



Ohio Board of Professional Conduct

OPINION 2020-07

Issued August 7, 2020

Withdraws Adv. Op. 91-18, Modifies Adv. Op. 96-3

Use of Surname of Retiring or Inactive Lawyer in Law Firm Name and Letterhead

SYLLABUS: A law firm may continue to include in the firm name, in a continuing line of succession, the surname of a retiring lawyer granted retired or inactive registration status by the Supreme Court. A law firm may continue to list on its letterhead the name of a lawyer registered with the Supreme Court as “retired” or “inactive” if the name of the lawyer is designated with his or her registration status. A lawyer retiring from a law firm, and maintaining an “active” registration status, may become “of counsel” to the firm as long as the lawyer maintains a continuing and close, regular, personal relationship with the firm. A lawyer granted “retired” or “inactive” registration status may not serve as “of counsel” with any law firm. A law firm may continue to include in its firm name, the surname of lawyer who has retired from the firm and later becomes “of counsel” to the firm.

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

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QUESTIONS PRESENTED:

- 1). Whether a law firm may continue to include in its name the surname of a retiring lawyer who is granted “retired” or “inactive” registration status;
- 2). Whether it is proper for a law firm to list on its letterhead the surnames of lawyers granted “retired” or “inactive” registration status;
- 3). Whether a lawyer retiring from a law firm can become “of counsel” to the firm;

4). Whether a law firm may continue to include in its name the surname of a retiring partner who becomes “of counsel” to the firm.

APPLICABLE RULES: Prof.Cond.R. 7.1, 7.5

OPINION:

Question 1

A lawyer who registers and pays the biennial registration fee is granted “active” registration status by the Supreme Court. Gov.Bar R. VI, §2. A lawyer with an “active” registration status is permitted to practice law in Ohio. Lawyers retiring from a law firm often seek “retired” or “inactive” registration status from the Supreme Court. A lawyer granted “retired” registration status by the Supreme Court cannot continue to engage in the rendering of legal services for another. Gov.Bar R. VII, §2(A)(2)(c). A lawyer granted “inactive” registration status cannot engage in the practice of law, hold himself or herself out as authorized to practice, hold nonfederal judicial office, be employed in the Ohio judicial system in a position that requires the employee to be a lawyer, or practice before Ohio courts or agencies. Gov.Bar R. VI, §6(B)(2).

Notwithstanding the practice restrictions of retired or inactive lawyers, Prof.Cond. R. 7.5 permits a law firm to continue to use the surname of a retired lawyer in the firm name.¹ The term “retired” in the rule was included in a predecessor rule in the former Code of Professional Responsibility, predates the existence of certain registration requirements imposed by the Supreme Court, and refers to the relationship of the lawyer’s relationship with his or her firm, not his or her registration status. Whether the lawyer obtains “retired” or “inactive” registration status, the continued use in the firm name of the surname of a retiring lawyer complies with Prof.Cond.R. 7.5 and is not a false or misleading communication under Prof.Cond.R. 7.1. Thus, if a lawyer is retiring from the firm and the surname of the lawyer was included in the firm name prior to his or her retirement, then the surname can continue to be used in the firm name in a continuing

¹ Prof.Cond.R. 7.5 was amended on June 17, 2020 to exclude the prohibition against the use of trade names which may be used in addition to traditional law firm names that include the surname of one or more lawyers.

line of succession. The use of the retiring lawyer's surname in the law firm name is permitted even if the lawyer is simultaneously or subsequently granted "retired" registration status by the Supreme Court. In addition, a law firm can continue to use the surname of a retiring lawyer who contemporarily or subsequently was granted "inactive" registration status in the name of the law firm.²

Question 2

The name of a lawyer with a "retired" or "inactive" registration status may be included on law firm letterhead if the lawyer's name was included prior to the time that the lawyer's registration status changed. Gov.Bar R. VI, §11(D), Gov.Bar R. VI, §5(D). Consequently, if a lawyer is granted "retired" or "inactive" registration status, and remains listed on firm letterhead, the lawyer must be designated on the letterhead as "retired" or "inactive." The designation is necessary to avoid a false or misleading communication by the lawyer concerning their availability to practice law. Prof.Cond.R. 7.1.

Question 3

Prof. Cond. R. 7.5, cmt.[3] states that a lawyer may be designated as "[o]f Counsel" if the lawyer has a continuing relationship with a lawyer or law firm." The Board has previously advised that a lawyer who has retired from, or who has entered semi-retired status with, a firm and remains available to the firm for consultation and advice can hold "of counsel" status if the lawyer maintains a "continuing relationship" that is "close, regular, and personal" with the firm. Adv. Op. 2008-01. The relationship between lawyer and law firm must be more than a mere forwarder or receiver of legal business, a one-time advisor/consultant relationship, or a one-case relationship. *Id.* A lawyer who meets the requisite conditions for "of counsel" may be listed on the firm letterhead and

² Board Op. 96-3, modified by this opinion, concluded that the surname of an inactive lawyer may not be included in the law firm name because, in addition to retirement, there may be other reasons the lawyer chooses to obtain "inactive" status. Since the issuance of the prior advisory opinion, Gov.Bar R. VI, 5(D) was promulgated to permit a law firm to list an inactive lawyer's name on law firm letterhead with the "inactive" designation. In light of the rule change concerning letterhead listings, the Board modifies its previous advice that when a retiring lawyer's status change to "inactive" is related his or her retirement from the firm, the law firm name may continue to use the surname of the lawyer in the firm's name.

designated as such. However, a lawyer granted “retired” or “inactive” status may not be designated “of counsel” or otherwise represent that he or she is able to engage in the practice of law in Ohio. Gov.Bar R. VI, §11(D), Gov.Bar R. VI, §5(D).

Question 4

After a lawyer becomes “of counsel” to the firm, the lawyer’s surname may remain in the firm name if the surname was used prior to the lawyer’s change in status. The use of the “of counsel” lawyer’s surname in the firm name is neither false or misleading when the firm name is established and well-recognized. Prof.Cond.R. 7.1. *See* ABA Formal Op. 90-357 (1990). A surname of a lawyer joining a law firm for the first time as “of counsel” may not be included in the name of the firm. Adv. Op. 2008-01.

CONCLUSION: The surname of a lawyer retiring from a law firm may continue to be used in the name of the firm in a continuing line of succession. The lawyer’s contemporaneous or subsequent registration status as “retired” or “inactive” does not affect the ability of the law firm to continue to use the lawyer’s surname. Lawyers who are listed on law firm letterhead and subsequently are granted “retired” registration status, may continue to be listed and designated as such on the letterhead. A lawyer who meets the requirements for “of counsel” and maintains “active” registration status may be listed and designated as “of counsel” on a firm’s letterhead. A lawyer granted “retired” or “inactive” registration status may not serve as “of counsel” with any law firm. A law firm may continue to include in its firm name the surname of a lawyer who become “of counsel” and whose surname previously appeared in the firm name.