

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-89
Issued: March 1974

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>), especially Rules 7.01-7.50 and the Attorneys' Advertising Commission Regulations, before relying on this opinion.

Question 1: May an attorney be a shareholder, director and/or officer of a corporation organized to represent professional athletes in contract negotiations, wherein the corporation solicits athletes for representation by the corporation?

Answer 1: No.

Question 2: May the attorney be employed as legal counsel by the corporation referred to in Question 1?

Answer 2: No.

Question 3: May the attorney be employed by the corporation referred to in Question 1 to give legal services to the athlete?

Answer 3: No.

Question 4: May the attorney be employed by the corporation referred to in Question 1 to enter into contract negotiations, etc., on behalf of the athlete?

Answer 4: No.

References: DR 2-101, 2-102, 2-103, 2-105, 5-107

OPINION

Former Canon 35 provided that the professional services of a lawyer should not be controlled or exploited by any lay agency, whether personal or corporate, which intervened between the client and attorney. The rationale of this rule was found in the very personal nature of the lawyer-client relationship. This philosophy has its counter part in DR 5-107(B) of the new Code of Professional Responsibility, which provides:

A lawyer shall not permit a person who recommends, employs, or pays him to render legal services for another to direct or regulate his professional judgment in rendering such legal services.

Former Canon 27 enjoined solicitation of professional employment by an attorney. A similar restriction is embodied in DR 2-101, DR 2-102, DR 2-103 and DR 2-105. These rules are of significance in our present inquiry. They were also of concern to the Committee when it decided in ABA Formal Opinion 225 (dated July 12, 1941) that it is unethical for a practicing attorney to participate in the collection activities or the management of an agency which solicits the collection of claims. Noting that there are some services lawfully rendered by laymen which become professional services when undertaken by an attorney, the Committee found that the collection of claims by an attorney constitutes professional employment. When an attorney performs such services for an agency, he becomes professionally responsible for the activities of the agency, and they must conform to the ethical requirements of our profession. Because solicitation of employment is so clearly forbidden by the Canons, the Committee had little difficulty in deciding that employment in behalf of an agency engaged in such activity was improper. If a lawyer is to participate in such activities, said the Committee, he must withdraw from the practice of law and refrain from holding himself out as a lawyer. At the same time, the Committee was careful to point out that an attorney who does not participate in the collection activities of an agency or its management and who does not act as attorney in connection with any claim handled by the agency may properly own or have an interest in the collection agency.

The analogy between Formal Opinion 225 and the present inquiry is evident. The Ethics Committee has no hesitation in holding that the service of assisting professional athletes in contract negotiations would, as in the case of a collection agency, constitute professional employment when engaged in by a lawyer. The solicitation of such business accordingly presents the same ethical problems for an attorney encountered in Opinion 225. For this reason the Committee has concluded that an attorney may not ethically participate in any of the management activities of the corporation in question. If on the other hand the attorney is nothing but an inactive shareholder in the corporation, playing no active role in its activities, we find no ethical violation.

From what we have said, it necessarily follows that an attorney may not serve as legal counsel for a corporation soliciting professional athletes for representation in contract negotiations, if any of his services relate to the negotiations undertaken on behalf of an athlete. As we have seen, an attorney participating in the management or operation of such business is rightfully subject to a charge of ethical impropriety. An attorney whose employment includes legal assistance to the corporation in obtaining clients or furthering negotiations in their behalf is if any thing more directly involved in ethical misconduct. Only if the attorney's employment is confined to normal corporate matters and the general legal work that arises in the operation of a business may he accept the employment as legal counsel contemplated in this inquiry.

Questions 3 and 4 must also be answered in the negative. In addition to the problem of solicitation, the suggested employment involves conduct clearly contrary to the requirements of DR 5-107(B). Permitting a corporation to control the employment of an attorney in the performance of services for an athlete necessarily involves exploitation of an attorney by a lay agency and places an intermediary between the lawyer and his client. Such conduct has received consistent condemnation, and we must join in that conclusion.

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.