

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-318
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 1: May attorneys ethically form a legal research service to provide legal research to other attorneys?

Answer 1: Yes.

Question 2: Are the attorneys in the legal research service obligated to protect the confidences and secrets of the clients of the attorneys for whom they perform legal research?

Answer 2: Yes.

Question 3: Do the attorneys in the legal research service have a duty of loyalty to the clients of the attorneys for whom they perform legal research?

Answer 3: Qualified no.

OPINION

There is no ethical reason why attorneys should not be permitted to form a research service to be used by other attorneys. WVa. Ethics Opinion 84-3 (ABA Man. Prof. Resp. 801:9004). As the question was posed here, the research service works for the inquiring attorney, rather than for the client of the attorney. The attorneys for the research service do not correspond with nor talk to the client. In such an arrangement, the duty of the research service is primarily to the inquiring attorney; such an arrangement lacks the characteristics of an attorney-client relationship. ABA Man. Prof. Resp. 31:101.

At the same time, the research service is bound to protect the confidences and secrets of the client. The inquiring attorney is required to make reasonable effort to ensure that those hired by him protect the confidences and secrets of the client (MR 5.1) and the attorneys of the research service should be ethically bound as well.

The duty to protect the confidences and secrets of the client precludes the research service from working for attorneys on different sides of the same case or transaction, unless the clients give their informed consent. KBA E-308 requires that non-lawyers changing firms be screened from cases against the clients of the former firm where there is a possibility that confidential

information may be used to the detriment of the client. The same principle should apply in this context.

While the duty to protect confidences and secrets precludes working both sides of a matter, there is no independent duty of loyalty which would prevent the research service from under taking a research project against a person for whom the research service is working on an unrelated matter.

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.