KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-31
Issued: May 1967

This opinion was decided under the Canons of Professional Ethics, which were in effect from 1946 to 1971. Lawyers should consult the most recent version of the Rules of Professional Conduct and Comments, SCR 3.130 (available at http://www.kybar.org/237), before relying on this opinion.

Question: May a city prosecutor, a county attorney, or any other city, county, or state officer charged with the prosecution of criminal offenses represent defendants in criminal cases in court other than those in which they regularly practice as prosecutor?

Answer: No.

References: Canon 6, 29; Const § 228

OPINION

A city prosecuting attorney holding office for four years, at a salary of $150.00 per month is requested to represent a defendant in a criminal case in circuit court. The matter involved was not previously subject to prosecution in city police court. May the city prosecutor, a county attorney, or any other city, county, or state officer charged with the prosecution of criminal offenses represent defendants in criminal cases in courts other than those in which they regularly practice as prosecutor?

This question has been presented many times in various forms to the Ethics Committee of the American Bar Association, and that Committee has uniformly held that any public prosecutor may not ethically represent persons accused of crimes in any court, including out of state courts, during the term of his office. It is held that such representation violates the spirit of Canon 6 with regard to representing conflicting interests as well as Canon 29 respecting a lawyer’s duty to uphold the honor of his profession.

The preamble of the Canons of Professional Ethics reads as follows:

In America, where the stability of courts and of all departments of government upon the approval of the people, it is peculiarly essential that the system for establishing and dispensing justice be developed to a high point of efficiency and so maintained that the public shall have absolute confidence in the integrity and impartiality of its administration. The future of the Republic, to a great extent, depends upon our maintenance of justice pure and unsullied. It cannot be so maintained unless the conduct and the
motives of the members of our profession are such as to merit the approval of all just men.

It is further felt by the Committee that a prosecutor having taken the oath of office required by Section 228 of the Kentucky Constitution is proscribed from further defense representation in the Kentucky courts.

In related questions heretofore coming before the American Bar Association Ethics Committee it has been ruled that a city police judge, whose jurisdiction is limited to trials of misdemeanors and examinations of felony cases, may not ethically represent defendants in criminal cases in the circuit court (Opinion No. 242). It is not unethical for a special judge or a judge pro tem to practice law in the court over which he temporarily presides, in matters not connected with his service as special judge, where such is contemplated by the judicial system of his state (Opinion No. 161). It is improper for the partner of a judge to practice in the court over which he presides or for the partner of an assistant prosecutor to defend a criminal case (Opinion No. 142). A county attorney whose duty is to prosecute crimes committed within the county may not while in office properly undertake to obtain a pardon or parole of one convicted of a crime in another county (Opinion No. 118).

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.