

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-76
Issued: November 1973

Modified by E-444 (2018)

Question: Where the Commonwealth of Kentucky has a pending action for recovery of support money in behalf of a mother and for reimbursement by the father of money previously paid in the form of public assistance for the benefit of their child, may an assistant county attorney in his private practice file a separate action for the mother to recover support from the father and charge a fee for this service?

Answer: No.

References: DR 1-102(A)(4); KRS 406.021, 407.190

OPINION

Under Chapters 406 and 407 of the Kentucky Revised Statutes, the Kentucky Department of Economic Security is called upon to initiate paternity actions and actions for enforcement of support. KRS 406.021(1) and 407.190 specify that the county attorney in the county where the action is brought shall, at the request of the Department as complainant, prosecute the action. The Committee has been asked to decide whether, in view of these provisions, an assistant county attorney may file an action for support on behalf of a mother and charge a fee, where the Department has previously filed an action relating to the same matter.

The Preamble to the Code of Professional Responsibility stresses the high standards to which our profession is committed. Among the many rules adopted to insure the continuance of this commitment is DR 1-102(A)(4), which forbids conduct involving dishonesty, fraud, deceit or misrepresentation. The conduct contemplated in the present inquiry offends both the letter and spirit of this rule.

An assistant county attorney may of course maintain a private practice. However, we noted in KBA Opinion E-61 that an assistant is subject to the same restrictions as a county attorney. Clearly, a county attorney may not exact a fee for performing the statutory duties of his office. This prohibition applies with equal validity to his assistant. The basis for this conclusion is evident. It seems inconceivable that a client would knowingly pay to receive a service which an attorney is by law required to perform and for which he has already received compensation by virtue of his office. To charge in such circumstances runs counter to basic notions of honesty and fair dealing.

Moreover, to accept private employment in the circumstances here described creates an unhealthy inconsistency of employment which must be avoided. If the attorney persists in representing a client when an agency with which he must deal on a regular basis has already initiated similar action, the close cooperation which must necessarily be maintained between the two becomes impossible. For these reasons the Committee has no hesitation in holding the questioned employment impermissible.

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.