



# Ohio Board of Professional Conduct

## OPINION 2018-05

Issued August 3, 2018

### Lawyer and Firm Website Domain Names

**SYLLABUS:** The registration and publication of a domain name is a form of advertising and a professional designation subject to the Ohio Rules of Professional Conduct. A lawyer or firm is encouraged, but not required, to include in a domain name the name of the lawyer or firm, its partners, initials, or some other specific identifying criteria. A lawyer may not include a specific field of practice in a domain name if it conveys or implies a specialty when the lawyer is not in fact certified in that specific field of practice. A lawyer's use of domain name that references a specific city or municipality, when the lawyer or firm does not have a physical and active office in that city or municipality, is a false or misleading communication.

This nonbinding advisory opinion is issued by the Ohio Board of Professional Conduct in response to a prospective or hypothetical question regarding the application of ethics rules applicable to Ohio judges and lawyers. The Ohio Board of Professional Conduct is solely responsible for the content of this advisory opinion, and the advice contained in this opinion does not reflect and should not be construed as reflecting the opinion of the Supreme Court of Ohio. Questions regarding this advisory opinion should be directed to the staff of the Ohio Board of Professional Conduct.



# Ohio Board of Professional Conduct

65 SOUTH FRONT STREET, 5<sup>TH</sup> FLOOR, COLUMBUS, OH 43215-3431

Telephone: 614.387.9370 Fax: 614.387.9379

[www.bpc.ohio.gov](http://www.bpc.ohio.gov)

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VICE-CHAIR

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DIRECTOR

D. ALLAN ASBURY

SENIOR COUNSEL

KRISTI R. MCANAU

COUNSEL

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### QUESTIONS PRESENTED:

- (1) Is the registration and publication of a domain name considered "lawyer advertising" and subject to the Rules?
- (2) Is a domain name considered a "professional designation" and thus subject to Prof.Cond.R. 7.5?
- (3) Must a registered domain name include, in some fashion, the name of the firm, its partners, initials, or some other identifying criteria?
- (4) Does the inclusion of a specific field or practice in a domain name potentially violate Rule 7.4(e)?

- (5) Does the inclusion of generic designations in a domain name (defenselawyer.com, estateattorney.com) without the inclusion of the firm name violate any other Rules?
- (6) May a lawyer or firm advertise, by means of a registered domain name, that the lawyer or firm is associated with a specific city or municipality when the lawyer or firm does not, in fact, have a physical and active office in that city or municipality?

**APPLICABLE RULES:** Prof.Cond.R. 7.1, 7.2, 7.4, 7.5

**OPINION:** Customized websites are commonly used by law firms and solo practitioners as a means of communicating information relative to the areas of practice in which the firm or lawyer concentrates as well as contact information of the associated lawyers. Each website on the internet has an URL (uniform resource locator) that often contains a unique domain name as well as other components needed to locate the specific page or content. A common practice of lawyers is to set up multiple domain names in order to increase a lawyer or firm's internet presence.

Domain names are an important tool for lawyers to advertise their services to current and potential clients. Domain names appear in all the traditional places that addresses appear such as on letterheads, business cards, and in advertisements, and often appear as prominently as phone numbers and street addresses. Domain names also appear in e-mail addresses used by lawyers. Lawyers and firms typically choose a domain name that clients or potential clients will easily remember and that will identify the lawyer or firm.

#### *Domain names and advertising*

Advertising of a lawyer's services is specifically permitted by the Ohio Rules of Professional Conduct. Prof.Cond.R. 7.2. A lawyer's advertising may include many forms of communication such as written, recorded, electronic communication, or public media. *Id.* The rules permit public dissemination of information that might invite the attention of those seeking legal assistance. Prof.Cond.R. 7.2, cmt. [2]. The information that may be publicly disseminated includes, but is not limited to, the following: a lawyer's name, firm name, address, email address, website, and the kinds of services the lawyer will undertake. *Id.* All communications about a lawyer's services, including advertising, are

governed by Prof.Cond.R. 7.1 (a lawyer shall not make or use a false, misleading, or nonverifiable communication about the lawyer or the lawyer's services.)

