

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-163
Issued: March 1977

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 law firm show branch offices in other states on its letterhead?

Answer 1: Qualified yes.

Question 2: May law firm's letterhead show a separate address of a lawyer designated as "counsel" or "of counsel" to the firm on the letterhead?

Answer 2: No.

Question 3: If a Kentucky law firm shows no office in some other state on its letterhead, may it note on its letterhead in which states the lawyers listed on the letter head are admitted to practice?

Answer 3: No.

Question 4: If a Kentucky law firm shows an office in some other state on its letterhead, may it show affirmatively in which states one or more of the lawyers listed are admitted to practice?

Answer 4: No.

Question 5: If a Kentucky law firm shows an office in some other state on its letterhead, must it show non admission in either state of one or more of the lawyers listed?

Answer 5: Yes in some circumstances, no in some circumstances.

References: Opinion KBA E-85 (1974); DR 2-102(A)(D), 2-105; old Canon 33; ABA Formal Opinion 256 (1943), 316 (1967), 330 (1972); ABA Informal Opinion 821 (1965), 938 (1966), 956 (1966), 1007 (1967), 1037 (1968), 1097 (1969)

Opinion

In this opinion, “firm” includes a sole practitioner with or without associates. “Counsel”, “mere counsel”, and similar expressions designate a lawyer who is “of counsel” to a firm and is not a partner or associate in the firm. “Foreign state” means any jurisdiction other than Kentucky and includes foreign countries. A reference to a state by letter, such as “State A” refers to any jurisdiction other than Kentucky.

Our opinion of several letterheads used by Kentucky law firms has been requested. The forms of these letterheads are as follows:

LETTERHEAD 1

X, Y, & Z
[KY. ADDRESS]

Lawyer X
Lawyer Y*
Lawyer Z

branch offices
[Ky. address]
[Ky. address]

*licensed in
State A

LETTERHEAD 2

X, Y & Z
[KY. ADDRESS]

Lawyer X
Lawyer Y
Lawyer Z

counsel
*Lawyer M
[address in State A]

* admitted in
States A and B

LETTERHEAD 3

X, Y & Z
[KY. ADDRESS]

Lawyer X
Lawyer Y
Lawyer Z

office of state A
counsel
[address in State A]

office of State B
counsel
Lawyer X
[address in State B]

LETTERHEAD 4

X, Y & Z
[KY. ADDRESS]

Lawyer X
Lawyer Y
Lawyer Z

[names of de
ceased or former
members]

Lawyer M
(adm. Ky. - State A)

State A office
[address in State A]

LETTERHEAD 5

X, Y & Z
[KY. ADDRESS]

Lawyer X
Lawyer Y
Lawyer Z

State A office
Lawyer Q
[address in State A]

Lawyer M
Lawyer N
Lawyer O

[Ky. address]

[Ky. address]

LETTERHEAD 6

X, Y & Z
[KY. ADDRESS]

[names of de
ceased or former
members]

[address in State A]

[Lawyer M. resident
partner]

Lawyer X
Lawyer Y
Lawyer Z

The relevant provisions of the Code of Professional Responsibility are DR 2-102(A) and (D).

DR 2-102(A) states that “[a] lawyer or firm shall not use . . . letterheads, . . . or similar professional notices or devices, . . .” There follow six numbered exceptions to this general rule. Each exception describes a permissible “notice or device” and states the information which may properly appear therein. Publication of any further information falls within the general prohibition at the beginning of DR 2-102(A) and is therefore improper. One of these exceptions is DR 2-102(A)(4), which provides:

[a] letterhead of a lawyer identifying him by name and as a lawyer, and giving his addresses, telephone numbers, the name of his law firm, associates, and any information permitted under DR 2-105. A letterhead of a law firm may also give the names of members and associates, and names and dates relating to deceased and retired members. A lawyer may be designated “Of Counsel” on a letterhead if he has a continuing relationship with a lawyer or law firm, other than as a partner or associate....

Obviously DR 2-102(A)(4) contemplates that a firm may have law offices in more than one place and may show the address of each of these offices on its letterhead, Opinion KBA E-85 (1974). However, each such address must designate a law office as described in Opinion KBA E-85: “[It must be] a bona fide office open for the conduct of legal business during specified business hours, with secretarial personnel present to take calls and arrange appointments, and [an attorney must be] available to conduct business and interviews at the office as circumstances require.” A lawyer’s home address may not be printed on his letterhead unless he maintains a law office as described in Opinion KBA E-85 in his home.

That a firm may properly maintain law offices in more than one state is implicit in DR 2-102(D), discussed below. This being so DR 2-102(A)(4) authorizes a Kentucky firm to show the addresses of its law offices in foreign states on its letterhead, provided each such address is that of a law office of the firm as described in Opinion KBA E-85.

A lawyer “of counsel” to a firm is not a partner or associate of the firm, by reason of the definition in DR 2-102(A)(4). (ABA Formal Opinion 330 (1972) says that counsel “must not” be a partner or employee of the firm.) If counsel maintains an office separate from that of the firm, counsel’s office is not an office of the firm. Consequently, the firm’s letterhead may not show the address of counsel’s separate office.

This is not a mere literalist application of the language of DR 2-102(A)(4). The rule authorizes a firm to print its addresses for the obvious purpose of telling correspondents and the public where they may reach and obtain the services of the firm or the members or associates of the firm. If counsel has a separate office, presumably he has his own letterhead with his address on it, and this is sufficient to advise correspondents and the public where to reach him directly if they wish to do so. In other words, counsel may not publicize himself on his own letterhead and some other firm’s as well.

