

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-47
Issued: July 1971

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 new County Attorney represent a former client in a criminal and civil case arising out of alleged acts committed before he took office in his county when there has been a change of venue by agreement?

Answer: No.

OPINION

A County Attorney in Kentucky has raised a rather novel problem. Prior to his election as County Attorney, he was employed by a defendant charged with murder to represent the defendant both in the criminal proceedings and in a wrongful death civil action arising out of the alleged murder. Subsequently, the attorney was elected County Attorney, and forthwith withdrew from representing the person charged with murder, in both the criminal and civil cases.

Thereafter, the defendant was represented by another attorney on the murder charge, and two trials resulted in a hung jury. Finally, both the criminal and civil trials were moved to another county on a change of venue by agreement of counsel for the Commonwealth and for the defendant.

The defendant has now requested his original attorney, who is serving as County Attorney, to re-enter the case, both from the criminal standpoint and from the civil standpoint. The attorney raises the question as to whether or not he could become involved in either case, in view of his position as County Attorney in the county wherein the crime is alleged to have been committed, in view of the fact that the trial is to be held elsewhere.

The Committee is of the opinion that a County Attorney in the Commonwealth of Kentucky cannot ethically represent a defendant in any court in the Commonwealth, including the Federal Courts. The rationale for this position is thoroughly set forth in Formal Opinion No. 30, American Bar Association Standing Committee on Ethics, dated March 2, 1931. See also: Wise, Legal Ethics, Second Edition, pages 262-265. The Committee is also of the opinion that the County Attorney should not become involved in the civil proceedings arising out of the same incident, for the same reasons as set forth in Professor Wise's work on legal ethics.

It has been generally held that a public prosecutor in one state cannot properly defend a person accused of crime in another state. The American Bar Association's Committee has approved the right of a police judge and juvenile court judge of a rural community to defend indigent criminal defendants in superior courts of general jurisdiction, when appointed by the latter court. This opinion has turned on the duty of the Bar to defend indigents who might not be otherwise defended. See Opinion No. 55, American Bar Association Standing Committee on Ethics.

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.