

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-111
Issued: March 1975

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 police officer also engage in the general practice of law as a licensed attorney, provided he avoids the practice of criminal law and personal injury cases arising out of automobile accidents?

Answer: Yes.

References: Canon 9; DR 9-101(B)

OPINION

A police department inquires whether an officer may ethically practice law during off-duty hours if he avoids all criminal matters and personal injury cases arising out of automobile accidents.

It has frequently been observed that it is not improper for an attorney to engage in a separate business of profession so long as he does not violate the Canons in doing so. Within this framework the ABA Committee has said in Informal Opinion N. C-775 (dated February 15, 1965) that an attorney may engage in separate business activity (1) if the business is clearly not necessarily the practice of law when conducted by a lawyer; (2) if it can be conducted in accordance with the Canons; (3) if it is not used or engaged in such a manner as to advertise or solicit legal matters for the lawyer; if it will not inevitable serve as a feeder to his law practice; and (5) if, except in special circumstances, it is not conducted from the attorney's law office.

Another rule of significance to this inquiry is found in Canon 9, which notes that a lawyer should avoid even the appearance of professional impropriety. In the disciplinary rules applicable under this Canon, DR 9-101(B) enjoins an attorney from private employment in a matter in which he has had substantial responsibility as a public employee.

Examination of these rules convinces us that the department and officer were correct in stipulating that no portion of the latter's practice could involve criminal matters or automobile accident cases. Clearly, the appearance if not the fact of professional impropriety would be present in both areas, and there would be the ever-present danger that the officer in his role as attorney might be asked to accept employment in some matter in which he had exercised responsibility as a member of the force.

Excluding the areas of criminal law and auto accidents, can it be said that the practice of law by a police officer would necessarily violate the rules set forth in Opinion C-775? We think not. In the judgment of the Committee, the duties of a policeman do not necessarily constitute the practice of law when conducted by a lawyer, especially as the latter term has been limited by the facts of this inquiry. As here presented, the position of policeman would not inevitably serve as a feeder to his law practice. We have likewise concluded that his role as officer may, if approached with care, be so conducted as to avoid any suggestion of solicitation or advertisement.

Accordingly, the Committee believes that the attorney in question may properly serve as both attorney and police officer, so long as he at no time undertakes representation in any criminal matter or automobile accident litigation. If other areas of potential conflict should arise in the performance of his duties, he would likewise be expected to refrain from any practice in those areas as well.

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.