

KENTUCKY LAW UPDATE



2025

ADVANCING THE PROFESSION THROUGH EDUCATION

Together Lawyers Can Turn Ethics into Action

1 Ethics Credit

Sponsored by: AppalReD Legal Aid, Kentucky Access to Justice Commission,
Kentucky Legal Aid, Legal Aid of the Bluegrass, and Legal Aid Society

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TOGETHER LAWYERS CAN: TURN ETHICS INTO ACTION

Rebekah Cotton and Sarah Hayes

I. ACCESSING JUSTICE IN KENTUCKY

Kentucky's civil legal aid landscape is shaped by four primary organizations that provide free civil legal services to low-income and vulnerable populations across the state. These organizations – Kentucky Legal Aid, Legal Aid Society, Legal Aid of the Bluegrass, and AppalReD Legal Aid – ensure that residents in every part of the Commonwealth have access to legal assistance, regardless of their ability to pay. Each program operates in a specific region, and collectively, they serve the entire state with a focus on civil legal issues like housing, domestic violence, public benefits, consumer protection, and disaster relief.

- Kentucky Legal Aid serves Southcentral and Western Kentucky, offering legal support in rural and urban communities within those regions.
- Legal Aid Society is based in Louisville and focuses on the greater Louisville area and surrounding counties.
- Legal Aid of the Bluegrass operates in Northern and Northeastern Kentucky, helping individuals across a diverse mix of urban and Appalachian communities.
- AppalReD Legal Aid serves Eastern and Southcentral Kentucky, concentrating on some of the state's most rural and economically challenged counties in the Appalachian region.

Since 2017, the Kentucky Access to Justice Commission has actively partnered with the Legal Aid programs to close the justice gap that exists in Kentucky. Created by the Kentucky Supreme Court in 2010, the Commission aims to improve access to civil justice for Kentuckians who cannot afford legal representation. It works to coordinate statewide efforts, encourage innovation, and advocate for policies that reduce barriers to justice. The Commission serves as a bridge between legal aid providers, the courts, and the community, ensuring a more equitable justice system.

II. THE ROLE OF *PRO BONO* ATTORNEYS

Attorneys who volunteer their *pro bono* services through legal aid programs and the Kentucky Access to Justice Commission (KAJC) significantly expand the reach and impact of these organizations.

- Legal aid programs offer attorneys the opportunity to volunteer in various capacities, including staffing legal clinics, representing clients in extended service cases, and serving as "Attorney of the Day" for specialized court dockets.

KAJC also coordinates a variety of *pro bono* opportunities. Attorneys can volunteer at Legal Help Centers in Lexington, Covington, and Louisville where they assist self-represented litigants with civil legal matters on a limited scope representation basis. This allows volunteers to provide targeted, efficient support without taking on full representation of a case.

In addition, attorneys may participate in Kentucky Free Legal Answers, a virtual legal advice clinic where eligible users post civil legal questions online. Volunteer attorneys can log in at their convenience to respond to these questions, offering brief advice and guidance remotely. This flexible platform makes it easy for attorneys to provide meaningful assistance, even with limited availability.

III. ETHICAL FOUNDATIONS OF PRO BONO SERVICE AND THE KENTUCKY RULES OF PROFESSIONAL CONDUCT

A. [SCR 3.130](#) Kentucky Rules of Professional Conduct Preamble: A Lawyer's Responsibilities

“II. A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.”

VII. ...[A] lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession.... A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel.

B. [SCR 3.130 \(6.1\)](#) Donated Legal Services

A lawyer is encouraged to voluntarily render public interest legal service. A lawyer is encouraged to accept and fulfill this responsibility to the public by rendering a minimum of fifty (50) hours of service per calendar year by providing professional services at no fee or a reduced fee to persons of limited means, and/or by financial support for organizations that provide legal service to persons of limited means. Donated legal services may be reported on the annual dues statement furnished by the Kentucky Bar Association. Lawyers rendering a minimum of fifty (50) hours of donated legal services shall receive a recognition award for such service from the Kentucky Bar Association.

IV. COMMON ETHICS CONCERN FOR PRO BONO ATTORNEYS

A. Interacting with Unrepresented Opposing Parties

1. [SCR 3.130\(4.3\)](#) Dealing with unrepresented person. “[A] lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the

lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding."

