

KENTUCKY BAR ASSOCIATION
Unauthorized Practice of Law Opinion KBA U-46
Issued: March 1994

Question: May members of the staff of Nursing Home Ombudsman Agency of the Bluegrass, Inc., who are not lawyers admitted to the Kentucky Bar Association, represent patients of nursing homes, or the families of nursing home residents, in transfer and discharge hearing?

Answer: No.

References: SCR 3.020; KBA Us-3, 15, 17, 19, 27, 34, 35 and 43. See also U-36

OPINION

SCR 3.020, which defines the Practice of Law, contains no exception for administrative hearings. In KBA v. Henry Vogt Machine Co., 416 S.W.2d 727 (1967) the Supreme Court ruled that lay persons could not represent clients in adjudicative or quasi-adjudicative proceedings before state agencies. Being bound to apply SCR 3.020 as it is written, we have consistently refused to invent an “administrative agency” exception that would permit a layman to represent a client in a hearing that would involve the giving of legal advice and the making of legal argument, the examination or cross-examination of witnesses, and the like. We also note that Kentucky law forbids a corporation to provide legal services to third parties even though admitted house counsel. See, e.g., U-36.

The Cabinet for Human Resources opposes lay representation, argues that the hearings in question are quasi-judicial or adjudicative, and alleges that lay representation by this group’s staff will present conflicts of interest in some, if not many, cases. The requestor, The Ombudsman Agency, Inc., has not pointed to any specific federal authorization for lay practice in this area, although allusions are made to the Older American’s act.

In the absence of some showing that federal law authorizes this lay practice of law, and would supersede SCR 3.020, we are bound to answer the questions in the negative. Rule 3.020 is intended to insure that members of the public receive representation from a qualified and regulated professional.

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.”