

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-371
Issued: November 1994

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, this opinion refers to Rule 8.3, which was renumbered to Rule 8.4. 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: If “Lawyer” is an Alderman for the City of Louisville and is also affiliated with Law Firm (a partner, associate, of counsel, or contract lawyer), may other members of Law Firm represent clients before the Louisville and Jefferson County Planning Commission?

Answer: Yes.

References: KBA E-347; Matter of Ethics Opinion No. 74-28, 111 Ariz. 519, 533 P.2d 1154 (1975).

OPINION

It is our understanding that if an alderman is not a member of the Board of Aldermen’s Committee of Zoning/Inspections, Permits, and Licenses, then the alderman’s only responsibility in connection with a request for a zoning change arises when the Board votes on the legislative adoption of the Planning Commission’s recommendation.

In our opinion, the circumstances presented by this request for an opinion are distinguishable from those presented in E-347 (member of the firm is a member of the Zoning Board or Planning Commission). If Lawyer is not a member of the Board’s Committee on Zoning/Inspections, Permits and Licenses, if Lawyer recuses himself or herself from any vote on a city ordinance that involves a land use or zoning change sought by a client of the firm, if Lawyer recuses himself or herself from any vote on the appointment of any person to the Board of Directors of the Planning Commission (if members of Law Firm regularly represent clients before that body), if appropriate conflict control and screening procedures are implemented by the firm, then members of Law Firm are not disqualified from appearing on behalf of clients before the Planning Commission or before the Board of Aldermen (when the Board is reviewing the Planning Commission’s recommendation). By appropriate conflict and screening procedures we have in mind those set fourth in Matter of Ethics Opinion No. 74-28, 111 Ariz. 519, 533 P.2d 1154 (1975), wherein the court observed:

Members of the firm may appear before city boards and commissions if:

- 1) the attorney public official refrains from any matters handled by the firm with the members of the board or commission or with employees of the city or members of the city council;
- 2) there is a separation of accounts so that the attorney public official in no way shares in the fees or other remuneration received by the firm for such appearances, and
- 3) the attorney public official avoids participation in the selection of members of boards or commissions before which his firm regularly appears.

Finally we note that Rule 8.3(d) provides that “[i]t is professional misconduct for a lawyer to: state or imply an ability to influence improperly a government agency or official;” Accordingly, the firm should not include any reference to the attorney’s public office in its advertising and promotional literature.

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.