

KENTUCKY BAR ASSOCIATION
Unauthorized Practice of Law Opinion KBA U-24
Issued: September 1978

Question: May a corporation other than a legal professional service corporation, the membership of which is composed entirely of attorneys, which has been organized to promote the particular public cause reflected in its corporate name, designate itself, in that corporate name, as counsel of record in a judicial proceeding to which it is not a party provided a member-attorney signs all pleadings as representative of the corporate entity?

Answer: No.

References: KRS 274.005.274.065. 274.075; Hobson v. Kentucky Trust Co. of Louisville, 197 S.W.2d 454 (Ky. 1946)

OPINION

The request for this opinion recited that the question stated above was resolved on June 9, 1978, by Judge Nicholson of the Jefferson Circuit Court (No. 78CI3937). Since review of that decision by appeal or mandamus was or is available, this Committee must consider the exercise of restraint in rendering an opinion, lest it interfere with the properly established judicial jurisdiction. Thus, had this Committee harbored any reservations about the correctness of Judge Nicholson's decision, it would have respectfully declined to express an opinion.

The import of the question presented may perhaps better be felt if the form of the pleading which it suggests is hypothesized. That pleading might begin "comes the defendant, Joe Doe, by and through his attorney, Good Cause, Inc.," and might end with the signature block of "Good Cause, Inc.," Attorney for Defendant, by Richard Rowe, of counsel.

The suggested means of representation would violate both the letter and the spirit of the law. The letter of the law was established in a series of judicial opinions which reached the conclusion that a corporation may not engage in the practice of law. The most prominent of these is Hobson v. Kentucky Trust Co of Louisville, 197 S.W.2d 454 (Ky. 1946). The historic rule was altered by legislation in 1962, permitting the formation of Professional Service Corporations. In enacting the statute, the legislature recognized the Hobson rule with implied approval when it included in its definition of a "Professional Service" conduct which "prior to the passage of the chapter and by reason of law or a professional code of ethics, could not be performed by a corporation" (KRS 274.005). The Professional Service Corporation thus stands as the lone exception to the rule that legal services cannot be rendered by a corporation.

A group of attorneys composing a corporation promoting a particular social cause and bearing the name of that cause is not a Professional Service Corporation within the meaning of KRS Chapter 274. The concept of Professional Service Corporation was born out of tax disadvantages experienced by doctors and lawyers (4 A.L.R.3d 384). It was not intended to

change the character of these professions. *See* KRS 274.065. Nor is there any attempt at compliance with KRS 274.075, pertaining to the corporate name.

Turning from the judicial and legislative declarations and to the spirit of the thing, it is immediately apparent that the quality of representation is not in question. The same attorneys will perform with equal capability regardless whether or not the corporation espousing the cause is named as counsel or not. Indeed, the only visible effect of representation by the corporation espousing the cause would be the use of its name. It would create a vehicle for notoriety for the corporation. And this is the apparent purpose of its membership.

The worthiness of public causes is often a matter of controversy. The public image of the profession would not be enhanced if every public cause went through the metamorphosis of incorporation by two or more lawyers and became itself a legal counselor. The identification of the corporation as a legal counselor in a given piece of litigation could very well operate to the prejudice of one party or the other. And the temptation would exist to further the interest of the corporation by encouraging notoriety or prolonging the cause to the possible detriment of the client. Even with Professional Service Corporations, the burden of responsibility to the client and the Court ultimately falls upon the shoulders of the individual practitioner or his associate who lends his name to the corporation. The same is not true with respect to the corporation espousing the cause, in which each member can seek refuge in the anonymity of the corporate name.

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."