

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OPINION 91-18

Issued August 16, 1991

Withdrawn by Adv. Op. 2020-07

[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]

[Modified- by Opinion 96-3 on April 12, 1996]

SYLLABUS: A firm name may continue to include in its name, the name of a retiring attorney granted "retired registration status" or "inactive registration status," if included in the firm name prior to the attorney being granted "retired registration status" or "inactive registration status." DR 2-102 (B).

A law firm may list on its letterhead the name of an attorney granted "retired registration status" if the name was included prior to the time the attorney is granted "retired registration status," and provided that the letterhead includes a designation that the attorney is "retired." Gov.Bar R. VI § 3 (B). Attorneys with "inactive registration status" may not be listed on a firm's letterhead. Gov.Bar R. VI § 2.

A retiring partner who has "active registration status" with the Supreme Court of Ohio may be "of counsel" to the firm so long as the partner maintains a "close, regular, personal relationship" with the firm and remains on "active registration status." However, a retiring partner who has "retired registration status" with the Supreme Court of Ohio may not be of counsel." Gov.Bar R. VI § 3(B).

A law firm may continue to include in its firm name, the name of a retiring partner of the firm who becomes "of counsel" to the firm. DR 2-102 (B).

OPINION: Four questions are presented as follows:

1. Whether a firm may continue to include in its name the name of a retiring partner who is granted "retired registration status" or the name of a retiring partner who is granted "inactive registration status;"
2. Whether it is proper for a law firm to list on its letterhead the names of attorneys granted "retired registration status" or "inactive registration status;"
3. Whether a retiring partner can become "of counsel" to a firm;
4. Whether a law firm may continue to include in its name the name of a retiring partner who becomes "of counsel" to the firm.

Question 1

An attorney who is granted "retired registration status" or an attorney who is granted "inactive registration status" by the Supreme Court of Ohio must abide by the following restrictions:

[Attorneys with retired registration status and attorneys with inactive registration status] shall not be entitled to practice law in Ohio; hold himself [herself] out as authorized to practice law in Ohio; hold judicial office in Ohio; render any legal service for an attorney granted active status; occupy a position in this state in which he [she] is called upon to give legal advice or counselor to examine the law or pass upon the legal effect of any act, document, or law; be employed in the Ohio judicial system in a position required to be held by an attorney; or practice before any court or agency of this state on behalf of any person except himself [herself].

Gov.Bar R. VI §2 and §3 (adopted June 4, 1991, effective September 1, 1991).

Under DR 2-101 (A) of the Code of Professional Responsibility (Code) any communication by a lawyer regarding his or her professional status shall not contain any misleading statement or claim. Ethical Consideration 2-12 warns that in order to avoid the possibility of misleading persons with whom he [she] deals, a lawyer should be scrupulous in the representation of his [her] professional status. The Supreme Court of Ohio provides rules regarding firm names, in an effort to prevent misleading communication. For example, names of legal professional associations must be in compliance with Governing Bar Rule III, Section 2 (A). Further, the Code contains a rule which governs all firm names. Disciplinary Rule 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, except that the name of a professional corporation or professional association or legal clinic may contain "P.C." or "P.A." or similar symbols indicating the nature of the organization, and if otherwise lawful a firm may use as, or continue to include in, its name the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession.

Code of Professional Responsibility DR 2-102 (B).

This rule was written prior to there being a "retired registration status;" and thus, the reference in Disciplinary Rule 2-102 (B) to retired members of the firm is not to be interpreted as referring to a

particular registration status. With this in mind, it is clear from DR 2-102 (B) that a firm may use or continue to use the name or names of one or more retired members of the firm. Where a firm name is long established, the continued use in the firm name of a name of a retiring partner complies with the rules and is not misleading. Thus, it is the opinion of this Board that if an attorney is retiring and the name of the attorney was included in the firm name prior to his or her retiring, then the name can continue to be used in the firm name even if the retiring attorney acquires "retired registration status" or "inactive registration status."

Question 2

Governing Bar Rule VI § 3 (B) (adopted June 4, 1991, effective September 1, 1991) sets forth that "[a] law firm may include the name of a retired attorney on its letterhead if the name was included prior to the time the attorney is granted retired status, provided the letterhead includes a designation that the attorney is 'retired.'" Therefore, if an attorney is granted "retired registration status" and is listed on firm letterhead, the attorney must be listed as "retired." This designation is necessary to avoid misleading the public.

The Governing Bar Rules are silent as to the listing of an attorney with "inactive registration status" on firm letterhead. Thus, this Board advises that attorneys with "inactive registration status" may not be listed on a firm's letterhead. This advice is consistent with previous advice by the Board that the listing in a law list or directory of retiring partners who have acquired "inactive registration status" is misleading in that it gives the appearance that the "inactive registration status" attorneys are authorized to practice law. Ohio Sup.Ct, Op. 91-1 (1991).

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Question 3

Some confusion exists as to what "of counsel" means. The Code of Professional Responsibility does not define "of counsel." However, the American Bar Association Standing Committee on Ethics and Professional Responsibility has clarified the meaning of "of counsel" status. ABA

Formal Op. 90-357 (1990). Four principal patterns of the "of counsel" relationship were described: the part-time practitioners, who have changed from a full-time to a part-time career; the retired partners from the firm, who want to remain associated with the firm and be available for consultation; the probationary partners-to-be, who are brought into the firm laterally with the expectation of becoming a partner in a short period of time; and those with a permanent status as "of counsel," who have the quality of tenure, or something close to it, but lack the expectation of promotion to full partner status. Id. The core characteristic of the title "of counsel" is a "close, regular, personal relationship, describing a relationship which is neither that of partner nor the status ordinarily conveyed by the term "associate." Id. This Board supports the ABA clarification of the "of counsel" relationship.

Consistent with the ABA opinion, this Board has previously advised that a close, regular, personal relationship of a retired or semiretired former partner who remains available to the firm for consultation and advice could hold "of counsel" status. Ohio Sup.Ct, Op. 90-03 (1990) and Op. 88-23 (1988). It is still the opinion of this Board that a retiring partner may become "of counsel" so long as he or she maintains a "close, regular, personal relationship" with the firm and remains on "active registration status" with the Supreme Court of Ohio. However, this advice is not applicable if the attorney registers for "retired registration status" with the Supreme Court of Ohio. Under recent rule changes, an attorney in Ohio who is registered under "retired status" must comply with Governing Bar Rule VI § 3 (A) and (B), adopted June 4, 1991, effective September 1, 1991 for purposes of creating a "retired registration status." Under Governing Bar Rule VI § 3(B), "[a] retired attorney [meaning retired registration status] shall not be listed as 'of counsel' or otherwise be represented as being able to engage in the practice of law."

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Question 4

Where a firm name is long established, the continued use in the firm name of a name of a partner who becomes "of counsel" is not misleading. Therefore, the opinion of this Board is that the name of a partner who becomes "of counsel" to the firm may be continued to be used in the firm name. This advice is consistent with ABA, Formal Op. 90-357 (1990); Vermont Bar Ass'n, Op. 83-7 (1983); and Virginia State Bar, Op. 660 (1985).

Advisory Opinions of the Board of Commissioners on Grievances and Discipline are informal, nonbinding opinions in response to prospective or hypothetical questions regarding the application of the Supreme Court Rules for the Government of the Bar of Ohio, the Supreme Court Rules for the Government of the Judiciary, the Code of Professional Responsibility, the Code of Judicial Conduct, and the Attorney's Oath of Office.