- a. Identify the lawyer's client. Comment (1).
- b. If necessary, explain the client has interests opposed to those of the unrepresented litigant. Comment (1).
- c. The lawyer shall not give legal advice to an unrepresented person. The lawyer may suggest that the unrepresented person secure counsel.

2. Comments to [SCR 3.130\(4.3\)](#) refer to the difficulty of determining the position of the person and how that may, in itself, seem like rendering legal advice. In each case, it will depend on circumstances:
 - a. Consider education, experience, age, etc., of the unrepresented person and the setting of the discussion (courthouse, phone, lawyer's office, etc.).
 - b. So long as the lawyer has explained that the lawyer represents the adverse party, then the "lawyer may negotiate, settle disputes, prepare documents that require signing and explain underlying legal obligations of the document ..." Comment (2).

B. Unreachable Clients

1. Client disappears after proceedings begin. [KBA E-433](#).
2. [SCR 3.130\(1.4\)](#) Communication: Requires the lawyer to keep the client reasonably informed with sufficient details to make informed decisions.
3. [SCR 3.130\(1.2\)\(a\)](#) Scope of representation and allocation of authority between client and lawyer.
 - a. Requires the lawyer to abide by the client's decisions on the objectives of the representation and must consult with the client regarding the means to achieve those objectives.
 - b. Requires the lawyer to abide by the client's decision on settlement offers.
4. [SCR 3.130\(1.16\)](#) Declining or terminating representation.
 - a. Lawyers are required to withdraw if continued representation will violate the Rules of Professional Conduct or other law. [SCR 3.130\(1.16\)\(a\)](#).

- b. Lawyers are permitted to withdraw when the client renders representation unreasonably difficult. [SCR 3.130\(1.16\)\(b\)](#).
- c. Lawyers must give notice to the tribunal and may require permission to terminate representation; notwithstanding good cause for terminating, the tribunal may order continued representation. [SCR 3.130\(1.16\)\(c\)](#).

V. LIMITED SCOPE REPRESENTATION

A. [SCR 3.130\(1.2\)](#)

[SCR 3.130\(1.2\)](#) Scope of representation and allocation of authority between client and lawyer

- (a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by [Rule 1.4](#), shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.
- (b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.
- (c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent. [See below.]
- (d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

B. Supreme Court Commentary

Allocation of Authority between Client and Lawyer

- (1) Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. The decisions specified in paragraph (a), such as whether to settle a

civil matter, must also be made by the client. See [Rule 1.4\(a\)\(1\)](#) for the lawyer's duty to communicate with the client about such decisions. With respect to the means by which the client's objectives are to be pursued, the lawyer shall consult with the client as required by [Rule 1.4\(a\)\(2\)](#) and may take such action as is impliedly authorized to carry out the representation.

(2) On occasion, however, a lawyer and a client may disagree about the means to be used to accomplish the client's objectives. Clients normally defer to the special knowledge and skill of their lawyer with respect to the means to be used to accomplish their objectives, particularly with respect to technical, legal and tactical matters. Conversely, lawyers usually defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected. Because of the varied nature of the matters about which a lawyer and client might disagree and because the actions in question may implicate the interests of a tribunal or other persons, this Rule does not prescribe how such disagreements are to be resolved. Other law, however, may be applicable and should be consulted by the lawyer. The lawyer should also consult with the client and seek a mutually acceptable resolution of the disagreement. If such efforts are unavailing and the lawyer has a fundamental disagreement with the client, the lawyer may withdraw from the representation. See [Rule 1.16\(b\)\(4\)](#). Conversely, the client may resolve the disagreement by discharging the lawyer. See [Rule 1.16\(a\)\(3\)](#).

(3) At the outset of a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to [Rule 1.4](#), a lawyer may rely on such an advance authorization. The client may, however, revoke such authority at any time.

(4) In a case in which the client appears to be suffering diminished capacity, the lawyers[sic] duty to abide by the clients[sic] decisions is to be guided by reference to [Rule 1.14](#).

Independence from Client's Views or Activities

(5) Legal representation should not be denied to people who are unable to afford legal services, or whose cause is controversial or the subject of popular disapproval. By the same token, representing a client does not constitute approval of the client's views or activities.

