

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-203
Issued: January 1979

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 1: May a lawyer advise a layman who is conducting his own divorce action about the action without assuming the role of counsel for the layman?

Answer 1: Qualified yes.

Question 2: In the same circumstances, might the lawyers be liable for giving poor advice?

Answer 2: No opinions are given by the Committee on questions of law.

Question 3: Would the above answers be different if the lawyer volunteered the advice to the layman?

Answer 3: No.

References: Canons 6, 7; DR 6-101; EC 7-19

OPINION

Question 1

In responding to Question 1, it is assumed by the Committee that the advice given by the attorney can be separated into questions of procedural law and questions of substantive law. This distinction is drawn because of the necessity of the attorney to use all legal means in support of his client's case when dealing with questions of substantive law (DR 6-101) as opposed to the treatment of a general procedural question by an attorney. It is the opinion of the Committee that an attorney may advise a layperson on procedure without assuming the role of counselor for the layman. Questions on procedure are of such a nature that answers are readily discernible without having a complete history of the case at bar. It is an attorney's duty to represent his client zealously within the bounds of the law (Canon 7, EC 7-19). Answering substantive questions before having a complete history of the case would not allow the attorney to fully represent his client if only because of his lack of familiarity with the suit (DR 6-101(A)). In addition, it is the duty of the attorney to clearly establish that no attorney-client relationship exists when giving advice on questions of procedural law (Canons 6 and 7).

Question 2

(No opinions are given by the Committee on questions of law.)

Question 3

This answer follows the rationale given in the opinion to Question 1. An attorney should have as full knowledge as is practicable concerning his client's case before advising (DR 6-101(A)(2)). It can be inferred that by volunteering advice to a layperson, the attorney is not as familiar with the case as when assuming the role of advocate.

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.