

KENTUCKY BAR ASSOCIATION
Unauthorized Practice of Law Opinion KBA U-64
Issued: November 2012

Question 1: Can a non-lawyer request that a board or agency initiate an administrative action and grant a hearing or file an answer on behalf of an otherwise unrepresented corporation or other artificial entity in an administrative hearing?

Answer: No.

Question 2: Can a non-lawyer call himself or others, on behalf of an otherwise unrepresented corporation or other artificial entity, as a witness and provide fact testimony at an administrative hearing?

Answer: No.

Question 3: Can a hearing officer call a witness to provide fact testimony at an administrative hearing?

Answer: Qualified yes. While the hearing officer may not call a witness specifically on behalf of the corporation or other artificial entity the hearing officer may call a witness in order to elicit all relevant facts that may be necessary to conduct the hearing.

References: SCR 3.020, Turner v. Kentucky Bar Association, 980 S.W.2d 560 (Ky. 1998), SCR 3.130-5.5, Countrywide Home Loans, Inc. et. al v. Kentucky Bar Association, 113 S.W. 3d 105 (Ky. 2003), KBA U-52, KBA U-3, KBA U-12, KBA U-15, KBA U-17, KBA U-43, Kentucky State Bar Assn. v. Henry Vogt Machine Co., 416 S.W.2d 727 (Ky. 1967), KBA U-34, Secretary, Labor Cabinet v. Boston Gear, Inc., 25 S.W.3d 130 (Ky. 2000).

AUTHORITY

SCR 3.020 defines the practice of law. The Supreme Court of Kentucky has the exclusive authority to promulgate rules governing the practice of law. Turner v. Kentucky Bar Association, 980 S.W.2d 560 (Ky. 1998).

The compelling reason for such regulation is to protect the public against rendition of legal services by unqualified persons. Comment to Kentucky Rule of Professional Conduct SCR 3.130-5.5.

The practice of law is defined by SCR 3.020 as any service "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."

The "unauthorized" practice of law is the performance of those defined services by non-lawyers for others. Countrywide Home Loans, Inc. et. al v. Kentucky Bar Association, 113 S.W. 2d 105 (Ky. 2003).

Corporations are not permitted to practice law in the Commonwealth. Kentucky Bar Association v. Tussey, 476 S.W.2d 177 (Ky. 1972); KBA U-32; Kentucky Bar Association v. Legal Alternatives, Inc., 792 S.W.2d 368 (Ky. 1990).

OPINION

The questions presented in this opinion are not completely new and for the most part have been addressed in previous formal unauthorized practice opinions.

The KBA, in Opinion U-52, addressed these issues in part when presented with the question of whether or not a non-lawyer may represent parties before the Kentucky Department of Workers' Claims. The opinion held that non-attorneys may not represent parties before the agency because "[r]epresentation of parties before administrative agencies is the practice of law, as it necessarily involves legal advice, counsel and advocacy."

Also, U-52, summarizing previous related opinions, stated:

"Non-lawyers have been prohibited from representing corporations and individuals before the Kentucky Department of Transportation (Opinion KBA U-3); before a city civil service commission (Opinion KBA U-12); before the Kentucky Unemployment Insurance Commission (Opinion KBA U-15); before the Kentucky Board of Tax Appeals (Opinion KBA U-17) and in quasi-adjudicative proceedings before zoning boards and zoning authorities (Opinion KBA U-43) See also Kentucky State Bar Assn. v. Henry Vogt Machine Co., Ky., 416 S.W.2d 727 (1967)."

In addition to the UPL Opinions referenced above, the Bar Association has also held that a non-attorney may not appear before a faculty grievance committee as a representative of another individual in proceedings before the university faculty grievance committee. (KBA U-34). Furthermore, U-34 advises that where a member of a quasi-judicial body knows that the person is not licensed to practice law in the Commonwealth of Kentucky, that member would be aiding in the unauthorized practice of law to allow the non-attorney to appear in front of that committee. However, Secretary, Labor Cabinet v. Boston Gear, Inc., 25 S.W.3d 130 (Ky. 2000) clarifies that it may be necessary for a hearing officer to " 'fully elicit' all relevant facts" at a hearing, which may require taking testimony from a non-attorney. *Id.* at 134. That would not be considered the unauthorized practice of law.

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."