

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-159
Issued: January 1977

Modified by KBA E-243
Overruled by E-444 (2018)

Question 1: May a lawyer who shares offices with the county attorney accept employment adverse to the county?

Answer 1: No.

Question 2: May a lawyer who shares offices with the county attorney defend criminal cases except those cases in the attorney's county?

Answer 2: Qualified No.

References: KRS 62.210(3); Canon 9; DR 5-105; Opinion KBA E-44 (1971)

OPINION

The lawyer who shares offices with the county attorney is his son. They occupy the first story of a detached two-story building. Each uses a separate room as his private office and they use a third room in common for their secretaries and as a reception room. The law library is kept in all three rooms. Each lawyer operates separately from the other. Each has his own secretary, his own stationery, his own files, his own office checking account, his own records, etc. There has never been a partnership or employer-employee relationship between them.

Canon 9 states that "[a] lawyer should avoid even the appearance of professional impropriety." In Opinion KBA E-44 (1971), we decided that a lawyer who shares offices with the Commonwealth's attorney ought not defend criminal cases in the court in which it is the duty of the Commonwealth's attorney to prosecute. When lawyers who share offices represent adverse interests, there must always be some temptation to moderate zeal on behalf of the client in the interest of harmony in the office. No doubt such temptation would often, even always, be successfully resisted. However, a large part of the lay public believes that in these circumstances, one or both of the clients will get representation that is less than zealous. It is reasonable that the lay public should believe this because the temptation to moderate zeal in such circumstances is a

fact. Accordingly, we believe that office sharing lawyers ought not represent adverse interests because doing so presents an appearance of impropriety.

Under DR 5-105, partners and associates may not represent adverse interests. There is no such explicit provision in the Code of Professional Responsibility prohibiting or regulating representation of adverse interests by lawyers who merely share offices.

In the case at hand, the lawyer who shares offices with the county attorney should not represent parties whose interests are adverse to the County or Fiscal Court or to a county official in a matter in which the official is entitled to the advice and other legal services of the county attorney.

The lawyer who shares offices with the county attorney may defend criminal cases except those cases in the attorney's county.

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.