"I am not an attorney . . ."

ADVOCACY
V.
THE PRACTICE OF LAW

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ADVOCATE

- To speak, plead or argue in favor of
- One that argues for a cause, a **supporter** or defender
- A lawyer
- Synonyms: **champion**, booster, spokesperson, counselor, to urge, to recommend
- Advocacy includes: community networking, raising awareness, building relationships

VICTIM INVOLMENT IN THE KY LEGAL SYSTEM

- Police Department - Sheriff's Office
- County Attorney – Commonwealth's Attorney
- Civil - Criminal
- District Court - Circuit Court – Family Court
- Grand Jury
- Court of Appeals - Supreme Court
- County Attorney - Commonwealth Attorney
- Defense Bar - Public Defender - Legal Aid
- Probation & Parole

LAWYER

- A person whose profession is to represent clients in a court of law or to advise or act for clients in other legal matters
- Synonyms: counselor, advocate, attorney

VICTIM ADVOCATE

"Victim Advocate" means an individual at least eighteen (18) years of age and of good moral character, who is employed by, or serves as a volunteer for, a public or private agency, organization, or official to counsel and assist crime victims as defined in KRS 421.500.

KRS 421.570(1)

PROSECUTION-BASED VICTIM ADVOCATE

"Victim Advocate" includes a victim advocate employed by a Commonwealth's Attorney pursuant to KRS 15.760 and a victim advocate employed by a County Attorney pursuant to KRS 69.350.

KRS 421.570(1)

PROSECUTION-BASED VICTIM ADVOCATE

Additional qualifications and experience requirements for advocates employed by County Attorney and Commonwealth 's Attorney:

- At least two years experience working in the human services field, plus
  - Bachelors degree in social work, psychology, guidance and counseling, education, religion, criminal justice, or other human service field; or
  - High school diploma or equivalency certificate and at least four additional years of experience working in the human services field or court system.

KRS 69.350; KRS 15.760

TRAINING REQUIREMENTS FOR ADVOCATES

Each victim advocate shall complete training which shall include information concerning the difference between advocacy and the practice of law, and the appropriate intervention with crime victims, including victims of domestic violence, child physical and sexual abuse, human trafficking, and rape.

KRS 421.570(2)

VICTIMS

- Adult Victims
- Child Victims
- Elder Victims
- Collateral Victims

VICTIM

“Victim" means an individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a crime classified as stalking, unlawful imprisonment, use of a minor in a sexual performance, unlawful transaction with a minor in the first degree, terroristic threatening, menacing, harassing communications, intimidating a witness, criminal homicide, robbery, rape, assault, sodomy, kidnapping, burglary in the first or second degree, sexual abuse, wanton endangerment, criminal abuse, or incest.

If the victim is a minor or legally incapacitated, "victim" means a parent, guardian, custodian or court-appointed special advocate.

KRS 421.500

VICTIM

If the victim is deceased and the relation is not the defendant, the following relations shall be designated as "victim" **for the purpose of exercising rights contained in the Kentucky Crime Victim Bill of Rights**:

- Spouse
- Adult child - if spouse does not apply
- Parent - if spouse or adult child do not apply
- Sibling - if spouse, adult child or parent do not apply
- Grandparent - if spouse, adult child, parent or grandparent do not apply

KRS 421.500 (1)(a)

VICTIM

If the victim is deceased and the relation is not the defendant, the following relations shall be designated as "victims" **for the purpose of presenting victim impact testimony**:

- Spouse
- Adult child
- Parent
- Sibling
- Grandparent

KRS 421.500 (1)(b)

VICTIM

If any court believes that the health, safety, or welfare of a victim who is a minor or is legally incapacitated would not otherwise adequately be protected, the court may appoint a special advocate to represent the interest of the victim and to exercise those rights provided for by Kentucky Crime Victim Bill of Rights.

KRS 421.500 (2)

VICTIM ADVOCATE

A Victim Advocate works with criminal justice professionals to ensure that victims of crime receive the benefits of the rights set out in the Kentucky Crime Victim Bill of Rights under KRS 421.500 to KRS 421.575.

