

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-230
Issued: March 1980

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 who represents the Fraternal Order of Police practice criminal law in the same jurisdiction?

Answer: No.

References: DR 7-101, 5-104(A); Canon 9; Opinion KBA E-190 (1978)

OPINION

An attorney who represents the Fraternal Order of Police in certain departmental matters, grievances and various officers in other civil matters desires to practice defense matters in the same jurisdiction.

Due to the inherent nature of criminal actions and the manner of defending these actions, it appears that this practice would violate DR 7-101 as it relates to “representing a client zealously.” Since the attorney in question may have to zealously and vigorously attack the testimony of the officer involved in a criminal defense, it would at best create conflicts when he represented the individuals personally or as a group that he is trying to discredit.

Under DR 5-104(A), it states “A lawyer shall not enter into a business transaction with a client if they have differing interests....” Differing interests being defined under the Code of Professional Responsibility as “every interest that will adversely affect either the judgment or the loyalty of a lawyer to his client, whether it be conflicting, inconsistent, diverse or other interest.” Once again, if a lawyer representing a criminal defendant was called upon to discredit or attack the testimony of a police officer, it would very definitely create a differing interest to be representing the police officer individually or collectively as a member of the Fraternal Order of Police and attacking their credibility in a criminal matter.

As we stated in Opinion KBA E-190 (1978), “every time a lawyer accepts employment in a case or controversy there is necessarily another client(s) interest that the lawyer may not accept employment.”

Based upon the foregoing, it is the opinion of the Committee that the practice of representing the Fraternal Order of Police and individual members is a direct conflict with representing criminal defendants in the same jurisdiction.

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.