



Ohio Board of Professional Conduct

OPINION 2021-10

Issued October 1, 2021

Withdraws Adv. Op. 1997-1

Practicing Under a Common Trade Name Franchised Nationally to Lawyers and Law Firms

SYLLABUS: A lawyer or law firm may not practice under a common trade name which is franchised nationally to lawyers.

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:

Is it proper for lawyers to practice law in Ohio under a common trade name franchised nationally to lawyers?

APPLICABLE RULES: Prof.Cond.R. 5.4, 7.1, and 7.5

OPINION:

A franchise is “the sole right granted by the owner of a trademark or trade name to engage in business or to sell a good or service in a certain area.” Black’s Law Dictionary (11th ed. 2019). Although franchise agreements may vary in particularity, the essential element is the use of a common trade name. Under the franchise agreement subject to this inquiry, a common trade name is franchised nationally to lawyers in order to create a “nationwide network of franchised law firms.” Each franchisee pays a one-time franchise fee for use of the trade name and logo and monthly fees for advertising and other services. The monthly fee is based upon the number of lawyers in the firm. The franchiser provides marketing, advertising, and other services for the franchisee. The franchisee purportedly benefits by: 1) having a strong brand image; 2) having access to

benefits and programs relating to legal issues, technology, and law office management; 3) mass purchasing power; and 4) a system-wide referral network.

In June 2020, the Supreme Court of Ohio amended Prof.Cond.R. 7.5 to remove the prohibition on practicing under a trade name. A trade name is defined as “a name, style, or symbol used to distinguish a company, partnership, or business (as opposed to a product or service); the name under which a business operates.” Black’s Law Dictionary (11th ed. 2019). Firms must still exercise care to ensure that the trade name is not false, misleading, or nonverifiable. Prof.Cond.R. 7.1; Adv. Op. 2020-11. If a lawyer or law firm intends to practice as a legal professional association, corporation, or legal clinic, a limited liability company, or a limited liability partnership, a trade name used as a law firm name must comply with requirements of Gov.Bar R. III(2) and carry the appropriate corporate legend or designation. *Id.*

Although an Ohio lawyer may now practice under a trade name, the use of a common trade name in connection with a franchise implicates other rules. A partnership may not be formed with a nonlawyer if any of the activities of the partnership consists of the practice of law. Prof.Cond.R. 5.4(b). The Board has interpreted Prof.Cond.R. 5.4(b) to apply not only to partnerships formed in accordance with state law, but also to business relationships and associations between lawyers and nonlawyers. Adv. Op. 2019-10. If the corporation franchising the trade name is owned in whole or part by a nonlawyer, an Ohio lawyer is not permitted to practice under the trade name because the relationship between the franchiser and the lawyer includes the practice of law.

Further, lawyers may state or imply they practice in a partnership or organization only when there is a factual basis for the representation. Prof.Cond.R. 7.5(d). A partnership traditionally provides shared responsibility and liability for client matters. In contrast, a purpose of purchasing a franchised trade name is to enable the lawyer or law firm to benefit from recognition of the trade name and brand image. The American Bar Association addressed the licensing of a firm name in the context of a law firm seeking to create a national network of firms, all using the original firm’s name under a licensing agreement. “If a law firm licenses its name to other firms, all firms so licensed must, in fact, operate as a single firm and be treated as part of a single firm for all purposes under the * * * [r]ules.” ABA, Formal Op. 94-388 (1994).

If a potential client seeks to retain a lawyer in Ohio, who is working under a franchised trade name connected to a network of other lawyer franchisees, it is reasonable that the client may assume that: 1) the network of lawyers will not represent any clients with interests in conflict with those of the client; 2) that the Ohio lawyer will have access to the state specific expertise of lawyers located in other states; and 3) that the Ohio lawyer will have access to extensive financial resources to pursue client matters. As indicated by the franchiser's promise of a system-wide referral network, it is apparent that the franchise does not consider itself a single firm. An Ohio lawyer involved in a nationwide network of lawyer franchisees practicing law under a common trade name is a holding out to the public that implies the network is a partnership of lawyers. If the franchise and franchisees are not in fact a true partnership, with shared responsibilities and liabilities, the Ohio lawyer's conduct runs contrary to Prof.Cond.R. 7.5(d) and is also a misleading communication under Prof.Cond.R. 7.1.