

KENTUCKY BAR ASSOCIATION
Unauthorized Practice of Law Opinion KBA U-49
Issued: June 1997

Question: May an individual who is a non-attorney, who has been designated “attorney in fact” or who has been given “power of attorney,” represent a third party in court by creating, submitting, and/or signing pleadings, motions or agreed orders?

Answer: No.

References: SCR 3.010, 3.020.

OPINION

Only persons duly authorized and admitted under the Rules of the Kentucky Supreme Court may represent others in the courts of the Commonwealth, be they state or federal. See definitions of “Attorney,” SCR 3.010, and “Practice of Law,” SCR 3.020. *See also Frazee v. Citizens Fidelity Bank & Trust*, (Ky. 1964), 393 S.W.2d 778, at 782, in which Kentucky’s high court stated, inter alia:

“Only persons who meet the educational character requirement of this Court and who, by virtue of admission to the Bar, are officers of the Court and subject to discipline thereby, may practice law. The sole exception is the person acting on his own behalf.”

“Attorneys,” that is duly licensed and authorized attorneys, as defined in SCR 3.010 and 3.020, receive their authority to represent others and practice law directly and only from the Kentucky Supreme Court. Representation of others in a court of law is by definition the “practice of law,” and therefore only duly licensed attorneys may engage in such representation. Any person who represents another in a court of law without such authorization therefore is engaging in the unauthorized practice of law.

“Attorney-in-fact” and “power of attorney,” are, by contract, legal terms denoting certain types of agency relationships. The existence of such an agency relationship does not thereby allow the agent to practice law on behalf of their principal. Such an agent may be able to retain and direct an attorney authorized by the Kentucky Supreme Court to represent the principal, however, such an agent, acting under “attorney-in-fact” or “power of attorney” agency is not able to sign pleadings, make motions, file pleadings, submit or sign agreed orders, and to do so would be 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.”