

KENTUCKY BAR ASSOCIATION
Unauthorized Practice of Law Opinion KBA U-47
Issued: November 1994

Question: The following question regarding paralegals refers to scenarios in which the paralegal is outside of the office talking to clients and the paralegal's supervising attorney is not present. The supervising lawyer has asked: "Is the paralegal's rendering of advice the unauthorized practice of law if: (1) it is made clear that the paralegal is not a lawyer; (2) the lawyer discusses the specific issues with the paralegal both before the paralegal-client discussions and afterwards; and (3) the attorney accepts full responsibility for the paralegals actions and advice?"

Answer: No.

References: SCR 3.020 and 3.700; KBAs E-266 (1982); E-341 (1990); KBA U-45; ABA/BNA Lawyer's Manual on Professional Conduct 21:8601 et seq..

OPINION

The requestor contends that in his area there are a lot of misunderstandings about what a paralegal may or may not do, and that such misunderstandings have led to friction, threats of bar discipline, and so forth.

Much of what a paralegal does, whether the work be done in or out of the office, would be the unauthorized practice of law under SCR 3.020 except for the fact that the work is "supervised" by a lawyer, within the meaning of SCR 3.700. Kentucky does not recognize the concept of a "free-standing" paralegal service in which the paralegal provides legal services directly to members of the public. KBA U-45 (1992).

In the past we have issued opinions making it clear that the lawyer may not send a paralegal to engage in unsupervised representation of the client in court or administrative proceedings [KBA E-266 (1982)], or in depositions [E-341 (1990)]. Furthermore, the ABA has issued opinions making it clear that a lay legal assistant or paralegal may conduct initial interviews with clients so long as the client subsequently confers with the supervising lawyer [ABA Informal Op. 998 (1967)] and may sign correspondence incident to his or her proper functions, so long as he or she is clearly identified as a nonlawyer [ABA Informal Op. 1367 (1976)]. The questions now before us is more difficult to answer because it deals in generalizations about "supervision" and the notion that a lawyer must maintain a "direct relationship" with the client.

We assume that differences of opinion may have developed on these issues across the country. However, Kentucky has addressed this issue in its Paralegal Code, SCR 3.700, Sub-Rule 2: "The unauthorized practice of law shall not include any service rendered involving legal knowledge or legal advice ... where

- A. The client understands that the paralegal is not a lawyer;
- B. The lawyer supervises the paralegal in the performance of his duties; and
- C. The lawyer remains fully responsible for such representation”

The Kentucky Paralegal Code also states that “[m]aintaining a direct relationship with the client does not preclude a paralegal from meeting with the client nor does it mandate regular and frequent meetings between the lawyer and client ... when it appears that consultation between lawyer and client is necessary, the lawyer should talk to the client.”

In light of these standards we think that the question asked should be answered in the negative. Here the paralegal is acting as a conduit for the lawyer’s legal advice. The lawyer warrants that he or she will be providing adequate supervision, will be assuming full responsibility, and that the client will be fully informed of the paralegal’s status.

Note to Reader

This unauthorized practice 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 in part: “Both informal and formal opinions shall be advisory only.”