

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-1
Issued: March 1962

Question. May an attorney represent the next of kin in opposing the probate of the will which the attorney had prepared and witnessed?

Answer: No.

References: Canon 6

OPINION

The facts are that on May 10, 1960, an attorney prepared and witnessed the execution of a will for his client, whom the attorney considered at that time to be mentally competent. Two months later the attorney was advised by the brother and sister of the client of certain conduct on the part of the client that demonstrated that he was mentally incompetent. The attorney was employed by the brother and sister to institute a sanity inquest, which was done, and the former client was duly adjudicated to be mentally incompetent on September 22, 1960. The former client thereafter died and the Executor named in the will offered it for probate, at which time an earlier holographic will was also tendered for probate. The attorney informed the Probate Court that at the time the will was executed, he believed the client was mentally competent but, by close observance, he had subsequently concluded that the client was incompetent on that date, and had been incompetent for quite some time prior thereto. The next of kin desire to employ the attorney to oppose the probate of the will.

The question is: May the attorney represent the next of kin in opposing the probate of the will which the attorney had prepared and witnessed?

We are of the opinion that this case falls within Canon 6. An attorney should not attempt to nullify his own work, and the death of the former client does not release the attorney from his obligation to that client. It would be improper for the attorney to represent the next of kin in their efforts to defeat the instrument which the attorney had prepared.

Note to Reader

This ethics 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: "Both informal and formal opinions shall be advisory only; however, no attorney shall be disciplined for any professional act on his part performed in compliance with an opinion furnished to him on his petition, provided his petition clearly, fairly, accurately and completely states his contemplated professional act."