

**Kentucky Bar Association**  
**Ethics Opinion KBA E-384**  
Issued: July 1995

*Since the adoption of the Rules of Professional Conduct in 1990, the Kentucky Supreme Court has adopted various amendments, and made substantial revisions in 2009. For example, this opinion refers to Rule 1.2(e), which was deleted and the substance was moved to amended Rule 1.4(a)(5), and Rule 3.3(2), which was amended. Lawyers should consult the current version of the rules and comments, SCR 3.130 (available at <http://www.kybar.org>), before relying on this opinion.*

**Question:** “Your AFDC client’s spouse should be paying \$85.00 per week child support under the [child support] guidelines. This puts [the client] wife over the limit for the medical card. She [the client] wants to agree to \$45.00 per week and keep the medical card because her husband can not get medical insurance through his work and she knows she will have to bring him back to court time and time again to force him to pay the children’s medical bills.” May the lawyer present to the court the parties’ agreement settling on \$45.00 a week?

**Answer:** No.

**Reference:** KRS 403.211(3); Kentucky Rules of Professional Conduct 1.2(d) and (e) and 3.3(2).

**OPINION**

This question was among a number of hypotheticals presented at the 1995 KBA Convention - “Practical Approaches for Volunteer Lawyers Doing Divorce Work.” The Chairman of the Committee confesses that he gave the wrong answer to the question and wishes to make amends.

To the uninitiated - including lawyers (and the Ethics Chairman) who have never done divorce work, but who might be willing to volunteer to take a case pro bono, the client’s suggestion appears to make a great deal of sense. However, KRS 403.211(3) prohibits any deviation from the guidelines if the case involves a parent receiving public assistance. See Graham & Keller, Kentucky Domestic Relations Law 23.07(D).

Since the agreement is prohibited by law, the lawyer may not counsel or assist the client in this course of action and must inform the client regarding the relevant limitations on the lawyer’s conduct. See Rules 1.2(d) and (e). Also relevant is Rule 3.3(a)(2), which states that a lawyer shall not knowingly fail to disclose a material fact to a tribunal when disclosure is necessary to avoid a fraud being perpetrated upon the tribunal.

***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.*