

**KENTUCKY BAR ASSOCIATION**  
**Ethics Opinion KBA E-127**  
Issued: November 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:** May the members or associates of a law firm practice before the Kentucky Workmen's Compensation Board when one of the members of the firm is the Director of the Board?

**Answer:** No.

**References:** Opinion KBA E-30, E-34; KRS 342.230, 342.255, 342.270, 342.275

**OPINION**

In Opinion KBA E-30, we decided that a member of the Board of Tax Appeals could not himself practice before the Board, and that disqualification of himself in his own cases before the Board was an inadequate remedy for the impropriety. The principles of that opinion apply to make it improper for a partner or associate in the Board member's firm to practice before the Board. In Opinion KBA E-34, we decided that members of a firm could not practice before any administrative agency where a partner in the firm was a member of the administrative agency.

The Director of the Workmen's Compensation Board is not a member of the Board. Theoretically he is a mere administrative employee of the Board with no decisional authority. However, it is a fact that such administrative employees, consciously or not, often exercise considerable influence on decisions within their respective agencies, or are in a position to do so.

There is no comprehensive definition of the duties and authority of the Director in the Statutes (KRS Chapter 342) or regulations (803 KAR 25 010, 25 020). The Board fills "positions" and obtains medical services and advice, on the recommendation of the Director, KRS 342.230(1). The Director supervises all Board employees, including hearing examiners, KRS 342.230(2) and (3). Any investigation or hearing which the Board may undertake may be undertaken by the Director, if authorized by the Board, KRS 342.255, 342.275. The Director may confer informally with the parties to any dispute before the Board in an attempt to settle the matter, KRS 342.270(3). He may grant extensions of time not greater than fifteen days for taking proof and filing briefs without Board approval, he assigns cases to hearing officers and members of the Board, and he sits in at Board meetings. (Information supplied by the assistant to the General Counsel of the Department of Labor.)

It is clear that the Director is in a position to exercise considerable influence on the processing of a case before the Board and is far from being a mere clerk. Accordingly, we conclude that the principles of Opinions KBA E-30 and E-34 apply to make it improper for members and associates of a law firm to practice before the Workmen's Compensation Board while a member of the firm is the Director of the Board.

KRS 342.230(2) provides that the Director "shall devote his full time to the duties of his office." We have not been asked whether it is proper or improper for a lawyer to accept this position and still hold himself out as a partner in a law firm. We express no opinion on this question.

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***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.*