

KENTUCKY BAR ASSOCIATION
Unauthorized Practice of Law Opinion KBA U-53
Issued: July 1997

Question: May nonlawyer inmates represent other inmates in civil matters in court?

Answer: See Opinion.

References: SCR 3.010 and SCR 3.020
Kendrick v. Bland, 541 F.Supp.21(W.D.Ky 1981)
Brey v. Commonwealth, Ky., 917 S.W.2d 558 (1996)
May v. Coleman, Ky., 945, S.W.2d 436 (1997)

OPINION

The question has arisen whether inmates may draft or sign pleadings, appear in court or otherwise represent fellow inmates in civil matters.

Historically it should be noted that the training of inmates in the law was authorized pursuant to a consent decree which appears in the case Kendrick v. Bland, 541 F.Supp 21 (W.D.Ky. 1981) and given the time and focus of these inmate litigators some have produced work which is quite good.

However, the Supreme Court of Kentucky in two recent opinions, has answered the question raised. In Brey v. Commonwealth, Ky., 917 S.W.2d 558 (1996) the Court considered whether “inmate litigators” should sign motions for other inmates. The Court, on its own motion, ordered the Clerk of the Supreme Court to strike from the motion for discretionary review the reference to and signature of the inmate designated as “Inmate Litigator” and then went on to warn the future violation might result in the striking of pleadings, briefs or motions.

In May v. Coleman, 945 S.W.2d, 426 rendered May 22, 1997, the Court ruled that the consent decree was unenforceable insofar as it purports to condone the unauthorized practice of law in civil actions in court.

The court specifically held that it was addressing only whether or not the consent decree requires the appointment of an inmate legal aide to assist the inmate in the prosecution of a civil case which was filed in Pike Circuit Court. The court found that the consent decree did not nor could it authorize such an appointment. In light of the above Kentucky Supreme Court decisions it is not necessary for this Committee to offer a separate opinion on the matter.

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.”