

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OFFICE OF SECRETARY

OPINION 88-018

Issued August 12, 1988

[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]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: Providing legal research and writing services exclusively for lawyers and law firms is not considered engaging in the practice of law. Therefore, such a service can be marketed under a trade name. A person who conducts such a service exclusively for lawyer and law firms is not engaged in the practice of law and therefore, may not hold himself or herself out as a lawyer, though otherwise licensed to practice law.

OPINION: We have before us your request for an advisory opinion regarding the propriety of marketing certain litigation support services under a trade name. In addition to offering litigation support services, you wish to offer legal research and writing services.

As you indicate in your request letter, DR 2-102(B) pertains to practicing law under a trade name. This rule states that, “[a] lawyer in private practice shall not practice under a trade name...” Code of Professional Responsibility DR 2-102(B). In regard to when a lawyer is considered to be engaged in private practice, it is not desirable to formulate a single, specific definition of what constitutes the practice of law. Code of Professional Responsibility, EC 3-5. However, the practice of law has been characterized as “acting in a representative capacity in protecting, enforcing, or defending another person in the exercise of his legal rights and duties and in counseling, advising and assisting him in relation thereto.” In re Unauthorized Practice of Law, 185 N.E.2d 489, 494 (Ohio Ct. App. 1962).

It is our opinion that because a legal research and writing service for other lawyers does not involve representing or advising clients, that it should not be considered the practice of law. An attorney who is not engaged in the practice of law is not bound by the Code and therefore may use a trade name to market his or her legal research and writing services.

However, because you are admittedly not engaged in the practice of law, holding yourself out as a lawyer in your marketing information would be misleading. See, Code of Professional Responsibility DR 2-101(A). The ABA has held in an advisory opinion that “[a] man cannot advertise that he is a lawyer even though he has no intention of engaging in the practice of law. A man who is a lawyer can shed the cloak which surrounds him as a lawyer and stop practicing law, but when he does he must not advertise the fact that he is a lawyer.” ABA Committee on Ethics and Professional Responsibility, Informal Op. 610 (1963). In other words, a person who intends to use the title of lawyer is required to follow the Code of Professional Responsibility even though not engaged in the practice of law.

In regard to EC 3-6, which you mention in your request letter, it is our opinion that a lawyer may delegate tasks to other non-lawyers as long as the lawyer supervises and maintains responsibility for the work. Code of Professional Responsibility, EC 3-6.

In conclusion, it is our opinion and you are so advised that a legal research and writing service exclusively for lawyers and law firms is not considered the practice of law and therefore may be marketed under a trade name. An attorney who provides a legal research and writing service is not engaging in the practice of law and therefore should not hold himself or herself out as an attorney. Of course, a lawyer wishing to be identified as an attorney is required to comply with the Code of Professional Responsibility and may not practice law under a trade name.

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

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Secretary, Board of
Commissioners