

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-266
Issued: November 1982

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 a lawyer send a non-lawyer to do anything in a courtroom with respect to the representation of a client without a supervising lawyer present?

Answer: No.

References: SCR 3.020; SCR 3.700; EC 3-6; KBA E-142; KBA E-191; KBA E-227; SCR 2.540

OPINION

The question before us is basically “May a lawyer make use of paralegals in the courtroom.” This Committee notes at the outset that a paralegal is a relatively new term used in the practice of law. These individuals, both men and women, are not “licensed” by the Supreme Court of Kentucky. However, there is a Supreme Court Rule on the subject matter.

The practice of law in Kentucky is defined under SCR 3.020 as follows:

“The practice of law is any service rendered involving legal knowledge or legal advice, whether of representation, counsel or advocacy in or out of court, rendered in respect to the rights, duties, obligations, liabilities, or business relations of one requiring the services. But nothing herein shall prevent any natural person not holding himself out as a practicing attorney from drawing any instrument to which he is a party without consideration unto himself therefor.”

Supreme Court Rule 3.700 provides for certain provisions relating to paralegals. Of particular significance is Sub-Rule 1 which provides “a lawyer shall insure that a paralegal in his employment does not engage in the unauthorized practice of law.”

In addition Sub-Rule 3 provides in essence that it is not the unauthorized practice of law for a lay person to represent a client before any administrative tribunal or court where the court rule or decision authorizes the practice of non-lawyers. The commentary that expands this section and shows that in certain areas of Federal Regulations a lay person is allowed to appear in court.

This Committee notes that in its review of both the Supreme, Civil and Criminal Rules of Court there is no provision which allows non-lawyers to appear in court in the Commonwealth of Kentucky.

This Committee is cognizant of EC 3-6 which provides as follows:

“A lawyer often delegates tasks to clerks, secretaries, and other lay persons. Such delegation is proper if the lawyer maintains a direct relationship with his client, supervises the delegated work and has complete professional responsibility for the work product. This delegation enables a lawyer to render legal services more economically and efficiently.”

In the past, the Ethics Committee has been called upon to review the use by lawyers of the services of lay people (see KBA-142 and KBA E-191). It was the Ethic Committee’s opinion that a paralegal could not argue a motion on behalf of a client in court KBA E-227).

This Committee understands that in the Commonwealth of Kentucky we have historically had a “motion day or motion docket.” While it can be said that many of the items placed upon these dockets require no legal skill when the clerk calls the case; it should, nevertheless be emphasized that it is a proceeding in court and there is no rule of court allowing individuals other than lawyers to appear in court in the Commonwealth of Kentucky.

While one could advocate that there are certain cases in which law people (paralegals, legal assistants, secretaries, investigator receptionists and friends) could perform the needed services, they are not lawyers.

It should be specifically noted that law students who have completed 2/3rds of the academic requirements for graduation from an approved law school, and have signed an “oath of legal intern”, are not allowed to appear in courts of this state without personal appearance and supervision by a member of good standing of the Bar in this state (SCR 2.540.)

It is our opinion that the Supreme Court Rules in Code of Professional Responsibility clearly dictate that the only person other than a lawyer who may appear in court in the representation of a client is a lawyer.

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.