DR 2-102(A)(4) does not authorize publication of information concerning the jurisdictions in which any lawyer whose name is listed on the letterhead is licensed to practice. An exception to this general rule is required by DR 2-102(D) in the case of a firm which has offices in more than one jurisdiction and shows this fact on its letterhead. However, if a firm shows Kentucky addresses only on its letterhead, the letterhead may not print any information concerning the jurisdictions in which any lawyer whose name appears on the letterhead is licensed to practice, ABA Informal Opinions 821 (1965), 956 (1966), 1037 (1968).

Old ABA Canon of Ethics 33 provided in part as follows: “Where partnerships are formed between lawyers who are not all admitted to practice in the courts of the state, care should be taken to avoid any misleading name or representation which would create a false impression as to the professional position or privileges of the member not locally admitted.”

The ABA Standing Committee on Legal Ethics applied old Canon 33 in several cases in which a firm had offices in more than one state and one or more lawyers whose names appeared on the letterhead were not licensed to practice in every such state. In ABA Formal Opinion 256 (1943), the Committee decided that non-admission had to be noted as appropriate on the letterhead; e.g., with offices in States A and B, Lawyer X admitted in both states, Lawyer Y admitted in B only, the letterhead had to state with respect to Lawyer Y, “admitted in B only” or “not admitted in A.” In ABA Informal Opinion 938 (1966), the Committee decided that Old Canon 33 could be equally well satisfied by appropriate affirmative notations of admission with respect to each lawyer listed; e.g., in the previous example, “admitted in A and B” with respect to X and “admitted in B” with respect to Y. ABA Formal Opinion 316 (1967) stated that the letterhead must indicate the “limitations” on each lawyer’s right to practice in each state where the firm has offices. ABA Informal Opinion 1007 (1967) and 1097 (1969) required appropriate notations of non-admission and did not discuss affirmative notations of admission as a possibly acceptable alternative.

DR 2-102(D) was promulgated against this background. It provides: “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 make clear the jurisdictional limitations on those members and associates of the firm not licensed to practice in all listed jurisdictions.”

As we indicated above, we believe DR 2-102(A)(4) states the general rule as to what information may be printed on a letterhead. Accordingly, we construe DR 2-102(D) as an exception to DR 2-102(A)(4) intended to avoid the confusion thought to arise where a letterhead shows offices in more than one state and one or more lawyers listed on the letterhead are not licensed to practice in each such state. We interpret DR2-102(D) in accordance with this narrow purpose. “Jurisdictional limitation” means non-admission. DR 2-102(D) requires statements of non-admission only. Affirmative statements of admission are not authorized by DR 2-102(A)(4). Accordingly, affirmative statements of admission are within the general prohibition of R 2-102(A) and are not permitted in any case. However, a statement in the form “admitted only in State A” is the equivalent of

“not admitted in State B,” i.e., “admitted only in State A” is a statement of non-admission.

If a firm has no office outside Kentucky, no notations of non-admission are required on its letterhead.

If (1) a firm has an office outside Kentucky and (2) does not list that office on its letterhead, no notations of non-admission are required on the letterhead. The letterhead may be improper, but not because of the confusion sought to be avoided by DR 2-102(D).

If (1) a firm has an office outside Kentucky; (2) it lists that office on its letterhead; and (3) every lawyer listed on the letterhead is licensed to practice in both states, no notations of nonadmission are required.

If (1) a firm has an office outside Kentucky; (2) it lists that office on its letterhead; (3) one or more lawyers listed on the letterhead are not licensed to practice in both states; (4) every lawyer listed works only in states in which he is licensed to practice; and (5) the letterhead clearly shows where each lawyer listed works, no notations of non-admission are required.¹

If (1) a firm has an office outside Kentucky; (2) it lists that office on its letterhead; (3) one or more lawyers listed on the letterhead are not licensed to practice in both states; (4) every lawyer listed works only in states in which he is licensed to practice, and (5) the letterhead does not clearly show where each lawyer listed works, notations of non-admission are required with respect to each lawyer listed who is not licensed to practice in both states.

If (1) a firm has an office outside Kentucky; (2) it lists that office on its letterhead; (3) one or more lawyers listed on the letterhead are not licensed to practice in both states; (4) one or more lawyers listed work in a state in which they are not licensed to practice; and (5) the letterhead clearly shows where each lawyer listed works, notations of non-admission are required with respect to each lawyer shown as working in a state in which he is not licensed to practice.²

If (1) a firm has an office outside Kentucky; (2) it lists that office on its letterhead; (3) one or more lawyers listed on the letterhead are not licensed to practice in both states; (4) one or more lawyers listed work in a state in which they are not licensed to practice; and (5) the letterhead does not clearly show where each lawyer listed works, notations of non-admission are required with respect to each lawyer not licensed to practice in both states.

Letterhead 1 is improper because it shows Lawyer Y’s admission in State A but no office in State A. Letterhead 2 is improper first, because it shows the address of mere counsel; and second, even if that address were properly shown, it shows counsel’s admission in State B but no office in State B. Letterhead 3 is improper because it shows the address of mere counsel. Letterhead 4 is improper because it affirmatively shows Lawyer M’s admission in both Kentucky and State A. If X, Y and Z are not admitted in

State A, that fact should be shown. No impropriety appears on the face of letterheads 5 and 6.

This may be shown by use of certain conventions. If a column of names on a letterhead is headed or footed by an address, the implication is that the lawyers whose names appear in that column work at that address. If a letterhead prints an address readily identifiable as the main office of the firm and a column of names not headed or footed by some other address, the implication is that the lawyers whose names appear in that column work at the main office.

² Ibid.

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.