

**KENTUCKY BAR ASSOCIATION**  
**Ethics Opinion KBA E-307**  
Issued: September 1985

***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:** Attorney A is Chairman of the Board of a Mental Health Association that provides marriage counseling services and counseling services related to family alcoholism. A couple undergoes counseling and treatment at the Association's center, and such counseling results in a decision that the couple will divorce. The counselor recommends that A represent the husband in the divorce action. A, as Chairman of the Association, is privy to the parties' financial situation as well as to all other information in the parties' file. May A undertake such representation?

**Answer:** No.

**References:** New Jersey Op. 521 (1983).

**OPINION**

The usual facts posed by this inquiry must be emphasized. Information revealed in therapy and in counseling is highly personal and may be highly embarrassing if released. There are special obligations of confidentiality imposed on therapists, and many therapists in Kentucky are covered by testimonial privileges.

The fact that the Attorney-Board Member becomes privy to all information in the parties' files as a result of the referral is problematical, since it seems unlikely that either marriage partner would anticipate that one closely associated with the program would become, in effect, an adversary.

New Jersey Opinion 521 (1983) addresses an analogous situation:

Opinion 521 Confidentiality; Divorce; Mediation Services. A lawyer participating in a private matrimonial mediation service may not represent one of the parties in a subsequent divorce proceeding. In his capacity as mediator the lawyer may obtain confidential information concerning the marital situation. The lawyer's duty to zealously represent his client in the divorce would conflict with his duty to preserve the other party's confidences. Opinions 128, 155, 356; DR 7-101, 9-101. (10/6/83)

Because of attorney's association with the counseling agency it could reasonably be contended that the attorney is doing indirectly, through the counselor, what he could not do directly.

Concern must also be expressed about the propriety of the arrangement whereby the employees of the center recommend the Chairman of the Board to those seeking counseling services. Such a situation is fraught with the dangers of, not to mention the appearance of, a prohibited referral process.

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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.*