

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-260
Issued: May 1982

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: May a lawyer advertise legal services in the Commonwealth of Kentucky and not be admitted to practice in the Commonwealth of Kentucky?

Answer: Qualified No.

References: Bates v. State Bar of Arizona, 433 U.S. 350 (1977); In the Matter of R.M.J., 455 U.S. 191, 102 S.Ct. 929 (1982); Kentucky Bar Assn v. Gangwish, 630 S.W.2d 66 (Ky. 1982)

OPINION

This Committee is once again called upon to answer a question involving lawyer's advertising. Recent Supreme Court cases of the United States, as well as this State, have allowed lawyer's advertisement for routine legal services so long as the advertisement is not false, deceptive or misleading. See Bates v. State Bar of Arizona, 433 U.S. 350 (1977), In the Matter of R.M.J., 455 U.S. 191, 102 S.Ct. 929 (1982), and Kentucky Bar Assn v. Gangwish, 630 S.W.2d 66 (Ky. 1982).

There can be no doubt that the United States Supreme Court decisions in Bates and R.M.J. apply to the Commonwealth of Kentucky and would allow lawyers not admitted in the Commonwealth to advertise in Kentucky. Supreme Court Rule 3.030(2) requires a lawyer who is licensed to practice in another state and not in Kentucky to practice in Kentucky as long as he subjects himself to jurisdiction of the Rules of the Court and engages a member of the Association as co-counsel, whose presence shall be necessary at all trials. It is abundantly clear that a lawyer not admitted in Kentucky may only practice law in the Commonwealth with restrictions.

It is significant that the Supreme Court of Kentucky in reviewing the Bates case placed special emphasis on the following wording of the United States Supreme Court: "The only services that lend themselves to advertising are the routine ones: the uncontested divorce, the simple adoption, the uncontested personal bankruptcy, the change of name and the like...."

The Kentucky Court further found, “It is apparent that advertising as to fees is limited to fees charged for certain *routine* services and that misleading advertising can be prohibited.” (Emphasis by the Court.) Kentucky Bar Assn v. Gangwish, 630 S.W.2d 66 (Ky. 1982).

Accordingly, it is the Ethics Committee’s opinion that a lawyer who advertises in the Commonwealth of Kentucky misleads the public into believing that they are admitted to practice in the Commonwealth of Kentucky when in fact they are not. In the event that a lawyer from another state wishes to advertise in the Commonwealth of Kentucky there should be an appropriate statement listed in the advertisement. It is not this Committee’s function to determine the nature and extent of the statement. It is the Committee’s feeling that a statement such as “not admitted to practice law in Kentucky without co-counsel” would be adequate.

Of course, this opinion does not address the issue in which a lawyer advertises in a state in which he is admitted to practice law and that advertisement is transmitted to Kentucky in which the lawyer is not licensed to practice law.

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.