

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-377
Issued: March 1995

Since the adoption of the Rules of Professional Conduct in 1990, the Kentucky Supreme Court has adopted various amendments, and made substantial revisions in 2009. For example, the 2009 amendments include Rule 2.4, entitled "Lawyers serving as third-party neutral," addressing the type of nonrepresentational mediation described in this opinion. This opinion refers to former Rule 2.2, entitled "Intermediary," which addressed conflicts of interest in representational mediation. That rule was deleted and replaced by amended Rule 1.7 and Comments 26 through 33. Lawyers should consult the current version of the rules and comments, SCR 3.130 (available at <http://www.kybar.org>), before relying on this opinion.

Attorney wants to form Corporation X, which will provide mediation services, including domestic relations mediation, to the general public. Corporation X will have separate phone facilities - a separate phone and a separate address - apart from Attorney's law firm, although the mediation services would be provided by lawyers from Attorney's firm.

Question 1: Will this violate SCR 3.020?

Answer: No.

Question 2: Will the use of a trade name by Corporation X violate the Rules of Professional Conduct?

Answer: No.

Question 3: Can Corporation X solicit mediation business from other attorneys, from insurance carriers, and from members of the general public?

Answer: Qualified Yes.

References: Indiana Op. 5 (1992); KBA E-335 (1989).

OPINION

Mediation is not the practice of law, and does not violate SCR 3.020. Accord, Indiana Op. 5 (1992). Since Corporation X is not engaged in the practice of law, it may use a trade name. Indiana Op. 5 (1992). A mediator is not prohibited from soliciting business for his or her mediation service. However, an attorney who practices law and also engages in the delivery of medication services and who wishes to advertise and solicit mediation business must avoid violating Rules 7.01 - 7.60. Mediation, as defined for the purpose of this opinion, is defined to

exclude specifically the giving of any legal advice in the course of such mediation. Advertisement of mediation services which identifies any participant as a lawyer shall mandate compliance with all advertising rules pursuant to SCR 3.130. Given the separateness of the entities, we think this can be accomplished.

We note that Attorney and Attorney's firm must take care to avoid conflicts of interest. See Rules 1.7, 1.8, 1.9 and 2.2. Conflicts are addressed in KBA E-335 (1981) and in the Standards of Practice for Divorce and Family Mediation of the ABA (1984).

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.