

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-336
Issued: September 1989

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 suspended lawyer serve as a Paralegal in a law firm once the stated period of suspension has expired?

Answer: Yes.

References: KBA E-256 and E-255 (1981).

OPINION

This question comes before us as a request for amendment of KBA E-256.

In KBA E-255 the Committee and Board indicated in certain “General Provisos” that a suspended lawyer may perform the functions of a law clerk and do other law related work that laymen may do, but that the suspended lawyer should not have direct contact with clients (“Special Proviso #1”) and should not be given an office or place in a lawyer’s facility (“Special Proviso #3”). Both E-255 (“Special Proviso #2”) and a subsequent opinion, E-256, indicated that a suspended lawyer may not be designated or permitted to work as a paralegal in a lawyer’s office. The rule against a suspended lawyer serving as a paralegal necessarily follows from the rules against “client contact” and having an office, or place, in the lawyer’s facility.” The obvious purposes behind these restrictions are (1) to counter evasion of the effects of a suspension (2) to enforce the prohibition against unauthorized practice of law and (3) to protect clients and others from being misled as to the suspended lawyers status.

Neither E-255 nor E-256 expressly limited the duration of the special restrictions (no client contact, no office or place in the lawyer’s facility, no designation as a paralegal) to the stated period of suspension. Apparently, this has created some hardship, since a lawyer is not automatically reinstated upon the running of the period of suspension. Instead, he or she must reapply for admission and await the outcome of reinstatement procedures. A literal interpretation of E-255 and E-256 might lead one to conclude that a lawyer (1) may not serve as a paralegal at any time following the running of the period of suspension and preceding action on an application for reinstatement, and (2) may never serve as a paralegal if application for reinstatement is denied or is never sought. To put it another way, the opinions could be interpreted as permitting a suspended lawyer to serve as a paralegal only on condition that he or she first be readmitted as a full member of the Bar. Assuming that some logic supports this outcome, necessity and public policy do not require it.

For the reasons stated, KBA E-255 is amended to the extent that Specific Provisos ##1-3 apply only during the stated period of suspension. The prohibition of KBA E-256, that a suspended lawyer may not perform paralegal duties for a lawyer, is limited to the stated period of suspension.

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.