The Board has previously recognized that firm websites are a primary method of communicating with clients, prospective clients, and the public. Adv. Op. 2012-2. The Board now recognizes that web domain names in use by lawyers and firms are designed not only as addresses for websites, but also to publicly disseminate information about the lawyer or firm so that potential clients and the public may learn more about the lawyer or firm. As such, a lawyer's or firm's domain name is a type of advertising in the form of written and electronic communication subject to the requirements of Prof.Cond.R. 7.1 and 7.2.

*Domain name as a "professional designation"*

Prof.Cond.R. 7.5 specifically provides that "[a] lawyer shall not use a firm name, letterhead or other *professional designation* that violates Rule 7.1." *Id.* (emphasis added). A domain name or website address is a type of professional designation. Prof.Cond.R. 7.5. cmt. [1] (a lawyer or firm may also be designated by a distinctive website address or comparable professional designation.)<sup>1</sup> As such, the domain name or website address must be analyzed in relation to the prohibitions against false, misleading, or nonverifiable communications contained in Prof.Cond.R. 7.1.

*Content of a domain name*

The content of a firm name is specifically regulated by Prof.Cond.R. 7.5. The rule prohibits a lawyer or firm from practicing under a trade name, a name that is misleading as to the identity of the lawyer or lawyers, or a firm name that contains names other than the names of one or more lawyers in the firm. Prof.Cond.R. 7.5. The rule further explains that symbols communicating the nature of the organization are permitted and that a firm name may include a deceased or retired member. *Id.* Conversely, Prof.Cond.R. 7.5 does not specify any required criteria for a domain name. *Id.* In addition, because a firm's domain name is analogous to a firm's physical address, there is a distinction between a domain name and a firm name. Adv. Op. 1999-4 (*citing* Ariz. Op. 97-04). For those

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<sup>1</sup> In further support of the conclusion that a website address is a professional designation, the American Bar Association's Annotated Model Rules explains "[a] law firm's internet address need not be identical to the firm name. However, it is a *professional designation* subject to regulation under Rule 7.5." Bennett, Cohen & Gunnarsson, *Annotated Model Rules of Professional Conduct*, 628 (8<sup>th</sup> ed. 2015)(emphasis added).

reasons, a lawyer or firm is not required to include in a domain name, the name of the lawyer or firm, its partners, initials or some other specific identifying criteria, although including this information may be advisable to avoid a claim that the name violates Prof. Cond. R. 7.1. *Id.* Other jurisdictions have held a similar view that a firm may use a domain name different from its firm name as long as it is not false, deceptive, or misleading.<sup>2</sup>

Furthermore, a firm's use of a domain name without the name of the firm does not implicate the prohibition against practicing under a trade name because of the aforementioned distinctions between a domain name and a firm name. One ethics authority specifically addressed the difference between a domain name and a firm name and concluded that because domain names are not firm names, a domain name is not subject to the limitation on use of trade names in the rules governing firm names and letterheads. Az. Ethics Op. 97-04 (1997). In addition, New York, which has a prohibition against trade names similar to Prof. Cond. R. 7.5, provides in its lawyer conduct rules that a lawyer or law firm may utilize a domain name different from the name of the lawyer or firm so long as certain conditions are met.<sup>3</sup> N.Y. Rule 7.5(e). As long as a domain name is used to assist current or potential clients in locating the lawyer's or firm's website and not as a substitute way to identify the lawyer or firm, use of a domain name other than a lawyer or firm's name does not violate the Ohio Rules of Professional Conduct.<sup>4</sup> The Board also concludes that the classification of a domain name as a "professional designation" does not implicate the prohibition against practicing under a trade name.

Lastly, when evaluating the appropriateness of a domain name, lawyers should consider if the domain name is false, misleading, or nonverifiable. Prof. Cond. R. 7.1. An example of a false, misleading, or nonverifiable domain name is "willwineverycaseforyou.com" A lawyer cannot guarantee to win every case. Whereas, a domain name using the lawyer's name, the firm name, or a partner's name would be

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<sup>2</sup> See e.g., K.Y. Ethics Op. E-427 (2007); N.J. Advertising Ethics Op. 32 (2005); N.C. Ethics Op. 2005-14 (2006).

<sup>3</sup> Those conditions are: 1) all pages of the website clearly include the actual name of the lawyer or firm; 2) the lawyer or firm does not attempt to engage in the practice of law using the domain name; 3) the name does not imply an ability to obtain results; and 4) the name does not otherwise violate the rules. N.Y. Prof. Cond. R. 7.5(e); N.Y. Rule 7.5, cmt. [2].

