

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OPINION 99-9

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[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]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 proper for an attorney to place an on-line intake form on the law firm world wide web site that enables web site visitors to e-mail legal questions to the law firm and receive responses by e-mail from an attorney for a fee. In providing such on-line legal representation, the attorney should comport with the Ohio Code of Professional Responsibility and the guidelines set forth in this opinion.

OPINION: This opinion addresses a question regarding on-line legal representation of clients through e-mail questions and answers.

Is it proper for an attorney to place an on-line intake form on the law firm world wide web site that enables web site visitors to e-mail legal questions to the law firm and receive responses by e-mail from an attorney for a fee?

As the twentieth century comes to a close, on-line legal services arrive. The potential of on-line services as a method of providing legal representation will be seen in the next century. But, its presence now warrants consideration as to whether the ethical rules governing the practice of law in Ohio permit the rendering of on-line legal advice for a fee.

The requester would like to establish a law firm web site with a feature on the home page allowing web site visitors to e-mail legal questions to attorneys in the law firm. Visitors would complete an on-line intake form asking for their name, address, credit card information, legal question, and password for the attorneys to use when responding to the legal questions. Attorneys in the firm would respond to the questions by e-mail. The attorneys would include a statement that the answer was researched using Ohio law and was reviewed by an attorney licensed in Ohio. The attorneys would charge a flat fee for answering a single topic question. The attorneys would reserve the right to determine whether a question includes multiple topics and would communicate this before charging for or providing the answer. If the attorney needs additional information to answer the question, the attorney would communicate by e-mail. There would be no "real time communication," no telephone, and no in-person communication between the attorney and the person. Upon answering the legal question, the lawyer would not initiate any further contact. If a person wishes to retain the attorney for other services the contact would be at the person's initiative. This on-line legal service would be advertised through the law firm web site and other media such as newspaper, radio, and law firm brochures.

Access to legal services is a fundamental concern of the bar. Ethical Consideration 1-1 of the Ohio Code of Professional Responsibility states that “[a] basic tenet of the professional responsibility of lawyers is that every person in our society should have ready access to the independent professional services of a lawyer of integrity and competence.”

Only seven years ago, telephone legal advice was considered to be a novel method of delivering legal services. In Opinion 92-10, issued April 10, 1992, the Board remarked that “[a]lthough it is not unusual for lawyers to provide legal advice to their clients over the telephone, it seems unusual when this legal advice is given to a caller with whom the lawyer has no previous relationship. The Board advised that

[i]n Ohio it is not improper for a law firm to advertise and operate a dial-a-lawyer service offering legal advice by lawyers to callers over a telephone for a fee. However, there are several disciplinary rules that place ethical restrictions on such dial-a-lawyer services: Disciplinary Rules 2-101, 2-102, 2-103, 2-104, 2-105, 2-106, 3-103, 4-101, 5-101, and 6-101. Such telephone advice constitutes professional legal employment through which the lawyer owes the caller all the traditional duties owed by a lawyer to a client.

Just as telephones may provide a method of delivering legal services, so may computers. A South Carolina attorney with a physical disability sought an opinion from the South Carolina Bar on the propriety of representing clients exclusively through contacts from an on-line service. In Op. 94-27, the South Carolina Bar advised that “[t]he operation of a law office via electronic media does not, in itself, violate any provision of the rules. However the manner in which the practice of law occurs raises several issues of concern.” The opinion mentioned that the rules regarding communication, advertising of services, and direct contact with prospective clients would apply. The opinion also mentioned that geographic limitations of the lawyer’s practice must be identified so that it is clear that the attorney may not practice law except in those states in which the attorney is admitted to practice. In addition, the attorney was advised to obtain sufficient information to make a complete conflicts inquiry, to consider the rules regarding trial publicity, and to consider his ability to engage in privileged communications via electronic mail.

With any method of legal representation ethical guidelines must be met. As to the requirements of the Ohio Code of Professional Responsibility, the Board offers the advice listed below to attorneys who provide on-line legal representation through e-mail answers to e-mail questions from non-attorneys.

1. Representation must be free from conflict of interest under DR 5-101 and 5-105. Providing legal advice to specific questions by e-mail constitutes professional legal employment and carries with it all the traditional duties owed by lawyer to a client. As an attorney checks for conflicts when a client calls or comes to his office seeking legal services, an attorney must check for conflicts when a client e-mails seeking legal advice. The on-line intake form should provide a way

for the law firm to make a conflicts check prior to reviewing the legal question. After the conflicts check the legal question can then be posed to the law firm by e-mail.

2. In providing answers to e-mail questions a lawyer must act competently under DR 6-101(A).
3. The confidences and secrets of the e-mail clients must be protected under DR 4-101. For related guidance see Ohio SupCt, Bd of Comm'rs on Griev & Disc, Op. 99-2 (1999) (advising that “[a] lawyer does not violate the duty to preserve confidences and secrets under DR 4-101 of the Ohio Code of Professional Responsibility by communicating with clients through electronic mail without encryption.”)
4. Advertising of the on-line legal service must comport with DR 2-101 through DR 2-105.
5. A trade name for the on-line service cannot be used under DR 2-102(B). The on-line legal services must be advertised under the law firm name not a trade name.
6. The provision of the on-line service cannot be a joint business effort between an attorney and a non-attorney. Disciplinary Rule 3-103(A) requires that “[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.”
7. An attorney cannot charge an excessive fee for on-line legal services under DR 2-106(A).
8. If an attorney cannot answer the e-mail question or if the attorney determines that proper consideration cannot be given through e-mail response the lawyer should inform the client of such. The attorney should not recommend further employment of himself or herself or of a partner or associate of the law firm, unless the e-mail client asks for advice regarding employment of a lawyer under DR 2-103(A) and 2-104.
9. The attorney must not practice law in a jurisdiction where to do so would violate the regulation of the profession in that jurisdiction under DR 3-101(B). Thus, an attorney should not offer legal advice on-line to clients in other jurisdictions unless permitted by the rules of that state.

The Board is aware of authority that advises against the on-line transmittal of information from prospective clients. In Opinion 97-04 (1997) the State Bar of Arizona advised that lawyers may place on-line intake forms for prospective clients on their web sites, but that prospective clients *should not* be able to send completed forms electronically because of

a possibility of inadvertent disclosures of confidential information. This Board disagrees. For the Board's view on e-mail communication with clients see Op. 99-2 (1999).

In conclusion, the Board advises that it is proper for an attorney to place an on-line intake form on the law firm world wide web site that enables web site visitors to e-mail legal questions to the law firm and receive responses by e-mail from an attorney for a fee. In providing such on-line legal representation, the attorney should comport with the Ohio Code of Professional Responsibility and the guidelines set forth in this opinion.

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.