

KENTUCKY BAR ASSOCIATION
Unauthorized Practice of Law Opinion KBA U-52
Issued: June 1997

Question 1: May non-lawyers represent parties before the Kentucky Department of Workers' Claims?

Answer 1: No.

Questions 2: May non-lawyers serve as "workers compensation specialists" for the Kentucky Department of Workers' Claims?

Answer 2: No.

References: KBA U-3, KBA U-12, KBA U-15, KBA U-17, KBA U-43; SCR 3.020; KRS 342.230, KRS 342.329, KRS 342.320; Kentucky Constitution, Section 116; Kentucky State Bar Assn. v. Henry Vogt Machine Co., Ky., 416 S.W.2d 727 (1967). Ex Parte Auditor of Public Accounts, Ky., 609 S.W.2d 682 (1980). May v. Coleman, Ky., 945 S.W.2d 436 (1997).

OPINION

Non-lawyers have been prohibited from representing corporations or 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 adjudicative or 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).

Representation of parties before administrative agencies is the practice of law, as it necessarily involves legal advice, counsel and advocacy. The rationale of the above-cited opinions applies with equal force to representation of parties before the Kentucky Department of Workers' Claims.

It is noted that a December, 1996 amendment to KRS 342.320 states:

“(9) Notwithstanding any provisions of law to the contrary, the provisions of this chapter shall not be construed or interpreted to prohibit non-attorney representation of injured workers covered by this chapter.”

However, pursuant to Section 116 of the Kentucky Constitution, the Kentucky Supreme Court is vested with exclusive jurisdiction over the practice of law. The Kentucky Supreme Court had defined the practice of law at SCR 3.020, and has not authorized lay representation before the Department of Workers' Claims.

In the December, 1996 amendments to the Kentucky Workers' Compensation Act, a new position, called "workers' compensation specialist," was created at the Department of Workers'

Claims. Pursuant to KRS 342.329, the functions of the “workers’ compensation specialists” include:

“(c) Advising all parties of their rights and obligations under this chapter;” and

“(d) Assisting workers in obtaining medical reports, job descriptions and other materials pertinent to a claim for benefits and preparing all documents necessary for a claim application;”

In other words, the “workers’ compensation specialist” performs those duties normally associated with an attorney. However, there is no provision in the workers’ compensation statute or regulations requiring that the “workers’ compensation specialists be attorneys. Clearly, the performance of those duties by a non-lawyer constitutes the practice of law, not authorized by the Kentucky Supreme Court.

Note to Reader

This advisory opinion was affirmed in part and reversed in part by the Supreme Court of Kentucky in Turner v. Kentucky Bar Association, Ky., 980 S.W.2d 560 (1998).