

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-271
Issued: May 1983

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 who represented a criminal defendant later represent the victim of that criminal's acts in an action before the Crime Victims Compensation Board?

Answer: No.

References: KBA E-148; DR 5-105(A); DR 5-105(C); KRS 346.170; KBA E-190; KRS 346.010.

OPINION

The question before us involves a classic conflict of interest.

In the first case, the lawyer will represent an accused in a criminal action in District or Circuit Court. The lawyer then proposes to represent the victim of the prior criminal action in a case before the Crime Victims Compensation Board. KRS 346.010 et seq.

In KBA E-148, we reviewed the area of conflict of interest and noted that it would be a conflict of interest to represent someone in a latter representation which is substantially related to the prior representation.

DR 5-105(A) provides in essence the lawyer shall decline proffered employment if the exercise of independent professional judgment will be or is likely to be adversely affected.

There can be no argument that the latter representation is substantially related to the prior representation. DR 5-105(C) provides that a lawyer may represent multiple clients if it is obvious that he can adequately represent the interests of each, and each consents to the representation after full disclosure and consent. This fact situation is not multiple clients. Therefore, full consent and disclosure will not obviate the obvious fact that the matter of the second representation is substantially related to the prior representation. Any additional fact that the Crime Victims Compensation Board has the right of subrogation pursuant to KRS 346.170 fortifies this conflict of interest.

As stated in KBA E-190:

“Everytime a lawyer accepts employment in a case or controversy either as necessarily another client(s) interests that the lawyer may not accept employment.”

Accordingly, those lawyers faced with this situation must necessarily decline the proffered employment.

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.