

**KENTUCKY BAR ASSOCIATION**

**Ethics Opinion KBA E-167**

Issued: May 1977

**Overruled by E-444 (2018)**

**Question 1:** Lawyers A and B share offices. Lawyer A is a part-time assistant county attorney who prosecutes criminal and bastardy cases in the Quarterly Court. May B defend a criminal case in Quarterly Court if A does not prosecute it?

**Answer 1:** No.

**Question 2:** May B represent parties in bastardy actions in Quarterly Court if A is not involved?

**Answer 2:** No.

**Question 3:** May B continue to represent the plaintiff in a bastardy case in Quarterly Court which was pending before A became an assistant county attorney?

**Answer 3:** Qualified yes.

**References:** Code of Professional Responsibility, Canon 9; Opinion KBA E-159 (1977)

**OPINION**

In Opinion KBA E-159 (1977), we decided that a lawyer who shares offices with the county attorney may not accept employment adverse to the county and specifically that he could not defend criminal cases in the same county in which the county attorney was elected. The same principle applies in answer to Question 1.

In Opinion KBA E-159 (1977) we decided that office sharing lawyers should not represent “adverse” interests because it presents the appearance of professional impropriety denounced by Canon 9. In a bastardy proceeding, the county attorney or his assistant handling the matter is not in a position adverse to either of the private parties, but the interests of the county and Commonwealth in such cases clearly differ from those of the private parties. On the same reasoning set out in Opinion KBA E-159, we believe that a lawyer who shares offices with the county attorney or an assistant county attorney may not accept employment in a matter in which the county will be involved and in which his client’s interest would clearly differ from that of the county.

In answer to Question 3, we must consider the additional fact that B's client is entitled to counsel of her choice and B's withdrawal would undoubtedly delay the action and put the client to additional expense. Considering these facts and that fact that our answer to Question 2 is based on appearance of impropriety and not actual impropriety, we believe an exception may be made for this pending case, provided Lawyer A does not handle it for the county.

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***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.*