

**KENTUCKY BAR ASSOCIATION**  
**Ethics Opinion KBA E-229**  
Issued: January 1980

***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 1:** May an attorney licensed to practice only in the State of Indiana and maintains an office in the State of Indiana, have a listing in the Louisville, Kentucky yellow pages under the heading, "attorney", with his Indiana office and telephone number below?

**Answer 1:** No.

**Question 2:** Would Bates v. State Bar of Arizona, (1977), have any effect on the above decision?

**Answer 2:** No.

**References:** ABA Formal Opinion 284, 316; ABA Informal Opinion 487, 573(A); EC 3-9; DR 2-101(A), 3-101(B); Bates v. State Bar of Arizona, 433 U.S. 350, 97 S.Ct. 2691 (1977); SCR 3.135

**OPINION**

**Question 1**

Formal Opinion 284 of the ABA (August 1951), noted the use of a telephone directory for the purpose of facilitating communications between persons using the telephone and not for the purpose of permitting lawyers to advertise for legal services. The use of a directory by an attorney or a law firm outside the directory area of the office or residence of the attorney or firm would tend to be an advertising vehicle, and clearly improper (ABA Informal Opinion 487 (November 13, 1961)).

The listing by the attorney in question in the Louisville phone directory would seem to fit under the ruling of the Committee in ABA Informal Opinion 487. To further this, DR 2-101(A) puts the listing in the category of misleading and deceptive since he is not licensed to practice in the State of Kentucky.

ABA Formal Opinion 316 (January 18, 1967) recognized the fact that the area the attorney practices in makes a difference where the area is of metropolitan origin a lot of legal problems for clients take in both states, thus permitting a listing such as the one here. But, the opinion goes one step further when it pointed out that the practice in both states would be determined by each as a matter of law.

Here, the attorney in question cannot practice in Kentucky. His listing is misleading even though the geographical area takes in both jurisdictions.

Looking at EC 3-9 and DR 3-101B), it is clear that the practice of law by an attorney in a jurisdiction he is not permitted to by law or by court order, is a violation of regulations of the profession in that jurisdiction.

The only reprieve this attorney might have is where the out-of-town directory serviced the area or a portion of the area of Indiana the attorney practiced in. See Informal Opinion S73(A) (April 5, 1963). But this is distinguishable since as a matter of law the area the listing is registered in is not one the attorney can practice in, and most probably the Louisville directory does not extend into Indiana.

## **Question 2**

Bates v. State Bar of Arizona, 97 S.Ct. 2691 (1977), effectively changes the old rules of non-advertising as recognized in the ABA Code of Professional Responsibility in DR 2-101, but it would have no effect in Question 2. The ruling in Bates was adopted by the Kentucky Supreme Court in January, 1978, and on June 1, 1978, the same Court supplemented the ethical standards in Kentucky by adopting SCR 3.135, which prescribe the express avenues of advertising for the state.

However, upon viewing such rules in comparison with the present question, it seems as though they are inapplicable. The situation presented seems to be more of a concern in the area of the practice of law as a matter of law and not so much that of ethical advertising. The attorney here is not licensed to practice in Kentucky, and his listing is misleading to the public by indicating that he is. Code sections DR 2-101(A) and DR 3-101(B) seem to take care of that.

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### ***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.*