

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-268
Issued: February 1983

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 lawyer or law firm hold an open house?

Answer: Qualified yes.

References: ABA I.O. 623 (1963); ABA Construed Canon 27; ABA I.O. 757 (1964); ABA I.O. 940; ABA I.O. 796 (1964); ABA I.O. 815 (1964); DR 2-101(A), (B), (C); Bates v. State Bar of Arizona, 433 U.S. 384 (1977); Ohralik v. Ohio State Bar Association, 436 U.S. 447 (1978); In Re Primus, 436 U.S. 412 (1978); In Re R.M.J., 102 S. Ct. 929 (1982); Kentucky Bar Association v. Stuart, 568 S.W.2d 933 (1978); Kentucky Bar Association v. Gangwish, II, 630 S.W.2d 66 (1982); S.C.R. 3.150; S.C.R. 3.135; DR 2-103(A); S.C.R. 3.135(3)

OPINION

In ABA I.O. 623 (1963), the ABA construed Canon 27, under the Canons of Ethics then in existence, to preclude a general "open house" to constitute indirect advertising and, therefore, prohibited. The request concerned the opening of a new office, or upon the redecoration and refurbishing of its old offices, to which lawyers, public officials and prominent business men would be invited.

In ABA I.O. 757 (1964), the ABA ruled a Christmas party was improper since it was advertising. Likewise, in ABA I.O. 940, a get-acquainted dinner for clients in which a short synopsis of each lawyer's background was found to be self-laudatory and, therefore, unethical.

Interestingly, the ABA in I.O. 796 (1964) allowed a law firm to have a room at a hotel where adjusters and insurance agents were meeting for their annual convention, as long as they did not invite adjusters and agents who were not clients of the attorneys. Likewise, in ABA I.O. 815 (1964), the committee allowed a law firm to entertain at home or elsewhere the claims representatives of the insurance companies the law firm represents.

With the adoption of the Code of Professional Responsibility in 1969 in Kentucky, the applicable advertising sections were mainly governed under DR 2-101(A), (B), and (C). In 1977 the Supreme Court of the United States decided Bates v. State Bar of Arizona, 433 U.S. 384 (1977)

which opened the gates for lawyers to advertise under certain circumstances. Since 1977 numerous decisions of the Supreme Court of Kentucky have looked at advertising by lawyers. See Ohralik v. Ohio State Bar Association, 436 U.S. 447 (1978); In Re R.M. J., 102 S.Ct. 929 (1982); Kentucky Bar Association v. Stuart, Ky., 568 S.W.2d 933 (1978); and Kentucky Bar Association v. Gangwish, II, Ky., 630 S.W.2d 66 (1982).

The Supreme Court has promulgated rules on advertising. Effective January 1, 1978, the Court amended S.C.R. 3.130 to recognize that lawyers may advertise, as long as they comply with the Bates v. State Bar of Arizona case. Effective June 1, 1978, the Court promulgated exact rules for lawyers to advertise in SCR 3.135. SCR 3.135 has been amended and now includes an Attorneys' Advertising Commission in order to aid the lawyers in this sometimes confusing area.

DR 2-103(A) provides:

A lawyer shall not recommend employment, as a private practitioner, of himself, his partner, or associate to a non-lawyer who has not sought his advice regarding employment of a lawyer.

In construing this section of the Code of Professional Responsibility, the Supreme Court of Kentucky differentiated the terms "in-person solicitation" versus advertising. The former being prohibited, while the latter being protected since there could be no overreaching by the lawyer and deception could be controlled by sending a copy to the Bar Association. Kentucky Bar Association v. Stuart, Ky., 568 S.W.2d 933 (1978).

There are many reasons that a lawyer or law firm may wish to have an open house (new facilities, newly decorated, historic Christmas walk, etc.). It is the opinion of the Ethics Committee that as long as the card, letter, newspaper advertisement, etc. complied with SCR 3.135(3) such open houses are permissible. Of particular importance, but not the only one, to lawyers who anticipate having an open house is the words:

A written advertisement may be sent or delivered to an individual addressee only if that addressee is one of a class of persons, other than a family, to whom it is also sent or delivered at or about the same time, and only if it is not prompted or precipitated by a specific event or occurrence involving or relating to the addressee or addressees as distinct from the general public. (Emphasis added.)

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.