

# *The Supreme Court of Ohio*

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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## **OPINION 91-4**

Issued February 8, 1991

*[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]*

*[Not current-subsequent rule amendments to DR 2-101, eff. Jan. 1, 1993, Aug. 16, 1993, Jan. 1, 2000.]*

**SYLLABUS:** "Debt Relief Clinic" is both a trade name and a misleading name. In Ohio, the practice of law under the name "Debt Relief Clinic" would be a violation of DR 2-102 (B). Under DR 2-102 (B) & (D) it would be proper to practice law in Ohio under the name "X and Associates" even though attorney X is not licensed in Ohio, provided that the jurisdictional limitations are enumerated on the letterhead and in other permissible listings. Individuals whose names have been obtained from published notices of foreclosures or suits filed are potential consumers of legal services and may be the targets of direct mail campaigns under DR 2-101 (B), provided that the communication complies with DR 2-101. The DR 2-107 restrictions on division of fees apply to attorneys not in the same firm and do not apply to the division of fees by law partners licensed in different jurisdictions.

**OPINION:** We have before us your request for an advisory opinion on questions regarding firm names, direct mail advertising and division of fees that have arisen in regard to a proposed partnership agreement. You are licensed to practice law in Ohio, are employed by a law firm headquartered in another state, and have been asked by the owner of the law firm to enter into a partnership agreement. The owner of the firm is not licensed in Ohio but is licensed in the state where the firm is headquartered. Your specific questions are as follows:

1. Whether it is proper in Ohio to name a law practice "Debt Relief Clinic" without reference to an attorney's name in the firm name;
2. Whether it is proper in Ohio to practice under the name "X and Associates" if partner X is licensed to practice law in another state, but not licensed in Ohio;

3. Whether it is proper to send letters to individuals whose names are obtained from published notices of foreclosures or suits filed, informing them that if they are not already represented your law firm would be willing to consult with them regarding their remedies under federal law;
4. Whether there are any limitations as to division of fees by law partners licensed in different jurisdictions?

Question 1

DR 2-102 (B) of the Code of Professional Responsibility specifically addresses the proper use of firm names. DR 2-102 (B) states in part that "[a] lawyer in private practice shall not practice under a trade name, a name that is misleading as to the identity of the lawyer or lawyers practicing under such name, or a firm name containing names other than those of one or more of the lawyers in the firm."

EC 2-10 of the Code of Professional Responsibility states that the use of a trade name could mislead the public concerning the identity, responsibility, and status of those practicing thereunder. EC 2-10 advises that a partnership name should be composed of the name of one or more of the lawyers practicing in the partnership.

"Debt Relief Clinic" does not contain the name of one or more of the lawyers practicing in the partnership. "Debt Relief Clinic" is both a trade name and a misleading name. In Ohio, the practice of law under the name "Debt Relief Clinic" would be a violation of DR 2-102 (B).

Question 2

The proposed partnership name, "X and Associates" does contain the name of one of the lawyers who would be practicing in the proposed partnership and therefore facially complies with DR 2-102 (B). However, since attorney X is not licensed to practice in Ohio, the Board looks for other guidance as to whether the name is proper. DR 2-102 (D) is a provision of the Code relating to partnerships formed or continued among lawyers licensed in different jurisdictions and is set forth below.

A partnership shall not be formed or continued between or among lawyers licensed in different jurisdictions unless all enumerations of the members and associates of the firm on its letterhead and in other permissible listings

make clear the jurisdictional limitations on those members and associates of the firm not licensed to practice in all listed jurisdictions, however, the same firm name may be used in each jurisdiction. CPR, DR 2-102 (D).

DR 2-102 (D) provides the authority for using the same firm name in each jurisdiction even though the firm name may contain the name of an attorney not licensed to practice in this state. It is the opinion of the Board that under DR 2-102 (B) & (D) it would be proper to practice law in Ohio under the name "X and Associates" even though attorney X is not licensed in Ohio, provided that the jurisdictional limitations are enumerated on the letterhead and in other permissible listings.

### Question 3

Restrictions on lawyer advertising have undergone an evolution since the Supreme Court's holding in Bates v. State Bar of Arizona that lawyer advertising is constitutionally protected commercial speech. 433 U.S. 350 (1977). States may no longer categorically prohibit targeted direct mail advertising. Shapero v. Kentucky Bar Ass'n, 486 U.S. 466 (1988). The Shapero court specifically addressed the issue of whether a state may, consistent with the First and Fourteenth Amendments, categorically prohibit lawyers from soliciting legal business for pecuniary gain by sending truthful and nondeceptive letters to potential clients known to face particular legal problems. The Shapero court rejected arguments that blanket prohibitions on targeted direct mail solicitation are justified because of a potential for overreaching, undue influence, coercion or invasion of privacy. According to the court, written forms of solicitation allow time for reflection and exercise of choice by the consumer. Id.

DR 2-101 (B) permits direct mail communication with potential consumers of legal services provided that the communication does not contain a "false, fraudulent, misleading or deceptive statement or claim" as prohibited by DR 2-101 (A). DR 2-101 (B) is set forth in its entirety below.

In order to facilitate the process of informed selection of a lawyer by potential consumers of legal services, a lawyer may publish or broadcast, subject to DR 2-102 through DR 2-105, information in print media, in written or printed material distributed to consumers through the mail or otherwise; or over radio or television. The information disclosed by the lawyer in such publication or broadcast shall comply with DR 2-101 (A). CPR, DR 2-101 (B).

The Board has previously issued two advisory opinions on targeted direct mail solicitation. A legal aid lawyer may use a targeted direct mail campaign to solicit indigent clients for representation for no fee on eviction actions after an eviction has been filed. Ohio Sup.Ct., Op. 88-3 (1988). An attorney may use a targeted direct mail campaign to solicit potential clients for representation in criminal matters. Ohio Sup.Ct., Op. 90-21 (1990). In Op. 90-21 the Board advised attorneys using targeted direct mail to review DR 2-101 (C) defining false or misleading communication, to be aware that targeted individuals may be more vulnerable than the general public, and to not interfere with an existing attorney-client relationship.

Ethics committees in other states have opined that a lawyer may send solicitation letters to individuals whose homes are subject to foreclosure: if not misleading or false and if in compliance with the Code, Virginia State Bar Ass'n, Op. 904 (1987); if factual determination is made that targeted individuals are not in physical, mental or emotional state that could render them unable to exercise judgement, Maryland State Bar Ass'n, Op. 88-19 (1988); if truthful and non-deceptive, Alabama State Bar Ass'n, Op. 88-101 (1988).

Direct mail campaigns facilitate the process of informed selection of a lawyer by potential consumers of legal services. It is the Board's opinion that individuals whose names have been obtained from published notices of foreclosures or suits filed are potential consumers of legal services and may be the targets of direct mail campaigns under DR 2-101 (B), provided that the communication complies with DR 2-101.

#### Question 4

DR 2-107 is the provision in the Code governing the division of fees among lawyers. DR 2-107 explicitly places restrictions on the division of fees by lawyers who are not in the same firm, but does not specifically address the division of fees by law partners licensed in different jurisdictions.

It is the opinion of the Board that the DR 2-107 restrictions on division of fees apply to attorneys not in the same firm and do not apply to the division of fees by law partners licensed in different jurisdictions. However, the Board advises that attorneys should comply with applicable state laws regarding partnerships and ethical requirements of the states where licensed.

**This is an informal, non-binding advisory opinion based upon the facts presented and limited to questions arising under the Code of Professional Responsibility.**