



KOSH REVIEW COMMISSION
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Frankfort, KY 40601
(502) 573-6892 - (502) 573-4619 Fax#
Web: www.koshrc.ky.gov

This information is provided to assist you in understanding how your case will proceed and is intended for that purpose only. You must refer to the Commission's Rules of Procedure (803 KAR 50:010) for guidance about specific rules, which can be found on our website at www.koshrc.ky.gov. Statutes and regulations can be found linked on the left side of the screen. Under the regulations section, click on 803 KAR 50:010 which is a link to our rules. These rules can be downloaded and printed for your convenience.

PLEASE READ CAREFULLY

1. The KOSH Review Commission was established by statute as an independent agency to provide due process of law to those who contest occupational safety and health citations. (See KRS 338.071, and KRS 338.081) The Commission is a part of Kentucky's Occupational Safety and Health program, but it is completely independent of the Labor Cabinet. Stated simply, an attorney for the Labor Cabinet is responsible for prosecuting your case, and the Review Commission is responsible for hearing the evidence presented by both parties and reaching a fair and impartial decision. The Secretary of Labor has the burden of proving the charges alleged in the citation and complaint are accurate. If the commissioner fails to prove his case, the citation will be dismissed by the Review Commission (See 803 KAR 50:010, Section 43 (1) of the commission's Rules of Procedure.
2. In proceedings before the Review Commission if your business is not incorporated you may represent yourself or hire an attorney. **If your business is incorporated, you must hire an attorney to represent the corporation before the Review Commission.** Whichever of these options fits your circumstances, you will be allowed full participation. See Attachment "A", the KBA Advisory Ethics Opinion U-64.
3. In order for you to fully participate in the prehearing telephone conferences with the hearing officer and the Labor Cabinet's attorney, you should be familiar with the enclosed Rules of Procedure. **Failure to follow these rules could result in dismissal of your contest.** You may contact someone at our office, (502) 573-6892 for questions about procedural matters.

However, you may not discuss the merits with anyone at the Commission unless all parties to the case are present, either in person or by telephone. See Section 54 of the Commission's Rules of Procedure.

4. Within twenty (20) days from the date the Labor Cabinet received your letter of contest, the Secretary is required to file a formal complaint with this Commission. The Secretary of Labor will serve you a copy of the complaint either by certified mail or personal service. Section 20 (4) of the Commission's rules says you shall file a written response, also called an Answer, to the complaint within fifteen (15) days of the date you received the complaint. Your answer should deny any fact asserted in the complaint with which you disagree; a general denial is all that is necessary. Any allegation in the complaint not denied will be deemed admitted and can be used against you at the hearing. **The original of your answer is to be mailed to the Review Commission, and a copy of your answer is to be mailed to the Labor Cabinet.** If you require additional time to respond, you may file a written request for an extension with the Review Commission. Extensions will be granted at the discretion of the Review Commission. If you fail to file an answer, your case will be dismissed by this commission or its hearing officer.

5. Once we receive your answer here at the Review Commission, your case will be forwarded to the Office of the Attorney General for assignment to a hearing officer and scheduling of a hearing. The hearing officer will preside over and regulate the course of the hearing. If necessary, the hearing officer has the duty and authority to exclude any individual from the hearing who engages in improper or disrespectful conduct. See Section 36 (6) of our Rules of Procedure.)

6. After the hearing is concluded and the parties have submitted briefs to the hearing officer, the hearing officer will forward his recommended order to the Commission for issuance. When the hearing officer's order is issued by the Commission, a copy will be mailed to you. If you do not agree with the hearing officer's recommended order, you may ask the Commission to review the hearing officer's recommended order. To do this, you must file a petition for discretionary review with the commission. The petition must be received by the commission within 25 days of the date the hearing officer's recommended order is issued. See Section 48 of the Commission's Rules of Procedure.)

