

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-194
Issued: September 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 1: May a lawyer who shares office space with a part-time Commonwealth Attorney practice criminal law in District Court?

Answer 1: No.

Question 2: May a lawyer who shares office space with a part-time Commonwealth Attorney practice criminal law in a Circuit Court?

Answer 2: No.

References: Opinion KBA E-61, 167; Canon 9; DR 5-105(D); KRS 30.140

OPINION

In Opinion KBA E-61, the Ethics Committee determined that a Commonwealth Attorney could not defend a criminal case in any court in the Commonwealth. This prohibition was found to extend to law partners of Commonwealth Attorneys under KRS 30.140. As to Commonwealth Attorneys' associates, or persons who are not a partner and who have no affiliation beyond the sharing of office space and secretarial help, the Committee adopted this test "whether clients or the public might be led to believe that lawyers so affiliated have such close personal, and professional relationship as to imply special advantage or unusual influence." The relationship described in Questions 1 and 2 above would present an apparent conflict under this test. Under Canon 9 of the Code of Professional Responsibility a lawyer should avoid even the appearance of professional impropriety. Disciplinary Rule 5-105(D) specifically requires an attorney's affiliate to decline employment where the attorney himself is required to decline employment under a disciplinary rule. An attorney sharing office space with a part-time Commonwealth Attorney can arguably be classified as an affiliate. See also Opinion KBA E-167 regarding lawyers sharing office space with an Assistant County Attorney where it was determined that such lawyers could not defend criminal cases in the District Court or the Circuit Court.

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.