

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-343
Issued: January 1991

Since the adoption of the Rules of Professional Conduct in 1990, the Kentucky Supreme Court has adopted various amendments, and made substantial revisions in 2009. For example, Rule 6.5 addresses non-profit and court-annexed limited legal services programs. Lawyers should consult the current version of the rules and comments, SCR 3.130 (available at <http://www.kybar.org>), before relying on this opinion.

Question 1: May a lawyer limit his or her representation of an indigent *pro se* plaintiff or defendant to the preparation of initial pleadings?

Answer 1: Yes.

Question 2: May a legal services organization prepare handbooks for distribution to laymen concerning their legal rights, which contain forms of pleading and practice for use *pro se*?

Answer 2: Yes.

References: ABA Informal Op. 1414; Maine Op. 89 (1988); New York State Op. 613 (1990); New York City Op. 1987-2; Virginia Op. 1127 (1988).

OPINION

These questions come to the Committee from a legal services organization. The organization cannot satisfy all requests for assistance, and cannot always obtain alternative (volunteer) *pro bono* counsel. We note, however, that our answer would also apply to limited representation provided by lawyers in private practice.

The Bar committees that have considered Question 1 are in agreement that counsel may limit his or her undertaking to providing assistance in the preparation of initial pleadings (complaint & answer). *Cf.* Rule 1.2(c). The overriding consideration should be the recognition and satisfaction of the legal needs of indigent persons. Artificial barriers should not be set up in the name of legal ethics.

On the other hand, the same committees voice concern that the Court and the opponent not be misled as to the extent of the counsel's role. Counsel should not aid a litigant in a deception that the litigant is not represented, when in fact the litigant is represented behind the scenes. Accordingly, the opinions from other states hold that the preparation of a pleading, other than a previously prepared form devised specifically for

use by *pro se* litigants, constitutes substantial assistance that must be disclosed to the Court and the adversary. Some opinions suggest that it is sufficient that the pleading bear the designation “Prepared by Counsel.” However, the better and majority view appears to be that counsel’s name should appear somewhere on the pleading, although counsel is limiting his or her assistance to the preparation of the pleading.

It should go without saying that counsel should not hold forth that his or her representation was limited, and that the litigant is unrepresented, and yet continue to provide behind the scenes representation. On the “flip side,” the opponent cannot reasonably demand that counsel providing such limited assistance be compelled to enter an appearance for all purposes. A contrary view would place a higher value on tactical maneuvering than on the obligation to provide assistance to indigent litigants.

Opinions that have issued in states having Rule 11 or an equivalent take the position that counsel has an obligation to adequately investigate the facts so that the pleading can be filed in good faith, even though counsel is limiting his or her representation. We are inclined to the same view, but conclude that this is first and foremost a question of procedural law to be answered by the courts.

With the reservations noted we answer Question 1 in the affirmative.

Question 2 does not appear to involve the same considerations. The inclusion of forms for use by *pro se* litigants in a handbook intended for distribution to laymen has not been viewed as the practice of law or as active and substantial assistance implicating any of the above considerations. The First Amendment considerations are also obvious. For these reasons, we answer Question 2 in the affirmative.

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.