

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-352
Issued: November 1992

Since the adoption of the Rules of Professional Conduct in 1990, the Kentucky Supreme Court has made substantial revisions to rules governing the advertisement of legal services. For example, this opinion refers to Rules 7.1 and 7.3, which were revised and renumbered. Lawyers should consult the current version of the rules and comments, SCR 3.130 (7.01-7.60) (available at <http://www.kybar.org>) and the Attorneys' Advertising Commission Regulations, before relying on this opinion.

Question: Is “in person” or “live telephone” solicitation of corporate officers or employees permitted under a “sophisticated client” exception to Rule 7.3(a)?

Answer: No.

References: SCR 3.130 - Professional Conduct, Rules 7.1 and 7.3; S. Handler, S. Pflaum and J. Cozad, Commentary: The Ethics of Solicitation of Business from Corporate Clients, 5 *Georgetown Journal of Legal Ethics* 423 (1991); ABA Informal Op. 84-1504 (1984); California Op. 1981-61 (1981); Columbus (Ohio) Bar Op. 5 (undated); Illinois Rule 7.3.

OPINION

Rule 7.3(a) provides:

A lawyer shall not by in-person or live telephone contact or solicit professional employment from a prospective client with whom the lawyer has no family or direct prior professional relationship. (emphasis added)

The language of Rule 7.3(a) does not suggest that there is or should be any “sophisticated client” exception. After extended discussion the Ethics Committee and the Board of Governors were in agreement that all lawyers should be required to abide by the same rules, and that the recognition of a “sophisticated client” exception might undermine enforcement of the Rule and negate any deterrent effect that it might have. Furthermore, it was felt that any such “exception” should be made by a legislative body, such as the Rules Committee.

The 1991 article alluded to in our “References” section stated that “both (the Model Code and the Model Rule) contain clear prohibitions on in-person solicitation of corporate officers or employees who are neither attorneys nor current clients.” *Id.* at 432.

Some bar committees have interpreted Rule 7.3 in a way that permits a lawyer to solicit business from other lawyers. *See, e.g.*, California Op. 1981-61; Columbus (Ohio) Bar Op. 5

(undated); Cf. ABA Informal Op. 84-1504 (1984). It has been suggested that Rule 7.3 may be “interpreted” so as to permit contact with and solicitation of corporate counsel. See Commentary: The Ethics of Solicitation of Business from Corporate Clients, *supra*. In Illinois, Rule 7.3 was amended to state that “(t)he term ‘solicit’ means contact with a person other than a lawyer... .”

While possible “interpretations” were discussed at the Committee level, it was the position of the Board that the Rule should be read and applied as it is written, and without any exceptions made for contacts with “sophisticated clients” or “corporate counsel.” Such “amendments” may be sought through the Rules Committee.

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.