

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-293
Issued: November 1984

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: May an attorney establish and operate a consulting business that would disseminate legal information to business through training sessions?

Answer: Qualified yes.

References: In re R.M.J., 455 U.S. 191 (1982); KBA E-274; KBA E-270; ABA EC 8-3.

OPINION

The question raised herein has been widely discussed among members of the Bar Association, particularly in light of the Kentucky Supreme Court's recent rule regarding mandatory continuing legal education. *See*, SCR 3.665, *et seq.* The attorney requesting the opinion hypothetically asked whether it would be possible for an attorney to conduct a training session for managers on topics such as "Employment at Will-Discharging an Employee." At the outset, it should be noted that the Code of Professional Responsibility makes no distinction between a lawyer acting in his/her capacity as a lawyer and a lawyer who is concurrently engaged in another occupation. Frequently, lawyers are requested to be members of corporations or to serve in leadership roles in charitable and civic activities. Moreover, Ethical Consideration 8-3 provides that "[m]embers of the public should be educated to recognize the existence of legal problems and the resultant need for legal services...

Somewhat related to the question raised herein is the extent to which lawyers may participate in television programs aimed at providing general information about legal concerns to the public. The Ethics Committee addressed this issued in KBA E-270 and included therein a list of potential problems that may face lawyers cast in the role of providing education to non-lawyers. The list, while not intended to be exhaustive was provided as a guide to lawyers and consists of the following suggestions:

1. The lawyers should not give personal legal advice to individuals who may call in to the program.
2. The lawyers should be very careful to avoid any mentioning as to any pending or anticipated litigation that might interfere with a fair trial.
3. The lawyers should be very careful not to mention any privileged communications which may have been obtained as to any client past or present.

4. The lawyers should remember that he/she represents all the lawyers throughout the Commonwealth. He/she should act in a dignified manner and should not engage in self laudatory statements. The lawyer in appearing should act with dignity and within the accepted traditions of the legal profession.

Further, more than a decade ago, the Ethics Committee of the Kentucky Bar Association spoke to the problem of the dual role of the attorney *qua* attorney and attorney *qua* businessman in KBA E-74 which posed the question of whether an attorney could engage in both the practice of law and the operation of a real estate business. Incorporated therein by reference was ABA Informal Opinion 775 which stated that an attorney does not necessarily violate the canons by engaging in a separate occupation (1) if the separate business is not necessarily the practice of law when conducted by a lawyer; (2) if it can be conducted in accordance with the canons; (3) if it is not used or engaged in such a manner as to directly or indirectly advertise or solicit legal matters for the lawyer; (4) if it will not inevitably serve as a feeder to his law practice; and (5) if it is not conducted in or from a lawyer's law office except where the volume of the law practice and business is so small that separate quarters are not economically feasible and where, even in that situation, there is no indication on the office, letterhead or otherwise that the lawyer engages in any activity except the practice of law. While certain of the precepts embodied in ABA Informal Opinion 775 are dated insofar as they relate to lawyer advertising, the concern raised by the question herein is that the lawyer will utilize the consulting business as a method of indirect advertising thereby circumventing SCR 3.135 (now Rules 7.01-7.60) which specifically relates to lawyer advertising.

However, so long as the provisions of SCR 3.135 and the principles embodied in KBA E-270 are adhered to, it would appear that an attorney may operate and establish a consulting business that would disseminate legal information to businesses through training sessions.

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.