

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-187
Issued: August 1978

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 a lawyer share office space, a secretary, a library and the same waiting room with a circuit judge within the same circuit as the lawyer and before whom the lawyer would be practicing?

Answer: No.

References: Opinion KBA E 44 (1971), E-61 (1972); Canon 9; DR 9-101(C)

OPINION

According to Canon 9 of the Code of Professional Responsibility, a lawyer should avoid even the appearance of professional impropriety. DR 9-101(C) states that a lawyer shall not state or imply that he is able to influence improperly or upon irrelevant grounds any tribunal, legislative body or public official. While this body does not question the motives for such an arrangement, nevertheless it would appear to the public that the attorney could gain special favors for his clients whether in criminal or civil matters before the circuit judge.

In Opinion KBA E-61 it was noted that an attorney who shares a law office with a police judge could not represent persons arraigned before the police judge. The Committee further stated that although the opinion dealt with the propriety of an attorney's employment by a client who has appeared before his office "associate" as opposed to employment in criminal cases generally, they felt that this represented the most restrictive interpretation to be applied to such an arrangement. Thus, it necessarily follows that a person who shares office space with a circuit judge would be entirely precluded from practicing criminal law before him.

Opinion KBA E-44 stated that an attorney defending persons accused of crime in the circuit court could not share office space and a secretary with a Commonwealth Attorney because of the "appearance of impropriety." A circuit judge should avoid the appearance of impropriety and should be ever mindful of his duty to uphold the integrity and independence of the judiciary. This should be the case regardless of whether the case before him would be civil or criminal. For the lawyer to practice before the circuit judge under the arrangement described must be condemned as a violation of the Code.

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.