

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-317
Issued: January 1987

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Question: May an attorney, who intends to withdraw or has withdrawn from a law firm, communicate by telephone or in person with clients with whom he personally has had a professional relationship to inform them that he is establishing a new practice, and advise those clients that they have a right to choose between the former firm and the attorney's new firm with respect to legal representation?

Answer: Qualified yes.

References: DR 2-104; Model Rule 7.3; Association of the Bar of the City of New York 80-65 (1980); Adler, Barish, Daniels, Levin & Sreskoff v. Epstein, 393 A.2d 1175 (Pa. 1978); 1 ALR 4th 1164.

OPINION

The general proscription against solicitation does not preclude a withdrawing lawyer from informing clients of the firm whom he or she personally represented prior to his or her separation from a firm. Such direct contact falls within the exception for persons with whom the lawyer has had a prior professional relationship. DR 2-104 and Model Rule 7.3. ABA/BNA Lawyer's Manual on Professional Conduct § 91:901.

It is clear that simple announcements of new associations are appropriate. 1 ALR 4th 1164-1165. In addition, ethics opinions from other jurisdictions have approved of telephone or personal communications with clients, with whom the lawyer has had a professional relationship, to inform them of the lawyer's new practice and their right to choose between the former firm and the lawyer's new firm with respect to legal representation. See, e.g., Association of the Bar of the City of New York Opinion 80-65 (1980).

It should be noted that some contacts have been viewed as a tortious interference with the former firm's contracts in at least one reported opinion. See Adler, Barish v. Epstein, 393 A.2d 1175 (Pa. 1978), 1 ALR 4th 1164. But see G. Hazard and W. Hodes, The Law of Lawyering 526-27 (1985) (criticizing the Adler, Barish opinion). Whether specific conduct or a specific course of conduct may be actionable is a question of law the Committee cannot answer.

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.