

# *The Supreme Court of Ohio*

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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## **OPINION 92-19**

Issued October 16, 1992

*Withdrawn October 1, 2021*

*[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]*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 2-103(B) expressing the rule in gender neutral language; DR 2-111 and related amendments setting forth terms and conditions under which a lawyer or law firm may sell or purchase a law practice, eff. Feb. 1, 2003.]*

**SYLLABUS:** It is improper under Ohio's Code of Professional Responsibility for a lawyer to purchase client files and client lists from another attorney. The sale and purchase of client files and client lists would violate Disciplinary Rule 2-103 (B) by improperly compensating another for a referral. Such sale and purchase could also violate Disciplinary Rules 4-101 (B) (1) and (3) by failing to preserve, or by using to another's advantage, client confidences and secrets. Further, the sale of client files and client lists could impair a client's freedom to choose counsel since any change in counsel must be approved by the client.

**OPINION:** The question presented is whether an attorney may purchase client files and client lists from another attorney. At the outset, it should be noted that this opinion does not address the sale of the tangible assets of a law practice such as real estate, law books, and office equipment. It does not address the sale and purchase of accounts receivable. It does not address the sale of the intangible asset of good will, except to the extent that the sale of client files and lists might be considered as part of good will. It does not address the dissolution of a law partnership. Nor, does this opinion address payments to a deceased lawyer's estate as addressed in Disciplinary Rule 3-102 (A).

Though no Disciplinary Rule in Ohio directly addresses the sale of a law practice, there are several rules applicable to the sale of client files and lists: Disciplinary Rule 2-103, which prohibits a lawyer from paying others to recommend his or her services; and Disciplinary Rule 4-101, which requires the preservation of a client's confidences and secrets.

Disciplinary Rule 2-103 (B) specifically states that "[a] lawyer shall not compensate or give anything of value to a person or organization to recommend or secure his [her] employment by a client, or as a reward for having made a recommendation resulting in his [her] employment by a client, except that he [she] may pay the usual and reasonable fees or dues charged by any of the organizations listed in DR 2-103 (D)." The purchase of client files and lists would be the giving of value to another party to secure employment by a client, since any money paid by a purchaser for client files and lists would be in

essence a reward to the seller for recommending the purchasing lawyer. The Supreme Court of Ohio held that a respondent's alleged purchase of a law business violated DR 2-103 (B) by compensating or giving something of value to a person to secure employment by a client. Lake County Bar Assn. v. Patterson, 64 Ohio St. 2d 163, 164 (1980).

Disciplinary Rule 4-101B (1) requires that a lawyer shall not knowingly reveal a confidence or secret of a client. The sale of client files would almost necessarily include confidences and secrets regarding the client. Ethical Consideration 4-6 provides: "Thus a lawyer should not attempt to sell a law practice as a going business because, among other reasons, to do so would involve the disclosure of confidences and secrets." Further, Disciplinary Rule 4-101 B (3) prohibits an attorney from using a confidence or secret of a client for the advantage of the attorney or a third person. The sale of client files would benefit the selling attorney and could be considered an advantage to the buyer as a third person. Thus, without client consent, the sale of client files would violate Disciplinary Rule 4-101B (1) and (3). Further, the acts of selling client files and revealing confidences without the approval of the client is against public policy as it impairs a client's freedom to choose counsel.

The Board notes that the propriety of the sale of a law practice has been a subject of debate within the profession. On February 12, 1990, the House of Delegates of the American Bar Association adopted Model Rule 1.17 as an amendment to the ABA Model Rules of Professional Conduct. Model Rule 1.17 provides that a lawyer or law practice may sell or purchase a law practice, including good will, provided four conditions are met. Briefly summarized, the first condition is that a seller must cease to engage in private practice in the area where practice had been conducted. Second, the practice must be sold as an entirety to another lawyer or law firm. Third, the seller's clients must have actual written notice regarding the proposed sale, terms of any changes in fees, their right to obtain other counsel or take possession of their file, and that consent is presumed if there is no client objection within ninety days. Fourth, the fees charged shall not be increased by reason of the sale.

Several states have adopted rules that govern the sale of a law practice. In California, Rule 2-300 of the California Rules of Professional Conduct (May 27, 1989), provides inter alia, that all or substantially all of a law practice of a member of the bar, living or deceased, including good will, may be sold to another member of the bar or law firm subject to conditions set forth in the rule. In Florida, the supreme court adopted Rule 1.17 (effective January 1, 1993) patterned after but not identical to the Model Rule. For example, one difference is that the Florida rule does not give recognition to good will as part of the sale.

However, in states with rules based on the Model Code, the sale of a law practice is generally limited to the sale of tangible assets of the practice. See e. g. Vermont Bar Ass'n, Op. 88-3 (undated), Kentucky Bar Ass'n, Op. 324 (1987), State Bar of Michigan, CI-1145 (1986), CI-618 (1981), CI-577 (1980). Cf., Oregon State Bar, Op. 508 (1986), Chicago Bar Ass'n, Op. 83-11 (1984).

Ohio is bound by the Code of Professional Responsibility. The Code contains no rule under which the sale of client files and lists would be acceptable. Even if a client gave consent to share client confidences and secrets, the sale of client files and lists would still be improper since there would be prohibited compensation for a referral. It would also be improper if a client felt pressure to consent to such a sale.

Thus, this Board's opinion is that it is improper under Ohio's Code of Professional Responsibility for a lawyer to purchase client files and client lists from another attorney. The sale and purchase of client files and client lists would violate Disciplinary Rule 2-103 (B) by improperly compensating another for a referral. Such sale and purchase could also violate Disciplinary Rules 4-101 (B) (1) and (3) by failing to preserve, or by using to another's advantage, client confidences and secrets. Further, the sale and purchase of client files and client lists could impair a client's freedom to choose counsel since any change in counsel must be approved by the client.

**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.**