

**KENTUCKY BAR ASSOCIATION**  
**Ethics Opinion KBA E-18**  
Issued: November 1963

*This opinion was decided under the Canons of Professional Ethics, which were in effect from 1946 to 1971. Lawyers should consult the most recent 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 the partner of the city attorney who serves as police court prosecutor defend a criminal action in that court?

**Answer:** No.

**References:** Canon 6

**OPINION**

Initially, this problem involves the question of a lawyer's duty to his client and conflicting interests as defined in Canon 6. Under a simple partnership relation the question has been answered many times in the negative. It has been answered by this Board In re Prather 1-149; and In re Prosecuting Attorneys 1-215; and by American Bar Opinion 16, followed by Opinions 30, 34, 77, 118, 134 and 192; Texas Opinion 23; Virginia Opinion 32 and New York City 259.

So long as the partnership relation continues between the prosecutor and his professional associate, it is clearly unethical for one member of the firm to oppose the interests of the state while the other member represents those interests.

However, in the absence of statutory, or other restrictions, a member of a partnership may enter public service and still remain a member of the firm. Accordingly, exceptions have been made in the case of a judge engaging in private practice, ABA Opinions 55, 138, 142 and 143; Missouri Opinions 30 and 67.

There are further exceptions where the attorney's services are limited, part-time or temporary and the employment creates no appearance of impropriety. Especially is this true in the rural community where the salary is small or nonexistent. The lawyer is to be commended for under taking public service under these circumstances and should not be penalized by denying him some portion of practice when the entire community and those concerned are fully aware of the public position he holds.

We have heretofore approved the continuation of a firm where it engaged only in civil practice and,

1. One member engaged in part-time service as an assistant prosecutor, and
2. One member accepted employment in criminal cases as an individual, no member of the firm participating or benefiting from any such employment.

However, we are unable to find, in this jurisdiction or any other, where the members of a firm or partnership engaged in the general practice of law have been authorized to represent conflicting or opposing interests in criminal and penal cases.

It is the opinion of this Committee that, unless there is a termination of the partnership, members thereof cannot ethically appear on opposite sides or represent conflicting interests, as would be the case under the question submitted for our opinion.

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***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.*