

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-208
Issued: March 1979

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>), before relying on this opinion.

Question: Does a local rule of court which authorizes service on the party against whom relief is sought and the attorney of record after a judgment in a divorce action violate DR 7-104(A)(1)?

Answer: No.

References: DR 7-104; Canon 9; EC 7-18; Kentucky Bar Assn v. Shane, 553 S.W.2d 467 (Ky. 1977)

OPINION

The problem presented is whether an attorney should be permitted to communicate with an adverse party in a divorce suit *after* a final decree has been obtained.

Although the Code forbids communication by an attorney with an adverse party represented by an attorney, it does not contemplate the absence of knowledge whether a party is represented by an attorney. The rule's provision that notice be served on both the attorney of record and the party meets the requirement that the attorney be served but provides additional protection for a party no longer represented. Due to the nature of finality in divorce actions and the likelihood that once a decree is obtained, the attorney's employment will be ended, such protection is needed to insure that both parties will, in fact, receive notice. The fact that an attorney represents a party in a divorce action does not necessarily mean that the attorney is bound to represent the same party in any subsequent proceeding involving the same action.

Both the Disciplinary Rule, which is mandatory, and the Ethical Consideration, which is discretionary provide for an exception to the general rule where exigent circumstances are present. DR 7-104 qualifies the rule with "unless ... authorized by law to do so" and EC 7-18 extends the exception to "unless pursuant to law or rule of court." The requirement of this local rule of court constitutes such a law or rule of court. Neither the KBA nor the ABA have ruled on the requirement of notice where it is not known whether a party is represented by counsel. The requirements are clear only where an attorney knows that a party is or is not represented. (See Kentucky Bar Assn v. Shane, 553 S.W.2d 467 (Ky. 1977).) Under the special circumstances of a divorce action, its characteristic of finality and the possible consequences of failure to effectively serve notice upon

an adverse party (i.e., a default judgment); the rule as it stands is reasonable and does not violate any provision of the Code of Professional Responsibility.

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.