COMMUNITY V. PROSECUTION-BASED

Community-Based	Prosecution-Based
• Safety planning • Resource provider • Victim's voice • Listen to victim • Empowerment • Support system • Be on their side • Affirm feelings • Help them process • Explore alternatives • Information regarding court system	• Safety planning • Resource provider • Victim's voice • Listen to victim • Empowerment • Support system • Be on their side • Affirm feelings • Help them process • Explore alternatives • Information regarding court system

What does a Victim Advocate NOT do?

UNAUTHORIZED PRACTICE OF LAW

A victim advocate shall not engage in the practice of law as defined in KRS 524.130.

KRS 421.570(3)

UNAUTHORIZED PRACTICE OF LAW

Except as provided in KRS 341.470 and KRS 130.130(2), a person is guilty of unlawful practice of law when, without a license issued by the Supreme Court, he engages in the practice of law, as defined by rule of the Supreme Court.

KRS 524.130(1)

UNAUTHORIZED PRACTICE OF LAW

Kentucky Supreme Court Definition:
The practice of law is any service rendered 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.

SCR 3.020

UNAUTHORIZED PRACTICE OF LAW

Unlawful practice of law is a Class B misdemeanor.

KRS 524.130(3)

UNAUTHORIZED PRACTICE OF LAW

Any attorney who knowingly aids, assists or abets in any way, form, or manner any person or entity in the unauthorized practice of law shall be guilty of unprofessional conduct.

SCR 3.470

UNAUTHORIZED PRACTICE OF LAW

All states have general statutes limiting the practice of law to licensed attorneys. Generally, the practice of law includes:

- Accepting cases from a client
- Setting fees
- Giving legal advice, thereby rendering independent legal judgment on behalf of a client
- Preparing or signing legal documents
- Appearing in a representative capacity before a court

UNAUTHORIZED PRACTICE OF LAW

A "practical" definition of what the practice of law means might include:

- Preparing any legal document or pleading
- Preparing or expressing legal opinions
- Appearing or acting as an attorney in court
- Providing advice or counsel as to how any of the above activities might be done, or whether they were done in accordance with the law

UNAUTHORIZED PRACTICE OF LAW

Advocates can provide information to victims about their potential legal rights and remedies. However, advocates may only give the victim general information about what the law says and provides.

An advocate can not specifically help the victim decide, based on her particular circumstances, whether or not to invoke any of their rights or pursue any of their potential remedies.

UNAUTHORIZED PRACTICE OF LAW

The threshold question to ask in regard to whether an exchange of information is practicing law or not might be:

- Did the activity simply involve giving **general information** vs. giving a **legal opinion** about a particular victim's situation?

UPL EXAMPLES – LEGAL ADVICE

In these examples, is the Advocate . . .

- Improperly giving legal advice, thereby rendering independent legal judgment on behalf of a victim?
- Improperly providing advice or counsel as to how any of the above activities might be done, or whether they were done in accordance with the law?
- Improperly preparing or expressing legal opinions?

UPL EXAMPLE – LEGAL ADVICE

"Your husband hit you so you will qualify to get an EPO, so you should file for one and request that the judge order him out of the house."

Same example reworded:

"The law says that if someone is assaulted by their spouse, that person has the choice to file a petition with the court to get an emergency protective order (EPO). When filing for an EPO, the victim can request that the judge grant a no-contact order and direct the spouse to leave and not be around the house shared by the parties."

UPL EXAMPLE – LEGAL ADVICE

"When your case is called by the judge, you should begin by telling the judge what your partner did and that you are scared of him. You should call your mom and sister to testify as witnesses for you to tell the judge that they have seen your partner hit you before and they saw how beat up you were after this incident. You should bring a copy of your medical records and introduce them to the judge as "exhibit A". When your partner tells the judge that your injuries happened when you fell down the stairs while trying to hit him, you should ask him how it would be possible for you to receive choking marks around your throat by falling down the stairs.

Same example reworded:

"I am not an attorney so I can't give you legal advice about how to present your case, but I can explain how the process usually works in Judge Smith's courtroom. Based on my experience from watching Judge Smith conduct other domestic violence hearings, he usually asks the parties what happened and gives each person a chance to explain it to him. He may ask if either person has any witnesses to call to testify about what happened. He may also allow either person to present any documents or other information regarding this or other incidents.

