

Kentucky Bar Association
Ethics Opinion KBA E-215
Issued: May 1979

Question: May a part-time assistant county attorney represent the defendant in a civil action to collect delinquent dependency support payments?

Answer: No.

References: DR 5-105; KRS 15.725, 23A.010, 24A.110, 407.190, 407.250, 530.050, 532.090, 532.100

OPINION

We assume that an assistant county attorney's public duties are coexistent with those of the county attorney.

Nonsupport is denounced as a Class A misdemeanor by KRS 530.050 and is within the jurisdiction of the district court, KRS 24A.110, 532.090, 532.100. It is the county attorney's duty to prosecute all violations of the criminal laws within the jurisdiction of the district court, KRS 15.725(2).

Flagrant nonsupport is denounced as a Class D felony by KRS 530.050 and is within the examining jurisdiction of the district court, KRS 24A.110, and the general jurisdiction of the circuit court, KRS 23A.10. It is the duty of the Commonwealth's attorney to prosecute all violations of the criminal laws in circuit court, KRS 15.725, and it is the county attorney's duty to assist the Commonwealth's attorney in circuit court "when necessary," KRS 15.725(3).

Under KRS Chapter 407, the Uniform Reciprocal Enforcement of Support Act, it is the duty of the county attorney to represent the person to whom a duty of support is owed, KRS 407.190, 407.250.

The county attorney thus has a potential public duty adverse to the defendant in any case of alleged nonsupport. If he represents the defendant in such a case, the exercise of his independent professional judgment in behalf of the public will certainly be adversely affected. Such a case cannot be brought within DR 5-105(C), and therefore DR 5-105(A) requires the county attorney to decline the 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). Note that the Rule provides: "Both informal and formal opinions shall be advisory only; however, no attorney shall be disciplined for any professional act on his part performed in compliance with an opinion furnished to him on his petition, provided his petition clearly, fairly, accurately and completely states his contemplated professional act."