

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-135
Issued: January 1976

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 1: May a county judge who is a lawyer furnish to personal representatives in decedents' estates printed form petitions for probate of wills and appointment of personal representatives?

Answer 1: Yes.

Question 2: May the county judge or his lay clerks or secretaries prepare or assist in preparing petitions for personal representatives on such forms?

Answer 2: No.

Question 3: May a county judge who is a lawyer furnish to personal representatives a format for final settlements?

Answer 3: Yes.

Question 4: May a county judge, his clerks or secretaries, prepare or assist in preparing final settlements for personal representatives?

Answer 4: No.

References: KRS 30.150, RCA 3.470; DR 3-101(A); Frazee v. Citizens Fidelity, 393 S.W.2d 778 (Ky. 1965); Winkenhofer v. Chaney, 369 S.W.2d 113 (Ky. 1963); Carter v. Brien, 309 S.W.2d 748 (Ky. 1956); In re Kenton County Bar Assn, 236 S.W.2d 906 (Ky. 1951).

OPINION

The prescription of practice forms seems to be within a court's rule-making powers, to the extent a court has such powers. Certainly the Kentucky Court of Appeals thinks so, as evidenced by their prescription of official forms in the Rules of Civil Procedure and Rules of Criminal Procedure. Whether a Kentucky county court has rule making powers is a fundamental question of law. We do not believe that Questions 1 and 3 present any legal ethics issues.

The preparation of petitions for probate and appointment of personal representatives, final settlements, and other documents invoking the jurisdiction of the probate court, is the practice of law, Frazer v. Citizens Fidelity, 393 S.W.2d 778 (Ky. 1965); Winkenhofer v. Chaney, 369 S.W.2d 113 (Ky. 1963); Carter v. Brien, 309 S.W.2d 748 (Ky. 1956).

The availability of court-prescribed forms makes no difference. The use and adaptation of forms in particular cases require professional legal judgment. This is well illustrated by preparation of a final settlement. An adequate settlement is more than a mere list of receipts and disbursements. For example, it must reveal computation of distributive shares, which may involve allocation of debts, expenses, and federal estate tax. Even if a settlement is little more than a list of receipts and disbursements, the listing of a receipt implies that the item is an asset of the estate subject to probate administration, or income from such an asset. The listing of a disbursement implies that the item was properly paid from assets of the estate.

If the county judge's lay clerks and secretaries are preparing petitions for probate and appointment, final settlements, and other documents invoking the jurisdiction of the probate court, they are engaged in the unauthorized practice of law. If they are doing so with the knowledge and acquiescence of the county judge, he is knowingly aiding, assisting, and abetting the unauthorized practice of law in violation of RCA 3.470 and DR 3-101(A).

In general, a judge may not practice law in a court over which he regularly presides, In re Kenton County Bar Assn, 236 S.W.2d 906 (Ky. 1951). KRS 30.150 provides: "No county judge shall prepare any pleadings to be filed or used in the county court of his own county "If the county judge himself prepares petitions for probate and appointment, final settlements, and other documents invoking the jurisdiction of the probate court, or if his clerks and secretaries prepare such documents under his supervision, he is himself engaged in the unauthorized (not to say illegal) practice of law in violation of RCA 3.470 and DR 3-101(A).

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.