PREPARATION OF FORMS

Advocates may help a victim fill out a court form herself by defining any terms in the instructions that might be unclear or by pointing out where on the form particular information is to be written. If the victim can not read, the advocate may read the form to her, and write down the required information *verbatim* as instructed by the victim. An advocate should not fill out a form for the victim unless the victim can not do so herself due to physical limitations or illiteracy. The advocate should not substitute their own words for the victims or summarize.

UPL EXAMPLE – PREPARATION OF FORMS

In this example, is the Advocate . . .

- Improperly preparing or signing legal documents?
- Improperly preparing any legal document or pleading?

UPL EXAMPLE - PREPARATION OF FORMS

A domestic violence victim comes into the courthouse after hours to file criminal charges against her husband. The victim is extremely afraid of the defendant and fears he will return to the home and retaliate against her. After filing the charges, she meets with a victim advocate who gives her information regarding an emergency protective order. The victim needs to leave to pick up her children and is afraid she will miss her bus. She tells the advocate she does not have time to fill out an EPO petition.

The advocate hands her the standard EPO form and tells the victim if she will just sign it, the advocate can fill it out for her since she has the information from the criminal complaint.

Same example reworded:

A domestic violence victim comes into the courthouse after hours to file criminal charges against her husband. The victim is extremely afraid of the defendant and fears he will return to the home and retaliate against her. After filing the charges, she meets with a victim advocate who gives her information regarding an emergency protective order. The victim needs to leave to pick up her children and is afraid she will miss her bus. She tells the advocate she does not have time to fill out an EPO petition.

The advocate gives her safety planning information and the phone number and bus route schedule for the domestic violence shelter and makes an appointment to meet with the victim the following morning to completer the EPO.

OUTSIDE THE COURTROOM

Advocates must be careful in discussing any victim's case with other persons such as judges, prosecutors, prosecutor based advocates, the victim's attorney, clerks and others. If requested by the victim, and preferably in the victim's presence, an advocate may assist and support a victim in discussing her case and addressing her concerns and issues with such persons.

OUTSIDE THE COURTROOM

Remember: Under the Kentucky Rules of Evidence, a victim's communications with a victim advocate may be privileged under the Counselor-Client privilege.

This rule does not apply to victim communications to an advocate who is employed by a Commonwealth's Attorney or a County Attorney.

KRE 506(a)(1)(G)

UPL EXAMPLE - OUTSIDE THE COURTROOM

The day before a district court hearing you approach the County attorney and say ”Mrs. Smith was badly beaten by Mr. Smith and you need to press charges against him because he’s obviously committed domestic violence. He should receive the maximum sentence and no probation.” You later call the victim’s divorce attorney, and say “Mrs. Smith wants full custody of her kids and no visitation. Otherwise, she’s going to go back to him.”

Example reworded:

At the victim's request, you accompany her to the County Attorney's office because she wants to talk to him about alternatives to sending her husband to jail. Afterwards, she asks what probation is and you explain the term generally, without reference to her husband's case in particular. She then tells you that she wants supervised visitation because she's afraid he will run off with the kids. You tell her she can discuss that with her attorney and let her know that the local CFC office conducts supervised visitation on Sundays.

COURT PROCEEDINGS

In all court proceedings, a victim advocate, upon the request of the victim, shall be allowed to accompany the victim during the proceeding to provide moral and emotional support. The victim advocate shall be allowed to confer orally and in writing with the victim in a reasonable manner.

However, the victim advocate shall not provide legal advice or legal counsel to the crime victim in violation of KRS 421.570 and 524.130.

KRS 421.575

COURT PROCEEDINGS

Advocates can inform victims about non-legal, basic matters, such as proper attire, where to sit, not to interrupt the judge, be prepared for the abuser to say things about the victim that she won't agree with or that will be upsetting, etc.

The advocate can provide a general orientation about the way the hearing will be conducted.

However, the advocate may not provide any particular or individualized advice about the court proceeding, such as how to present a case, which witnesses to call, how to cross-examine witnesses or introduce documents, etc.

