The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE
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OPINION 97-1
Issued February 14, 1997
Withdrawn by Adv. Op. 2021-10

[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]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: It is improper under DR 2-102(B), 2-102(C), and 3-103(A) for attorneys to practice law in Ohio under a common trade name franchised to attorneys across the nation.

OPINION: This opinion addresses attorney participation in a "nationwide network of franchised law firms" using a common trade name and logo for the practice of law.

> Is it proper for attorneys to practice law in Ohio under a common trade name franchised to attorneys across the nation?

"In its simplest terms, a franchise is a license from owner of a trademark or trade name permitting another to sell a product or service under that name or mark." *Black's Law Dictionary* 592 (5th ed. 1979). Although franchise agreements may vary in particularity, the essential element is the use of a common trade name.

Under the franchise agreement presented to this Board, a common trade name for the practice of law is franchised to attorneys across the nation to create a "nationwide network of franchised law firms." Each franchisee pays a one-time franchise fee for use of the trade name and logo and monthly fees for advertising and other services. The monthly fee is based upon the number of attorneys in the firm. The franchiser provides marketing, advertising, and other services for the franchisee. The franchiser's literature claims that the franchise program "will do for the legal market what Century 21 did for real estate." The franchisee purportedly benefits by having a law office with the "strongest brand image in the legal field," "ancillary benefits and programs relating to legal issues, technology and law office management," "mass purchasing power," and a "system wide referral network."

The answer to the inquiry is resolutely "no." First, the use of trade names is prohibited under DR 2-102(B) of the Ohio Code of Professional Responsibility. Second, a nationwide network of attorney franchisees practicing law under a common trade name is a holding out to the public that implies a partnership of lawyers where none exists and is prohibited under DR 2-102(C). Third, under DR 3-103(A) a partnership may not be formed with a non-lawyer if the activities consist of the practice of law. A lawyer who enters a franchise agreement with a non-lawyer would be involved in a business relationship with a non-lawyer where the activities consist of the practice of law in

violation of DR 3-103(A). If the franchiser is a lawyer or law firm, there would be no violation of DR 3-103(A), but there still would be violations of DR 2-102(B) and DR 2-102(C).

The rules are set forth below.

> 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 names other than those of one or more of the lawyers in the firm, [exceptions not pertinent to this opinion].
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> DR 2-102(C) A lawyer shall not hold himself or herself out as having a partnership with one or more other lawyers or professional corporations unless they are in fact partners.
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> DR 3-103 (A) A lawyer shall not form a partnership with a non-lawyer if any of the activities of the partnership consist of the practice of law.

There may be other applicable disciplinary rules depending upon the particularities of a specific franchise agreement, but these speculative concerns are not addressed further in this opinion other than to state a few examples. There could be ethical concerns regarding referral, conflict of interest, and fee division rules. In addition, there could be concerns regarding advertising rules. However, this opinion is not to be interpreted as a statement against group advertising by attorneys. Group advertising is permitted within certain ethical boundaries. *See* Ohio SupCt, Bd. of Comm'rs on Griev and Disc, Op. 89-30, Op. 91-7, and Op. 92-3.

Outside Ohio, there are several ethics committees that have not approved the practice of law under a franchised trade name. In Utah, "a franchise arrangement in which a lawyer or firm is provided with a trade name, marketing and related services . . . is inherently misleading because it implies to potential clients a partnership or professional corporation." Utah State Bar. Op. 95-04 (1995). In Illinois, "[t]he Rules of Professional Conduct are violated in numerous particulars by the creation of a network of independent licensee lawyers to be held out as practicing in the name of a corporation wholly owned by a non-lawyer." Illinois Sate Bar Ass'n, Op. 96-04 (1996). In Michigan, "[a] lawyer may not offer or make an agreement to franchise a trade name under which a number of lawyers who are not in fact in a partnership or professional corporation relationship with the franchiser hold themselves out as practicing under one firm name." State Bar of Michigan, RI 130 (1992).

The American Bar Association addressed the licensing of a firm name in the context of a law firm seeking to create a national network of firms, all using the original firm's name under a licensing agreement. "If a law firm licenses its name to other firms, all firms so licensed must, in fact, operate as a single firm and be treated as part of a single firm for all purposes under the Model Rules." ABA, Formal Op. 94-388 (1994). However, this Board does not rely on the ABA opinion as guidance to Ohio lawyers on the issue raised

herein. The opinion is not directly on point. It broadly covers a variety of relationships, interpreting the Model Rules that are not adopted in Ohio.

The franchise agreement before the Board would improperly involve Ohio attorneys in the use of a trade name for the practice of law, the misrepresentation of a partnership where no partnership exists, and might involve Ohio attorneys and non-lawyers in relationships in which the activities consist of the practice of law. Thus, in conclusion, this Board advises that it is improper under DR 2-102(B), 2-102(C), and 3-103(A) for attorneys to practice law in Ohio under a common trade name franchised to attorneys across the nation.

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.