**KENTUCKY BAR ASSOCIATION**
**Unauthorized Practice of Law Opinion KBA U-38**
Issued: May 1983

**Question 1:** May the manager of rental real estate, who is not lawyer and does not own the real estate, prepare and file a writ of forcible detainer without engaging in the unauthorized practice of law?

**Answer 1:** No.

**Question 2:** May such manager examine witnesses at the hearing upon a motion for forcible detainer?

**Answer 2:** No.

**Question 3:** May such manager appear at the hearing upon forcible detainer and testify, even though an attorney may not be present?

**Answer 3:** Yes.

**References:** CR 1; CR 2; KRS 383.210; KRS 383.585; SCR 3.020, Frazee v. Citizens Fidelity Bank and Trust Co., Ky., 393 S.W.2d 778 (1964).

## OPINION

The primary purpose of prohibiting the unauthorized practice of law is to prevent one not skilled in legal matters from taking steps in behalf of another which, if those steps are ill-advised, or are not taken properly, may be detrimental to the person represented or the public generally . The countervailing concern is the public interest in the conduct of business without the expense of securing legal services where those services are not necessary.

When the gas station attendant fills out a credit card "contract", he should not be required to consult a lawyer. Similarly, it would appear to be in the public interest that certain acts of the manager of rental property, though legal in nature or having legal repercussions, would not constitute unauthorized practice. He may fill in and sign rental agreements. He may agree to make certain improvements or repairs to the property rented. In doing so, he is binding the owner by whom he is employed. But these acts are so routine and so interwoven with his presumed business expertise that no one would suggest they constitute the unauthorized practice of law. Frazee v. Citizens Fidelity Bank & Trust Co., Ky., 393 S.W.2d 778 (1964).

Since the manager of rental property is better situated to know when eviction is appropriate than any other person, and eviction involves his business expertise, some flexibility should be accorded in defining "unauthorized practice" as it relates to him.

But the application to a District Court for writ of forcible detainer constitutes the institution of a "civil action" and regardless of the form used or the name otherwise given it, that application constitutes a "complaint". CR 1 & 2; KRS 383.210. It is a pleading.

It is virtually axiomatic that pleadings may be filed only by attorneys or by individuals acting pro se. The Practice of Law in Kentucky is defined by Supreme Court Rule 3.020 as follows:

> The practice of law is any service rendered involving legal knowledge or legal advice, whether of representation, counsel or advocacy in or out of court, rendered in respect to the rights, duties, obligations, liabilities, or business relations of one requiring the services. But nothing herein shall prevent any natural person not holding himself out as a practicing attorney from drawing any instrument to which he is a party without consideration unto himself therefor. An appearance in the Small Claims Division of the District Court by a person who is an officer of or who is regularly employed in a managerial capacity by a corporation or partnership which is a party to the litigation in which the appearance is made shall not be considered as unauthorized practice of law. Amended effective November 1, 1978.

A manager of rental property has no protectable estate in it, but is clearly acting for another - the owner. KRS 383.585. The conclusion is inescapable that unless the established rule is contorted beyond recognition, the filing of a writ of forcible detainer is beyond the province of the real estate manager.

Moreover, because the filing of such a paper improvidently could result in a liability beyond what a manager would ordinarily be expected to assume, there is no great vice in requiring that manager either to secure an attorney or to secure the signature of the landlord on the complaint. By the filing of such a complaint, the complainant is asking the Court to take the time, trouble and expense to review the matter. The Court, in turn, would not be asking too much of the complainant if it required that the landowner personally sign the complaint. And by adopting such a requirement, the landowner who would experience any liability as a result of its filing, would have the opportunity to personally participate in the decision with respect to the propriety of filing.

There certainly could be no vice in the manager signing an affidavit in support of the complaint. But for anyone other than the landowner (or an attorney) to sign the complaint itself would be unauthorized practice.

The examination and cross-examination of witnesses in a judicial proceeding is a legal function, and no justification exists to permit a lay manager to perform this function. This is particularly true in District Court, where the Judge is accustomed to personally eliciting such evidence from the witnesses as he/she believes to be relevant.

Ordinarily, in any judicial proceeding. it is desirable to have an attorney ask questions and conduct argument, because an attorney is clothed with the expertise to separate the relevant

from the irrelevant. This advantage is overlooked when a party represents himself, because of his constitutional right to speak for himself. But it should not be overlooked where the party seeks to have a lay representative speak for him.

This is not to say that the apartment manager may not testify. He would occupy the same status as any other witness in any other hearing. No witness can be accused of unauthorized practice because he testifies. And a witness cannot be faulted for presenting his testimony in the way he thinks appropriate, even in the absence of sympathetic counsel. Again, the District Judge can ask such questions if deemed appropriate.

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***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."*