7. The Review Commission encourages settlement of its cases at any stage of the proceedings. If settlement of this case is an option you would like to pursue, you are encouraged to contact the attorney who filed the complaint for the Secretary of Labor (see page 2 of the Notice of Receipt of Contest) at (502) 564-3070.

ADVISORY ETHICS OPINION

UNAUTHORIZED PRACTICE OF LAW OPINION KBA U-64

November 2012

- Question 1:** Can a non-lawyer request that a board or agency initiate an administrative action and grant a hearing or file an answer on behalf of an otherwise unrepresented corporation or other artificial entity in an administrative hearing?
- Answer:** No.
- Question 2:** Can a non-lawyer call himself or others, on behalf of an otherwise unrepresented corporation or other artificial entity, as a witness and provide fact testimony at an administrative hearing?
- Answer:** No.
- Question 3:** Can a hearing officer call a witness to provide fact testimony at an administrative hearing?
- Answer:** Qualified yes. While the hearing officer may not call a witness specifically on behalf of the corporation or other artificial entity the hearing officer may call a witness in order to elicit all relevant facts that may be necessary to conduct the hearing.
- References:** SCR 3.020, Turner v. Kentucky Bar Association, 980 S.W.2d 560 (Ky. 1998), SCR 3.130-5.5, Countrywide Home Loans, Inc. et. al v. Kentucky Bar Association, 113 S.W. 3d 105 (Ky. 2003), KBA U-52, KBA U-3, KBA U-12, KBA U-15, KBA U-17, KBA U-43, Kentucky State Bar Assn. v. Henry Vogt Machine Co., 416 S.W.2d 727 (Ky. 1967), KBA U-34, Secretary, Labor Cabinet v. Boston Gear, Inc., 25 S.W.3d 130 (Ky. 2000).

AUTHORITY

SCR 3.020 defines the practice of law. The Supreme Court of Kentucky has the exclusive authority to promulgate rules governing the practice of law. Turner v. Kentucky Bar Association, 980 S.W.2d 560 (Ky. 1998).

The compelling reason for such regulation is to protect the public against rendition of legal services by unqualified persons. Comment to Kentucky Rule of Professional Conduct SCR 3.130-5.5.

The practice of law is defined by SCR 3.020 as any service "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."

The "unauthorized" practice of law is the performance of those defined services by non-lawyers for others. Countrywide Home Loans, Inc. et. al v. Kentucky Bar Association, 113 S.W. 2d 105 (Ky. 2003).

Corporations are not permitted to practice law in the Commonwealth. Kentucky Bar Association v. Tussey, 476 S.W.2d 177 (Ky. 1972); KBA U-32; Kentucky Bar Association v. Legal Alternatives, Inc., 792 S.W.2d 368 (Ky. 1990).

OPINION

The questions presented in this opinion are not completely new and for the most part have been addressed in previous formal unauthorized practice opinions.

The KBA, in Opinion U-52, addressed these issues in part when presented with the question of whether or not a non-lawyer may represent parties before the Kentucky Department of Workers' Claims. The opinion held that non-attorneys may not represent parties before the agency because "[r]epresentation of parties before administrative agencies is the practice of law, as it necessarily involves legal advice, counsel and advocacy."

Also, U-52, summarizing previous related opinions, stated:

"Non-lawyers have been prohibited from representing corporations and 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 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)."

In addition to the UPL Opinions referenced above, the Bar Association has also held that a non-attorney may not appear before a faculty grievance committee as a representative of another individual in proceedings before the university faculty grievance committee. (KBA U-34). Furthermore, U-34 advises that where a member of a quasi-judicial body knows that the person is not licensed to practice law in the Commonwealth of Kentucky, that member would be aiding in the unauthorized practice of law to allow the non-attorney to appear in front of that committee. However, Secretary, Labor Cabinet v. Boston Gear, Inc., 25 S.W.3d 130 (Ky. 2000) clarifies that it may be necessary for a hearing officer to "fully elicit" all relevant facts" at a hearing, which may require taking testimony from a non-attorney. *Id.* at 134. That would not be considered 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."