

KENTUCKY BAR ASSOCIATION
Unauthorized Practice of Law Opinion KBA U-35
Issued: July 1981

Question: May a paralegal represent the Department of Justice in a hearing before the Board of Claims at which time the paralegal would present evidence including cross examination of witnesses without an attorney from the Department of Justice being present?

Answer: No.

References: SCR 3.020, 3.030, 3.540, 3.700; Opinion KBA U-4, U-27, Kentucky State Bar Assn v. Henry Vogt Machine Co. Inc. 416 S.W.2d 727 (Ky. 1967); Opinion KBA E-227

OPINION

SCR 3.020 defines the practice of law in the State of Kentucky. As such, it provides that any service, in or out of court, with respect to the rights, duties, obligations, and liabilities of the parties, is the practice of law. Further, SCR 3.030 provides that only persons licensed to practice law in this state, as well as, under certain conditions lawyers licensed to practice in another state, may practice law in the State of Kentucky.

SCR 3.540 provides the only exception to these rules for the practice of law is by legal interns. This rule provides that a student who has completed two-thirds of the academic requirements may provide legal services on behalf of clients, if a member in good standing of this state “personally” supervises all activities of the student.

Accordingly, since the attorney would not be present during the proceedings, a paralegal would not fit within this exception.

The Committee has considered SCR 3.700. This rule provides that the unauthorized practice of law shall not include representation before any administrative tribunal or court, for such service or representation is rendered pursuant to a court rule or decision which authorized such practice by non-lawyers.

The Unauthorized Practice of Law Committee of this state has consistently ruled that the practice of law before an administrative hearing in Kentucky must be done by an attorney. See KBA-U4 and KBA U-27.

In Kentucky State Bar Assn v. Henry Vogt Machine Co. Inc. 416 S.W.2d 727 (Ky. 1967), the Court held that a non-lawyer who attended and participated in an Unemployment Insurance Commission hearing on behalf of his employer was engaged in the unauthorized practice of law. The Ethics Committee has held in KBA E-227 that a paralegal may not appear in court and argue a motion on behalf of a client

For all the reasons stated above a paralegal may not represent the Department of Justice in a hearing before the Court of Claims.

Note to Reader

This unauthorized practice 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). Note that the Rule provides in part: “Both informal and formal opinions shall be advisory only.”