

KENTUCKY BAR ASSOCIATION

Ethics Opinion KBA E-68

Issued: May 1973

This opinion was decided under the Code of Professional Responsibility, which was in effect from 1971 to 1990. Lawyers should consult the current version of the Rules of Professional Conduct and Comments, SCR 3.130 (available at <http://www.kybar.org>), before relying on this opinion.

Question: May an attorney be present to render legal advice to his client at a press conference called by this client?

Answer: Yes.

References: DR -107

OPINION

The Ethics Committee has received a novel and interesting inquiry from a Kentucky attorney concerning the possibility of impropriety on the part of another attorney who appears to have sat in on a press conference called by his client concerning civil litigation then pending, the details of which have received wide publicity in the press and other news media. Incidentally, criminal proceedings were also pending against the same person who called the press conference, and newspaper clippings furnished the Committee indicated presence of the person's attorney, but did not indicate that the attorney had made any statement of any kind to the press. The attorney making the inquiry wonders whether or not the other attorney committed any improper conduct in "participating in publicity" about pending litigation.

This inquiry is novel from the standpoint that it is different in two respects from the usual problems encountered concerning publicity generated by attorneys:

First, in the typical inquiry concerning publicity, it is the attorney, rather than the client, who makes statements to the press concerning pending civil or criminal litigation, and such activity on the part of the attorney is, of course, generally condemned or highly restricted. See Canon 20 of the former Canons of Professional Ethics, and DR 7-107 of the newer Disciplinary Rules of the American Bar Association, adopted as official guidelines by the Kentucky Bar Association.

Secondly, many of these problems arise out of statements by public prosecutors concerning evidence, etc., in a pending criminal matter and these are universally condemned because of the likelihood of creating an adverse public or official attitude concerning the guilt of a person accused of crime.

It seems to the Committee that the ethical guidelines and opinions of the Standing Committee on Ethics of the American Bar Association concerning pretrial publicity by lawyers are sound and should be rigidly enforced. On the other hand, if a client undertakes, however foolishly, to call a press conference and make his own statements concerning litigation or pending criminal proceedings, it seems to us that he has a perfect right to have his attorney present at the time the statements are given for the sole purpose of advising him. As a matter of fact, it occurs to us that any person, regardless of his circumstances, has a perfect right to insist on his attorney being present at virtually any transaction in which he may be engaged, be it public, private, civil, criminal, or otherwise. Obviously, an attorney may be under ethical obligation to refrain from participating in illegal acts, and he may well be justified in refusing to represent a client who persistently chooses to disregard his advice, but those matters are not raised by the present inquiry.

Note to Reader

This ethics 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). The Rule provides that formal opinions are advisory only