

KENTUCKY BAR ASSOCIATION

Ethics Opinion KBA E-94

Issued: July 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>), before relying on this opinion.

Question: May an attorney serving as criminal trial commissioner in quarterly court share office space, on an expense sharing basis, with an assistant county attorney whose duties require him to act as criminal prosecutor in another division of quarterly court?

Answer: No.

OPINION

An attorney serving as criminal trial commissioner in a division of quarterly court proposes to enter into an office sharing arrangement with an assistant county attorney whose duties require him to act as criminal prosecutor in another division of quarterly court. They would not be partners but would merely occupy the space on an expense sharing basis. While their respective positions would not ordinarily require them to serve in the same court, this could occur. Under these circumstances the attorney inquires whether the arrangement would be proper.

After consideration, the Committee has concluded that this arrangement would not be proper. A judge must remain always above suspicion, and even the appearance of impropriety must be avoided. Of special importance is the image of an impartial judiciary. It would be difficult, if not impossible, for the lay public to maintain faith in such impartiality where judge and prosecutor occupied the same office, with the resulting association that suggests. That the two would ordinarily work in different divisions of their court is a technical nicety that would escape most members of the public.

In a related area, the Committee has previously noted, in Opinion KBA E-61 that an attorney sharing offices with a police judge may not represent persons arraigned before the police judge, although the two are not partners. We referred there to ABA Formal Opinion 104 (dated March 9, 1934), where the rule was originally announced. We find no essential difference between that situation and one where an attorney occupying offices with a judge is a member of the very prosecutor's office which must appear daily before that judge. In both instances the possibility of misunderstanding by the public is great and should be avoided.

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.