KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-115
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 1: May a County Attorney conduct both the county business and his private practice out of the same office located in the county courthouse?

Answer 1: Yes.

Question 2: Is it proper for a County Attorney to sit beside the County Judge at the bench during examining trials, juvenile hearings and other court proceedings?

Answer 2: No.

References: Canon 9

OPINION

An attorney inquires whether a County Attorney may properly conduct both the county business and his private practice from the same office in the county courthouse. He asks secondly whether it is appropriate for a County Attorney to sit beside the County Judge at the bench during various court proceedings in which he participates as prosecutor.

The Ethics Committee notes that the practice referred to in the first inquiry is widespread throughout the Commonwealth. It is frequently dictated by economics. In some communities it would not be feasible for a County Attorney to maintain two entirely separate offices. In such circumstances, and so long as public and private practice are kept distinct, we find nothing that would ethically prohibit use of a County Attorney's office in the county courthouse for the conduct of both the county business and his private practice.

The second inquiry presents a different question. Canon 9 imposes upon an attorney the duty of avoiding even the appearance of professional impropriety. In his activities a judge should also avoid the appearance of impropriety. He should as well be ever mindful of his duty to uphold the integrity and independence of the judiciary. While there may be nothing in the present facts to indicate actual impropriety, the suggestion of it is sufficiently strong that we must condemn the practice in question. It would be difficult for a defendant to have continued faith in the independence of the judiciary when his adversary, the County Attorney, is seated at the bench in a position of apparent favor beside the very judge who must decide the defendant's fate. Upon an

adverse ruling, it would be all but impossible to convince many defendants confronted with such arrangement that the prosecutor had not used special influence to secure the desired disposition. If there is no faith in the independence of the judiciary, there is likewise no respect for it. That requirement is so fundamental to our system that we do not hesitate to conclude that the practice in question would be improper.

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.