

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-221
Issued: November 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>), especially Rules 7.01-7.50 and the Attorneys' Advertising Commission Regulations, before relying on this opinion.

Question: May a Kentucky lawyer enter into a partnership with a New York law firm for the sole purpose of handling forwarded commercial accounts with agreement to pay the New York lawyers three percent of all monies collected or fifty percent of all noncontingent fees collected on the accounts that are forwarded to the Kentucky lawyer by the New York law firm?

Answer: No.

References: Opinion KBA E-92; DR 2-102(C), 2-107(A); ABA Formal Opinion 115

OPINION

Opinion KBA E-92 (1974) concerned the formation of a partnership with an attorney in another state. It stated that

An arrangement which involved only referral of specified business to an attorney in another state, without a general division of fees earned by the firm and responsibility for its actions. would not in reality be a partnership at all.

In the question presented, the lawyers are partners only in the sense of carrying on a business. We do not believe this is one law firm within the meaning of DR 2-107.

Opinion KBA E-92 (1974) subscribes to the policy of ABA Formal Opinion 115 in which it was found improper for two attorneys to hold themselves out as partners in different states where there was not a division of fees on cases forwarded from one to the other. Further, DR 2-102 provides that

(C) A lawyer shall not hold himself out as having a partnership with one or more other lawyers... unless they are in fact partners.

In the situation presented to the Committee in this case, the proposed law firm is a law firm in form only and not in substance.

A second issue is whether this agreement complies with DR 2-107(A). This section provides that there is no such thing as a “referral fee” unless the division is made in proportion to services performed or responsibility assumed. In this agreement all losses are borne by the “resident” partner which indicates a lack of responsibility on the part of the national partner. Further, the strict fee schedule gives no indication of a division of fees based upon legal services rendered or responsibilities assumed by the respective attorneys. This contract is nothing more than a written “referral service” and in violation of DR 2-107.

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.