

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-92
Issued: March 1974

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>), especially Rules 7.01-7.50 and the Attorneys' Advertising Commission Regulations, before relying on this opinion.

Question 1: May a Kentucky attorney ethically form a partnership with an attorney in another state for the operation of law offices in both states?

Answer 1: Yes.

Question 2: May a Kentucky attorney ethically form a limited partnership with an attorney in another state for the operation of law offices in both states, listing the other attorney as an associate on his letterhead?

Answer 2: No.

References: DR 2-102(B)(C) and (D)

OPINION

A Kentucky attorney has posed a question concerning the formation of a partnership with an attorney in another state. For purposes of this Opinion, the Committee will consider first the general propriety of interstate partnerships and will then review the specific inquiry addressed to us by the attorney.

The ethical rules material to this inquiry are found in DR 2-102(B), 2-102(C) and 2-102(D). DR 2-102(B) provides that a lawyer in private practice shall not practice under a name that is misleading as to the identity of the lawyer or lawyers practicing under that name. An attorney is required by DR 2-102(C) not to hold himself out as having a partnership with one or more other lawyers unless they are in fact partners. In DR 2-102(D) we find specific reference to partnerships between lawyers in different jurisdictions:

A partnership shall not be formed or continued between or among lawyers licensed in different jurisdictions unless all enumerations of the members and associates of the firm on its letterhead and in other permissible listings make clear the jurisdictional limitations on those members and associates of the firm not licensed to practice in all listed jurisdictions; however, the same firm name may be used in each jurisdiction.

These rules had their counterparts under the old canons in effect prior to adoption of the Code of Professional Responsibility and have been interpreted on several occasions. In ABA Formal Opinion 256 (dated December 17, 1943), it was noted that there is nothing wrong in having in a firm name a partner admitted to practice only in a state where a branch office of the firm is located, so long as all letterheads and representations to the public make it clear in which states the members are licensed to practice. More recently, the ABA Committee ruled in ABA Formal Opinion 316 (dated January 18, 1967) that the members of a partnership are neither required to practice nor maintain offices in the same state, if they indicate the limitations on their practice in a manner consistent with the Canons and if the person admitted only in a particular state must vouch for the work of all the others. The Committee stressed, however, that in any interstate partnership or association the local man must be admitted to practice in the state and must have the ability to make and be responsible for making decisions for the lawyer group.

The Ethics Committee has not previously had occasion to consider this matter, but we are persuaded that the opinions cited above correctly stated the applicable rules. From this it follows that a Kentucky attorney may properly enter into a partnership arrangement with an attorney from another state (a) so long as a partnership is not implied where none exists and (b) the jurisdictional limitations on the members are made clear in all letterheads and representations to the public.

The second question presents different considerations. While the inquiry does not indicate, for purposes of our reply we assume that by "limited partnership" with an attorney in another state is meant the referral of specified business to such attorney and the division of fees earned from that business on a stated basis. This practice has received repeated condemnation. In ABA Formal Opinion 115 (dated August 27, 1934), it was found improper for two attorneys to hold themselves out as partners in different states when there was not division of fees except on cases forwarded from one to the other. Later, a proposed partnership between attorneys in different cities which contemplated only a referral arrangement in certain types of cases was found unethical (ABA Formal Opinion 277, dated June 26, 1948).

The Ethics Committee has carefully considered and fully subscribes to these opinions. An arrangement which involved only the referral of specified business to an attorney in another state, without a general division of fees earned by the firm and responsibility for its actions, would not in reality be a partnership at all. For the attorneys to indicate otherwise would be a misrepresentation to the public in clear violation of DR 2-102.

We also find the designation of the out-of-state attorney as "associate" to be misleading. Such practice was specifically condemned in ABA Formal Opinion 310 (dated June 20, 1963), where it was said to be improper to designate as associate any attorney who is a partner. Here, the attorney is not in reality an associate, since no more than a portion of his time is devoted to the business of the firm. Moreover, he professes to be a partner and not an associate. Regardless of which we consider him, such designation is misleading.

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.