Agreements Limiting Scope of Representation

(6) The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

(7) Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See [Rule 1.1](#).

(8) All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. See, e.g., [Rules 1.1, 1.8](#) and [5.6](#).

C. Case Law – Scope of Representation

1. In addition to being reasonable under the circumstances, all agreements which limit representation must be in writing, require the informed consent of the client(s), and must comport with the Supreme Court's rules, including the rules of professional conduct. *Persels & Associates, LLC v. Capital One Bank, (USA), N.A.*, 481 S.W.3d 501 (Ky. 2016).
2. Family law practitioners may provide comprehensive representation during property division proceedings but not provide representation in any form during child custody proceedings, or vice versa. *Persels & Associates, LLC v. Capital One Bank, (USA), N.A.*, 481 S.W.3d 501 (Ky. 2016).

3. Agreements that limit representation to distinct stages of litigation may be reasonable under the circumstances. *Persels & Associates, LLC v. Capital One Bank, (USA), N.A.*, 481 S.W.3d 501 (Ky. 2016).
4. Agreements are authorized that limit the scope of legal assistance or that limit representation to discrete legal tasks, so long as they are reasonable under the circumstances and the client gives informed consent; this includes limitations on services provided in furtherance of traditional litigation as well as alternative dispute resolution methods. *Persels & Associates, LLC v. Capital One Bank, (USA), N.A.*, 481 S.W.3d 501 (Ky. 2016).
5. Limitation on scope of initial representation effected by “dual contract” arrangement whereby attorneys used pre- and post-petition contracts to “bifurcate” services provided to Chapter 7 debtor was reasonable, as required by Kentucky Rules of Professional Conduct. Debtor approached attorneys for bankruptcy representation, and attorneys concluded based on information obtained from her at a lengthy initial meeting a Chapter 7 case would be appropriate. Attorneys explained their two alternative fee arrangements for such cases, and offering debtor an initial contract for limited pre-petition services was a reasonable action that afforded debtor access to bankruptcy and the benefit of the automatic stay. Attorneys explained the case would require additional post-petition work, that she should retain counsel for that work, and they could perform that work under a second fee agreement, after which they had another meeting and executed a contract for such services. *In re Carr*, 613 B.R. 427 (Bkrtcy. E.D. Ky. 2020).

D. Informed Consent and Reasonableness

1. Informed consent.

SCR 3.130(1.0) Terminology

(b) “Confirmed in writing,” when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (e) for the definition of an informed consent. If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

...

(e) “Informed consent” denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

2. Reasonableness under the circumstances.

“Where reasonable under the circumstances.” Attorneys must analyze each case or transaction to ensure it is appropriate for limited scope representation. There may be circumstances where the case is of a certain level, or other circumstances are present, such that the attorney should conclude providing unbundled services is not reasonable. In those instances, the attorney, at the very least, must advise the client of that conclusion and potentially decline to represent the client on a limited scope basis.

- E. Kentucky Bar Association, Ethics Opinion [KBA E-441](#), Issued: July 28, 2017

Question 1: What is “limited scope representation?”

Answer: When the lawyer and client agree that the lawyer’s representation will be limited to matters specifically defined in their agreement.

Authority: [SCR 3.130\(1.2\)\(c\); Persels](#), 481 S.W.3d 501 (Ky. 2016).

Question 2: What are the requirements of a “limited scope representation” in litigation?

Answer: 1) Informed consent by the client; 2) a writing adequately describing the agreement; and 3) the limitation is reasonable.

Authority: [Rule 1.2\(c\); Persels](#), which adds to [Rule 1.2\(c\)](#) the requirement that the agreement be signed by the client or confirmed in writing. [Rule 1.0\(e\)](#).

Question 3: What is required of an attorney who “ghost writes” an initial pleading (complaint, answer, cross-claim, or counter-claim) for a *pro se* litigant?

Answer: 1) The attorney must investigate the matter sufficiently to reasonably conclude that the pleading is supported by a non-frivolous basis in law and fact; and 2) the attorney must indicate on the pleading that it was prepared “with the assistance of counsel.” The attorney is not required to sign the pleading or indicate the name of counsel.

