

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-153
Issued: July 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 prosecuting attorney who has represented a party in a divorce action subsequently participate in prosecution of the adverse party under KRS 530.050 for nonsupport of the children of the marriage?

Answer 1: No

Question 2: May a prosecuting attorney who has prosecuted under KRS 530.050 for nonsupport of children subsequently represent the complainant in a divorce action against the KRS 530.050 defendant?

Answer 2: No.

References: KRS 25.010, 26.010, 530.050, 532.090, 534.040; DR 7-105, 9-101(B); EC 7-21; Opinion KBA E-64 (1973)

OPINION

EC 7-21 cautions against the use of criminal proceedings to coerce adjustment of private civil claims. DR 7-105 states that a lawyer may not participate in presenting criminal charges solely to obtain an advantage in a civil matter. It is true that child support is not entirely a private matter and it is true that DR 7-105 appears to depend in part on the lawyer's motivation. However, we are unwilling to permit the lawyer to judge his own motivations in such cases. In Opinion KBA E-64, we stated that a Commonwealth's attorney should not accept employment in an action to collect delinquent child-support payments because of the coercive effect of his power to prosecute for nonsupport. The coercive effect of the power to prosecute exists regardless of the prosecutor's motives or whether the power is or is not exercised. The offense denounced by KRS 530.050 is a Class A misdemeanor punishable by confinement for one year or less (KRS 532.090) and for a fine of not more than \$500.00 (KRS 534.040). It is therefore within the concurrent jurisdiction of the circuit court, the quarterly court, and (subject to territorial limitations) the municipal court (KRS 25.010, 26.010). Thus there will be at least one other prosecutor, not disqualified by this opinion, who can prosecute under KRS 530.050.

DR 9-101(B) states that “[a] lawyer shall not accept private employment in a matter in which he had substantial responsibility while he was a public employee.” This answers Question 2 clearly and directly.

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.