<sup>4</sup> The New Jersey Supreme Court Committee on Attorney Advertising reached the same conclusion in New Jersey Advertising Ethics Opinion 32 (2005).

truthful and straightforward communication. A lawyer's name, firm name, or partner's name lends itself to simple and distinctive identification of the lawyer or firm.

*Inclusion of specific field of practice in domain name*

Prof.Cond.R. 7.4 regulates a lawyer's communication of his or her fields of practice and specialization. "A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law or limits his or her practice to or concentrates in particular fields of law." Prof.Cond.R. 7.4(a). However, a lawyer may not state or imply that the lawyer is a specialist unless the lawyer has been certified as prescribed by the Supreme Court and the name of the certifying organization is clearly identified in the communication. Prof.Cond.R. 7.4(e)(1) and (2).

The inclusion of a specific field of practice in a domain name that conveys or implies a specialty when the lawyer is not in fact certified in that specific field of practice violates Prof.Cond.R. 7.4. For example, a domain name such as "familylawspecialists.com" would imply special competence or experience and does not clearly identify the certifying organization. On the other hand, the use of an area of practice or a generic designation such as "defenselawyer.com," "estateattorney.com," or "familylawlawyer.com" may be appropriately communicated in a domain name because it describes the particular field of practice or concentration of the lawyer. If a lawyer is in fact a certified specialist, a domain name such as "OSBACertifiedElderLawSpecialist.com" may be registered and used because it is truthful and not misleading and meets the specific requirements of Prof.Cond.R. 7.4. The Ohio State Bar Association ("OSBA") is an organization approved by the Supreme Court of Ohio Commission on Certification of Attorneys as Specialists, and the name of the certifying organization is clearly identified. Similarly, "OSBACertifiedElderLawLawyer.com" may be registered and used as a domain name if all of the lawyers in the firm are certified elder law specialists by the OSBA.

*Domain name associated with a specific city or municipality*

The Board cautions lawyers that registering and using a domain name that suggests the lawyer or his or her firm is associated with a specific city or municipality, when the lawyer or firm does not in fact have a physical and active office in that city or municipality, is a false and misleading communication. Prof.Cond.R. 7.1. The Board has previously found when reviewing the propriety of virtual law offices "that a lawyer must

avoid the implication or misrepresentation that the lawyer works from a physical office when it is not the case.” Adv.Op. 2017-5. Likewise, a lawyer in a traditional office arrangement must also avoid the implication or misrepresentation that the lawyer works from a physical and active office in a certain geographical location when it is not the case to avoid a violation of Prof.Cond.R. 7.1.

Thus, it is appropriate for a lawyer practicing criminal law with a physical and active office located in Dayton, Ohio to use a domain name such as “daytoncriminallawyer.com” because it is not false or misleading. However, if that same lawyer has no other office location, he or she may not also use a domain name such as “cincinnaticriminallawyer.com.” A potential client or current client could reasonably be led to believe, based on the domain name that the lawyer with a domain name such as “cincinnaticriminallawyer.com” operates a physical and active office geographically located in Cincinnati, Ohio. In order to avoid a false or misleading communication, a lawyer who does not have a physical and active office in a specific geographical location may not use a domain name such as “cincinnaticriminallawyer.com” as it implies that the lawyer works from a physical and active office in Cincinnati and is either false or misleading.

**CONCLUSION:** Domain names are a form of advertising subject to the Rules of Professional Conduct. When evaluating the appropriateness of a domain name, a lawyer or firm must consider whether the information communicated is false, misleading, or nonverifiable. Despite the classification of a domain name as a “professional designation,” a domain name is analogous to an address, and as such the prohibition related to practicing under a trade name is not applicable to a lawyer or firm’s choice of a domain name. A lawyer or firm is encouraged, but not required, to include in a registered domain name the name of the lawyer or firm, its partners, initials or some other specific identifying criteria. Lawyers and firms must be careful not to convey or imply a specialty in a field of practice in which the lawyer or members of the firm are not certified, but may convey an area of concentration in a practice through the information contained in a domain name. The use of a geographical location in a domain name that implies or misrepresents that a lawyer or firm has a physical and active office in that location, when in fact no physical and active office exists, is a false and misleading communication.