

# *The Supreme Court of Ohio*

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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## **OPINION 96-3**

Issued April 12, 1996

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*[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]*

**SYLLABUS:** An attorney in a legal professional association formed pursuant to Chapter 1785 of the Ohio Revised Code may not continue to hold shares in the legal professional association after being granted inactive registration status in Ohio. *See* Gov.Bar R. III §3(B); Gov.Bar R. VI §2.

A legal professional association formed pursuant to Chapter 1785 of the Ohio Revised Code may not continue to use the name of an attorney in the association's firm name after the attorney is granted inactive registration status in Ohio. *See* Gov.Bar R. III §2; DR 2-102(B).

This opinion modifies Opinion 91-18 (1991).

**OPINION:** This opinion addresses questions that arise when an attorney shareholder in a legal professional association changes his or her registration status from active to inactive.

1. May an attorney in a legal professional association continue to hold shares in a legal professional association after being granted inactive registration status?
2. May a legal professional association continue to use the name of an attorney in the association's firm name after the attorney is granted inactive registration status?

Question One

May an attorney in a legal professional association continue to hold shares in a legal professional association after being granted inactive registration status?

An attorney granted inactive registration status in Ohio is not entitled to practice law and may not hold himself or herself out as authorized to practice law. These restrictions apply until the attorney requests and is granted reinstatement of active status. *See* Gov.Bar R. VI §2.

An attorney authorized to practice as an active attorney under Gov.Bar R. VI may practice law in Ohio through a legal professional association formed pursuant to Chapter 1785 of the Ohio Revised Code. *See* Gov.Bar R. III §1. By statute, a shareholder in a professional association must be licensed to render the professional service.

R.C. 1785.02. An individual or group of individuals each of whom is licensed or otherwise legally authorized to render the same kind of professional service within this state ... may organize and become a shareholder, or shareholders, of a professional association.

The issuance, transfer, or sale of stock in a professional association is restricted to persons who are duly licensed or otherwise legally authorized to render the same professional service as that for which the association was organized. *See* Ohio Rev. Code Ann. §§1785.05, 1785.07 (Baldwin 1994).

Under Rule III §3(B) of the Supreme Court Rules for the Government of the Bar of Ohio, an equity holder in a legal professional association in Ohio must be a person authorized to practice law. The rule in pertinent part states:

Gov. Bar R. III § 3(B) ... An attorney shall not participate in a legal professional association, corporation, legal clinic, limited liability company, or registered partnership in which a member, partner, or other equity holder is a person not authorized to practice law in Ohio or elsewhere, except as permitted by DR 5-107 of the Code of Professional Responsibility [fiduciary

representative of estate of lawyer may hold stock for a reasonable time during administration].

The requirement of Rule III that an equity holder of a legal professional association be a person authorized to practice law is not met when an attorney shareholder changes from active to inactive registration status. An attorney with inactive registration status in Ohio is licensed to practice law, but is not authorized to practice law. In conclusion, the Board advises that an attorney in a legal professional association formed pursuant to Chapter 1785 of the Ohio Revised Code may not continue to hold shares in the legal professional association after being granted inactive registration status in Ohio. *See* Gov.Bar R. III §3(B); Gov.Bar R. VI §2.

### Question Two

May a legal professional association continue to use the name of an attorney in the association's firm name after the attorney is granted inactive registration status?

Names of legal professional associations are governed under Rule III §2 of the Supreme Court Rules for the Government of the Bar and DR 2-102(B) of the Ohio Code of Professional Responsibility. Although not the focus of this opinion, names of legal professional associations are also subject to regulation under general corporation law and professional association law. *See* Ohio Rev. Code Ann. §1701.05 (Baldwin 1994) and Chapter 1785 (Baldwin 1994).

Governing Bar Rule III was amended September 26, 1995, effective November 25, 1995. Governing Bar Rule III §2 requires that the name of a legal professional association comply with DR 2-102, R.C. §1701.05, and end with the legend "Co., LPA" or the words "A Legal Professional Association." Beyond that, the rule provides little guidance as to names.

Gov.Bar R. III §2. Name. The name of a legal professional association, corporation, legal clinic, limited liability company, or registered partnership shall comply with DR 2-102 of the Code of Professional Responsibility. The name of a legal professional association or legal clinic shall end with the

legend, “Co., LPA” or shall have immediately below it, in legible form, the words “A Legal Professional Association.” The name of a corporation, limited liability company, or registered partnership shall include a descriptive designation as required under sections 1701.05(A), 1705.05(A), or 1775.62, respectively, of the Revised Code.

In Opinion 88-016, the Board advised under the old rule that “the name of a legal professional corporation should not include the name of an associate who is not a shareholder in the corporation.” *See Bd of Comm’rs on Griev and Disc, Op. 88-016 (1988)*. The amended rule, unlike its predecessor, contains no express requirement that the name of a legal professional association consist of the name of one or more of the active shareholders and or the name of one or more deceased, retired, or disabled attorneys associated with its individual, partnership, or corporate predecessor in the practice of law. Rule III no longer contains an express requirement that the association remove from the association name the name of a shareholder who becomes disqualified to practice law for any reason.

The Board must now look to DR 2-102(B) for guidance in answering the question raised. Under DR 2-102(B), a firm may continue to use in its name the names of deceased or retired members of the firm. The firm name must not be misleading as to the identity of the lawyers practicing under the name and must not contain names other than those of one or more of the lawyers in the firm.

DR 2-102(B) 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 the name, or a firm name containing the names other than those of one or more of the lawyers in the firm, except that the name of a professional corporation or association, legal clinic, limited liability company, or registered partnership shall contain symbols indicating the nature of the organization as required by Gov.Bar R. III. 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. A lawyer

who assumes a judicial, legislative, public executive, or administrative post or office shall not permit his or her name to remain in the name of a law firm or to be used in professional notices of the firm during any significant period in which the lawyer is not actively and regularly practicing law as a member of the firm, and during this period other members of the firm shall not use the lawyer's name in the firm name or in professional notices of the firm.

In Opinion 91-18, the Board advised that “[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.’” That advice was offered in the context of a retiring partner of a law firm with a long established firm name. However, attorneys may seek inactive status for a variety of reasons, not just for the purpose of retirement after long years of practice.

With this opinion, the Board is modifying Opinion 91-18 (1991). The advice offered in Opinion 91-18 that the name of an attorney with inactive registration status may continue in a firm name is too broad. DR 2-102(B) grants special deference to deceased or retiring members of a firm by allowing their names to continue in the firm name. This special recognition should not be extended to attorneys who acquire inactive status for what could be a multitude of reasons aside from retirement.

The Board acknowledges that retired registration status cannot be granted until an attorney reaches the age of sixty-five. However, prior to reaching age sixty-five, it is not too onerous a burden for an attorney to keep his or her license active if he or she wishes the privilege of his or her name being continued in a firm name.

In conclusion, the Board advises that a legal professional association formed pursuant to Chapter 1785 of the Ohio Revised Code may not continue to use the name of an attorney in the association's firm name after the attorney is granted inactive registration status. *See* Gov.Bar R. III §2; DR 2-102(B). This opinion modifies Opinion 91-18 (1991).

**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.**