

KENTUCKY BAR ASSOCIATION

Ethics Opinion KBA E-85

Issued: March 1974

Question: May an attorney maintain a branch office in a county other than that in which his principal office is located and, if so, under what circumstances may this be done?

Answer: Yes.

Reference: DR 2-102

OPINION

The Committee has received an inquiry from a bar association concerning the propriety of a recent influx of branch offices by attorneys with principal offices in other counties. In some instances the branch office is fully operated and manned by a full-time secretary and attorney. Other branch offices have a full or part-time secretary with a part-time attorney, who spends the remainder of his time in his home office, and in some cases there is only an office with a telephone answered by an answering service or someone other than law office personnel with no regular attorney being assigned to the office.

This question most frequently arises in conjunction with the use of law lists. Canon 27, now DR 2-102, was interpreted in ABA Formal Opinion 249 (dated December 19, 1942) as requiring that an attorney not utilize an office address in a law list unless it is that of a bona fide office. Definition of "bona fide" was noted to depend upon the particular facts and circumstances of each case. Among the factors considered helpful in making this determination--though by no means exclusive--were whether the attorney maintained a lease where the office was located; whether there was a telephone there as well as the attorney's name on the building directory; and whether someone was present in the office to transact business.

A similar approach was taken in ABA Informal Opinion 187, where the question of branch offices was specifically faced. There the Committee observed:

There is no canon or ruling of the Committee that a practicing lawyer must confine himself to one office in the county where he is admitted to practice. We have ruled that he may maintain an office at his home in addition to his regular office, provided he makes it clear that the home office is at his home. It is also not necessary that a lawyer be at a specific office for any particular number of hours in a day. If circumstances warrant it, a lawyer or firm may properly maintain a branch office for the convenience of clients, provided there is someone in the office to make appointments with clients, which he could keep there. Wherever this Committee has sanctioned the maintenance of branch offices, they have been the bona fide branch offices of the lawyer....

Applying this language to the inquiry before us, the Committee has concluded that there is nothing improper in maintenance of a branch office outside the county of the attorney's home office if it is 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 if an attorney is available to conduct business and interviews at the branch office as circumstances require. This would not mean the constant presence of an attorney in the branch office, as such requirement would operate to the prejudice of small firms and solo practitioners. We do believe, however, that qualified personnel should be available at all times when the office is open to receive clients and calls. The use of an answering service, without more, fails to meet this criteria. Otherwise, the arrangements referred to in the inquiry appear permissible.

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). Note that the Rule provides: "Both informal and formal opinions shall be advisory only; however, no attorney shall be disciplined for any professional act on his part performed in compliance with an opinion furnished to him on his petition, provided his petition clearly, fairly, accurately and completely states his contemplated professional act."