

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-284
Issued: January 1984

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 an attorney who is a shareholder in a corporation be the attorney for that corporation?

Answer: Qualified yes.

References: Canon 5; EC 5-1, 5-2, 5-3, 5-7, 5-11, 5-18; DR 5-101(A), 5-104(A); Kentucky Bar Association v. Smith, Ky., S.W.2d (1983); 30 K.L.S. 12.

OPINION

The above question is one in which most lawyers who represent small corporations face on a daily basis.

Canon 5 states: "LAWYERS SHOULD EXERCISE INDEPENDENT PROFESSIONAL JUDGMENT ON BEHALF OF A CLIENT."

The ethical considerations behind Canon 5 provide in essence that professional judgment of a lawyer must be based solely for the benefit of a client, free of interest of the lawyer. EC 5-1, 5-2, 5-3, 5-7, 5-11.

An attorney for a corporation who is also a shareholder of that corporation whose allegiance to the corporate entity is provided in EC 5-18, as follows:

A lawyer employed or retained by a corporation or similar entity owes his allegiance to the entity and not to a stockholder, director, officer, employee, representative, or other person connected with the entity. In advising the entity; a lawyer should keep paramount its interests and his professional judgment should not be influenced by the personal desires of any person or organization. Occasionally, a lawyer for an entity is requested by a stockholder, director, officer, employee, representative, or other person connected with the entity to represent him in an individual capacity; in such case the lawyer may serve the individual only if the lawyer is convinced that differing interests are not present.

It is the Ethics Committee's opinion there is no per se rule of disqualification of the lawyer who owns stock in a corporation from simultaneously representing the corporation. However, the Committee must note for the benefit of all lawyers that there are a multitudeness potential for conflicts of interest facing the lawyer in this situation. The Disciplinary Rules, in particular DR 5-101(A) and DR 5-104(A), provide in essence that with full consent and disclosure they can enter into a business transaction for the client if the lawyer still exercises professional judgment on behalf of the client.

Recently, in Kentucky Bar Association v. Smith, Ky., S.W.2d (1983), 30 K.L.S. 12, the Supreme Court stated:

“... we are committed to the proposition that in financial dealings with a client, a lawyer must exercise the utmost good faith and fidelity to a client and not place himself or herself in a position of conflict of interest such as to bring the bench and bar into disrepute.”

In conclusion, it is our opinion that there is no per se rule of disqualification in this regard.

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.