

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-369
Issued: July 1994

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 Rule 7.30, which was amended and renumbered to Rule 7.09, and to Rule 8.3, which was renumbered to Rule 8.4. Lawyers should consult the current version of the rules and comments, SCR 3.130 (available at <http://www.kybar.org>) and the Attorneys' Advertising Commission Regulations before relying on this opinion.

Question: May a lawyer pay to participate in a new home owner service that distributes welcoming packages to new families in a community, which contain address books in which the attorney's name, address and telephone number are listed, along with discount coupons or gift certificates - for example, for a coupon for a "no-charge" initial consultation or a coupon for "\$50 good toward your legal fees."

Answer: No.

References: Kentucky Rules of Professional Conduct 7.30 and 8.3.

OPINION

Rule 7.30 provides that "[a] lawyer shall not in-person...contact or solicit professional employment from a prospective client with whom the lawyer has no family or direct prior professional employment." Rule 8.3 provides that it is professional misconduct for a lawyer to "violate or attempt to violate the rules of professional conduct...through the acts of another...."

We note that the general rule regarding in-person solicitation is "that a lawyer may not solicit legal business from potential clients to whom [the lawyer] is unrelated or with whom [the lawyer] has no prior professional relationship when a significant reason for the solicitation is the lawyer's pecuniary gain"; and that "[i]n person" means face-to-face or by live telephone...[and it]... also includes such contacts through agents." See ABA/BNA Law.Man.Prof.Con. 81-2001.

It is the opinion of the Board that the conduct involves in person contact or solicitation by an agent, for pecuniary gain which is prohibited by Rules 7.30 and 8.3. In Shapero v. KBA, 486 U.S. 466 (1988) the U. S. Supreme Court ruled that lawyers may not be prohibited from engaging in targeted direct mail solicitation, but "acknowledged the state's interest in preventing abuses in lawyer solicitation and noted that in assessing the potential for these abuses, the focus must be on the mode of communication. ... The Court reiterated that states may categorically ban in-person solicitation by lawyers for profit in accordance with its holding in Ohralick v. Ohio

State Bar Association, 436 U.S. 447 (1978), because the mode of communication in face-to-face solicitation presents great risk of abuse and restrictions short of a complete ban would be useless as in-person solicitation is conducted out of public view.” ABA/BNA Law.Man.Prof.Con. 81:2008-2009.

For the reasons stated we answer the question in the negative.

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.