

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-105
Issued: March 1975

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>), before relying on this opinion.

Question: Where an attorney has been employed by an insurance carrier to defend a claim against its policyholder by the insured's wife, is it unethical for the attorney to file an answer to the suit without first consulting the insured?

Answer: No.

References: Canon 6; DR 6-101(2)

OPINION

An attorney employed by an insurance carrier to defend a claim against its policyholder by the insured's wife inquires whether there is any impropriety in filing an answer to the suit without first consulting the insured. The attorney advises that both his own investigation and that of the carrier led him to conclude the insured would not cooperate in defending the case, and for this reason he proceeded with the filing of an answer without discussing the matter with the defendant. Subsequent preparation of the case confirmed the insured's reluctance to cooperate, including a refusal to correspond about the case or to answer interrogatories. The attorney now asks if he has committed any ethical breach in defending the case.

Canon 6 observes generally that it is incumbent upon a lawyer to represent a client competently. DR 6-101(2), adopted pursuant to this Canon, requires that a lawyer not handle a legal matter without preparation adequate in the circumstances.

Applying this standard, we find nothing in the conduct of the attorney in question that offends this or other ethical requirements. The attorney was employed by the insurer, and in the particular circumstances here presented it would appear that the insured was little more than a nominal party. Coupled with this is the fact the attorney had already been led to believe he would receive no cooperation from the defendant, a suspicion confirmed by subsequent developments. We cannot say that an attorney, faced with these facts, was ethically wrong in preparation of an answer without consulting the insured. The defense of such claims is difficult at best. There has been no suggestion that the pleading filed in defendant's behalf did not fully protect the interests of all concerned, and our examination of the answer convinces us that there has been compliance with the requirements of Canon 6. There will be ample time for such consultation as may be

required, and in the circumstances presented the failure to consult the insured before pleading is in our judgment no indication of ethical impropriety.

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.