

KENTUCKY BAR ASSOCIATION
Unauthorized Practice of Law Opinion KBA U-56
Issued: January 1999

Question: Does the appearance of an individual, not licensed as an attorney, before the Kentucky Natural Resources and Environmental Protection Cabinet on behalf of a third person, corporation or another entity, at a penalty assessment conference, constitute the unauthorized practice of law?

Answer: Yes.

OPINION

The practice of law is defined in SCR 3.020 as follows:

[A]ny 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.

According to the Natural Resources and Environmental Protection Cabinet, Office of Legal Services, even though a “penalty assessment” conference is “fairly informal,” (see letter of Barbara Foster, General Counsel, requesting an opinion in this matter), the corporation requesting the conference appears by an individual who explains orally why the corporation is contesting the proposed assessment. It seems obvious that the choice, formulation and articulation of reasons why the assessment is contested would necessarily require argument of “legal” reasons. To provide this service to the corporation, the person so appearing would do so in a representative capacity and his/her service would most certainly require legal knowledge regarding the rights, duties, obligations, liabilities or business relations of the corporation. It would, therefore, fall within the definition of the practice of law and unless performed by a licensed attorney, would be unauthorized. See, Kentucky State Bar Association v. Henry Vogt Machine Co., 416 S.W.2d 727 (Ky. 1967); KBA U-15 and KBA U-52.

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.”