COURT PROCEEDINGS

Depending on the judge, advocates may sit at counsel table or stand by the victim during the hearing. The advocate may not hold themselves out as a representative of the victim or provide her with any kind of assistance at the hearing that would constitute the practice of law.

UPL EXAMPLE – COURT PROCEEDINGS

In this example, is the Advocate . . .

- Improperly appearing in a representative capacity before a court?
- Improperly appearing or acting as an attorney in court?

UPL EXAMPLE – COURT PROCEEDINGS

During the hearing, the victim freezes and is unable to articulate what she has told you happened to her. You say "Your honor, this woman's husband committed domestic violence when he pushed her down and kicked her. She's really afraid of him. She wants a no-contact order and she wants him out of the house. She also wants custody of the kids and child support."

UPL EXAMPLE – COURT PROCEEDINGS

Same example:

During the hearing, you stand in between the victim and the abuser and try to prevent his making eye contact with her. When she gets scared and emotional during the proceedings, you gently touch her on the arm and tell her quietly she's doing great. When she becomes inarticulate, you wait until the judge asks if she needs a minute to collect herself. You look to the victim, see her nod yes, and tell the judge, "Yes, thank you she would appreciate that." In a low voice you confer with the victim and encourage her to take a moment to calm down, to remember what happened and what she had intended to tell the judge.

The rights established by the Kentucky Crime Victim Bill of Rights KRS 421.500 to 421.575 shall apply in all felony and misdemeanor proceedings in a District or Circuit Court of the Commonwealth.

KRS 421.576(2)

Nothing in the Kentucky Crime Victim Bill of Rights shall provide grounds for the victim to challenge a charging decision or a conviction, to obtain a stay of trial, or to compel a new trial. Law enforcement agencies, County Attorneys, and Commonwealth's Attorneys and courts shall make every reasonable effort to ensure that victims of crime receive the benefits of the rights set out in KRS 421.500 to 421.575.

KRS 421.576(3)

UPL – FINALLY . . .

The prosecutor tells the advocate that due to some evidentiary issues, he has made a plea offer to the defendant which involves amending the felony charges to misdemeanor charges and then conditionally discharging the sentence. The prosecutor tells the advocate to relay this information to the victim and get her "on board" and have her sign the plea agreement. He also tells her to answer any questions the victim may have regarding the evidentiary problems and why he is making this offer.

The prosecutor also tells the advocate if she cannot get the victim "on board," the advocate should sign the plea agreement for her since she has spoken to the victim. He tells the advocate that if the victim does not agree with the plea agreement, she should not tell the victim about the sentencing date and should not give her a victim impact statement to fill out.

When the advocate speaks to the victim, she is not "on Board" . . .

Expectations

VICTIM'S UNREALISTIC EXPECTATIONS

- Fix everything immediately
- Make choices for victim
- Don't change/interrupt things/victim's life
- Don't burden victim/require anything from victim
- Get their belongings
- Have all the answers
- Rescue
- Meet all needs
- Mind reader
- Fairy godmother
- Take on a larger role than advocacy

VICTIMS SHOULD EXPECT

- Good listener
- Nonjudgmental
- Knowledge of Job/resources
- Don't re-victimize
- Follow up
- Capable
- Culturally sensitive
- Empowerment
- Counselor confidentiality
- Reassurance
- Empathy without pity
- Objectivity
- Legal resources
- Financial resources
- Honesty
- Understanding

EXPECTATIONS OF ADVOCATE FOR THE VICTIM

- Rational
- Coherent
- Follow up/follow through
- Listen
- Help themselves
- Call in/keep in contact
- Honesty
- Maintain confidentiality
- Update contact info

- Leave abuser
- Moving forward
- Show up for court
- Accept change
- Provide evidence
- Understands effect of abuse on kids
- Open to resources available
- Consistent story

Are these expectations Realistic?

How does it affect your relationship with the victim when these expectations are not met?

The philosophy of victim-centered, victim driven advocacy requires the advocate to provide the victim with information, based on reliable sources, and then encourage and permit the victim to make her own decisions about what to do.

Remember, the advocate's role is to educate, support and give options. This role is extremely important as you may be the only person in the court system who is really providing these services for the victim.

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