

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-72
Issued: September 1973

This opinion was decided under the Code of Professional Responsibility, which was in effect from 1971 to 1990. Lawyers should consult the current version of the Rules of Professional Conduct and Comments, SCR 3.130 (available at <http://www.kybar.org>), especially Rules 7.01-7.50 and the Attorneys' Advertising Commission Regulations, before relying on this opinion.

Question: May an attorney specializing in a branch of law send notices of this fact to other attorneys?

Answer: Qualified Yes.

References: DR 2-105

OPINION

Canon 46 of the old Canons of Professional Ethics permitted an attorney to notify local attorneys only, in a brief, dignified announcement, of his availability to act as an associate in a particular branch of the law or legal service. Publication of a notice was also permitted in his local legal journal.

With adoption of the new Code of Professional Responsibility in 1969, Canon 46 was modified in several respects. No longer is a notice, otherwise proper, confined to a local legal journal or to local attorneys. The applicable rule is found in DR 2-105. In material portion it provides:

- (A) A lawyer shall not hold himself out publicly as a specialist or as limiting his practice, except as permitted under DR 2-102(A)(6) or as follows:
- (1) A lawyer admitted to practice before the United States Patent Office may use the designation Patent Attorney, Patent Lawyer, Trademark Attorney, or Trademark Lawyer, or any combination of those terms, on his letterhead and office sign, and a lawyer actively engaged in the admiralty practice may use the designation Admiralty or Admiralty Lawyer on his letterhead and office sign
 - (3) A lawyer available to act as a consultant to or as an associate of other lawyers in a particular branch of law or legal service may distribute to other lawyers and publish in legal journals a dignified announcement of such availability, but the announcement shall not contain a representation of special competence or experience. The announcement shall not be distributed to lawyers more frequently than

once in a calendar year, but it may be published periodically in legal journals.

The purpose of the notice and the type of specialty are not stated in the inquiry. If it is intended to announce the attorney's availability as a consultant to or associate of other lawyers in a particular area of the law, the Committee sees no ethical conflict in the use of an announcement to other attorneys, so long as it is undertaken with careful observance of the manner and form dictated by DR 2-105(A)(3). If on the other hand the attorney is not available for consultation or association with other attorneys, it is clear from the language of the rule that, except to the extent permitted by DR 2-105(A)(I), any notice to other lawyers of specialization would be prohibited.

Note to Reader

This ethics opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530 (or its predecessor rule). The Rule provides that formal opinions are advisory only.