

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-113
Issued: May 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. Is it ethical for an Assistant County Attorney, who is a prosecutor in Quarterly Court, to be appointed a Deputy Sheriff or Deputy Constable without drawing a salary in order to make arrests for various actions which have occurred in his court rather than going through the procedure of taking out warrants?

Answer: No.

References: Canon 9

OPINION

While there is no specific section of the Code of Professional Responsibility which decides this question, such a contemplated dual role of prosecutor and peace officer would, if implemented, place an extraordinary power in the office of Assistant County Attorney that was not intended by the Kentucky General Assembly nor by the framers of our Constitution. Although there does not appear to be a statutory nor a constitutional prohibition against such a dual role, there are ethical considerations which are not based upon hard-set rules, but rather upon the appearances of a lawyer's conduct. Canon 9 requires all lawyers to avoid even the appearance of professional impropriety and to conduct themselves so as to inspire the confidence, respect and trust of the public. Potential and actual witnesses should not be under the threat and possible intimidation that their testimony or conduct in court could cause the prosecutor himself to arrest them on the spot. Nor should other members of the public be subjected to arrest and then prosecution by the same person.

The Legislature has separated the offices of county prosecutor and the county peace officers not without purpose. Both offices have their own duties and functions, and the attempt to perform both may cause the neglect of one, the other, or both.

Because of the possible abuses that could result from such a prosecutor, peace-officer function, and because of its appearance to the public, it is the opinion of the Committee that it should not be condoned.

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.