Authority: *Persels*, S. Bhojani, Attorney Ghostwriting for *Pro Se* Litigants – Practical and Bright-Line Solution to Resolve the Split of Authority among Federal Circuits and State Bar Associations, 65 SMU L. Rev. 653 (2012).

Question 4: What is required of an attorney who provides assistance to a *pro se* litigant beyond preparation of the initial pleadings?

Answer: The attorney must provide the following information to the court and opposing counsel: the attorney's contact information (name, address, phone number) and the scope of the limited representation agreement. This is not an entry of appearance.

Authority: *Persels*

Question 5: May opposing counsel contact a party directly who has filed a pleading that indicates it was prepared with the assistance of counsel?

Answer: Yes, the attorney should ask the opposing party for the scope of the limited representation. If it appears that the opposing party is, or may be, represented by counsel on the matter at issue, the attorney should ask the party for the name of counsel and contact that person to confirm the scope of the limited representation. The attorney should deal directly with the opposing party if the limited representation has concluded or is otherwise not applicable.

Authorities: [ABA Formal Op. 472](#) (2015), [Rules 4.2](#) and [4.3](#).

FOR YOUR INFORMATION ...

The Kentucky Law Update: Continuing Legal Education for All Kentucky Lawyers

The Supreme Court of Kentucky established the Kentucky Law Update Program as an element of the minimum continuing legal education system adopted by Kentucky attorneys in 1984. The KLU program is now offered in a hybrid format. The 2025 Kentucky Law Update is presented as a one-day, in-person program at nine different locations across the state. The 2025 On-Demand Kentucky Law Update is available virtually on the Kentucky Bar Association website from September 1st until December 31st. These two programs combined offer every Kentucky attorney the opportunity to meet the 12 credit CLE requirement, including the 2 ethics credit requirement **close to home and at no cost!** Judges can also earn continuing judicial education credits through the Kentucky Law Update.

This program was designed as a service to all Kentucky attorneys regardless of experience level. It is supported by membership dues and is, therefore, every member's program. The program is a survey of current issues, court decisions, ethical opinions, legislative and rule changes, and other legal topics of general interest that Kentucky practitioners encounter daily. As such, the program serves both the general practitioner and those who limit their practice to specific areas of law. The Kentucky Law Update program is not intended to be an in-depth analysis of a particular topic. It is designed to alert the lawyers of Kentucky to changes in the law and rules of practice that impact the day-to-day practice of law.

About the Written Materials and Presentations

The KLU written materials are the result of the combined efforts of numerous dedicated professionals from around Kentucky and elsewhere. The KBA gratefully acknowledges the following individuals who graciously contributed to this publication:

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KBA Elder Law Section	Legal Aid of the Bluegrass
KBA Law Practice Committee	Legal Aid Society
KBA Office of Bar Counsel	New Americans Initiative
Kentucky Access to Justice Commission	Supreme Court of Kentucky

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A special acknowledgment to the organizations, authors, presenters, moderators, and other 2025 Kentucky Law Update program volunteers will appear in the January 2026 issue of the *Bench & Bar*.

CLE and Ethics Credit

The one-day, in-person 2025 Kentucky Law Update program is accredited for 6 CLE credits, including 2 ethics credits. The 2025 On-Demand Kentucky Law Update is accredited for 9.25 CLE credits, including 3 ethics credits. One credit is awarded for each 60 minutes of actual instruction, as noted on the agendas provided on the KBA website.

The Kentucky Bar Association's 2025 Kentucky Law Update programs are accredited CLE activities in numerous other jurisdictions. Credit categories and credit calculations vary from state to state. CLE reporting information for other states will be provided at the registration desk at the in-person programs. The out-of-state information for the on-demand sessions will be available on the program website.

Kentucky judges: don't forget you can claim CJE credit for attending this program.

REMEMBER: Reporting attendance credits is now done online. Visit the Kentucky Bar Association [website](#) for reporting information. The activity numbers for the in-person and on-demand programs are listed on the corresponding agendas and must be used to report credits through the Member CLE Portal.

Evaluations

The 2025 Kentucky Law Update is *your* program, and your input is valued and needed. Links to the program evaluations for the live, in-person programs will be provided to all registrants via email. A link for the on-demand evaluation will be located on the program webpage. Please take a few minutes to complete the evaluation. We appreciate your assistance in improving this program.

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