

# *The Supreme Court of Ohio*

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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## **OPINION 91-5**

Issued February 8, 1991

**[Withdrawn- by Opinion 2016-11 on December 9, 2016]**

*[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]*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:** Lawyers who practice in association with each other, but not as a partnership, are not considered lawyers in the "same firm" for purposes of division of fees under DR 2-107 (A). Lawyers who practice in association with each other, but not as a partnership, must fully comply with the restrictions on fee splitting contained within DR 2-107 (A).

**OPINION:** We have before us your request regarding the proper division of fees among lawyers. Your question is whether lawyers who practice in association with each other, but not as a partnership, would be considered lawyers in the "same firm" for purposes of division of fees under DR 2-107. The practice you describe is among nine attorneys who are not partners. The attorneys do not use a collective name. Each attorney uses individual letterhead. The attorneys operate the office collectively. The attorneys cooperate and assist each other in litigation matters and share fees based upon the proportion of work performed by each lawyer. Each client is advised of and introduced to the other attorney who may be assisting in the case.

DR 2-107 of the Code of Professional Responsibility governs the division of fees among lawyers. DR 2-107 (A), as amended August 1, 1990, is set forth below.

- (A) Division of fees by lawyers who are not in the same firm may be made only with the prior consent of the client and if all of the following apply:
  - (1) The division is in proportion to the services performed by each lawyer or, if by written agreement with the client, all lawyers assume responsibility for the representation;
  - (2) The terms of the division and the identity of all lawyers sharing in the fee are disclosed in writing to the client;
  - (3) The total fee is reasonable.

CPR, DR 2-107 (A).

The amended language of DR 2-107 (A) prohibits, with exceptions, the division of fees by lawyers "not in the same firm." Prior to amendment, DR 2-107 (A) prohibited, with exceptions, a lawyer from dividing a fee with a "lawyer who is not a partner in or associate of his law firm or law office." The Board interprets the language change in this provision to be a distinction without difference.

The substantive change in amended DR 2-107 is the relaxation of the restriction that fees be divided only in proportion to work performed. Amended DR 2-107 allows for division of fees by written agreement with the client, if all lawyers assume responsibility for representation. This substantive change is consistent with ABA Model Rule 1.5 (e). However, DR 2-107 and Model Code DR 2-107 continue to require more disclosure to and consent by the client than does Model Rule 1.5 (e).

The spirit behind the restrictions on fee splitting among lawyers not in the same firm is to avoid brokering in clients. C. Wolfram, Modern Legal Ethics 509-510 (1986). However, it is also recognized that a division of fees can serve the client by facilitating the association of lawyers where neither lawyer alone could serve the client as well. ABA, Annotated Model Rules of Professional Conduct 49 (1984). Thus, the restrictions on division of fees among lawyers not in the same firm assist in both protecting and serving the client.

The Definitions Section of the Code of Professional Responsibility defines law firm as including a professional legal corporation or a legal clinic. The Code could have included other practice arrangements in this definition but did not.

Law firms are different from a collection of solo practitioners who merely share some aspects of a law practice. The practice arrangement you describe would not commonly be considered a "law firm" by either lawyers or non-lawyers. The practice arrangement you describe is with lawyers outside your firm.

It is the opinion of the Board that the practice arrangement you describe does not fall within the definition of law firm for purposes of DR 2-107 (A). Lawyers who practice in association with other lawyers, but not as a partnership, would not be considered lawyers within the "same firm" and therefore must fully comply with the restrictions regarding division of fees contained within DR 2-107 (A).

**This is an informal, non-binding advisory opinion based only upon the facts presented and limited to questions arising under the Code of Professional Responsibility.**