

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-190
Issued: September 1978

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 lawyer who is on a retainer or contract for a city in a specific area bring suit against the city in an unrelated matter?

Answer: No.

References: Opinion KBA E-146, 155; DR5-10(A)(C), 7-10(A)(3); EC 9-2; ABA Formal Opinion 192; SCR 3.130

OPINION

The area of lawyers “conflict of interests” has been an area of fertile discussion. Perhaps, the main reason for the rule was to preclude “secrets or confidences” from being disclosed directly or indirectly. This, however, is not the sole reason. “Public confidence and respect for the law and the lawyer may be eroded by irresponsible or improper conduct of a lawyer” (EC9-2).

In ABA Formal Opinion 192 (1939) the Committee stated that an attorney holding public office should avoid all conduct which might lead the laymen to conclude that the attorney is utilizing his public position to further his professional success or personal interests.

The question posed is different from Opinion KBA E-146 and E-155 where the lawyer was no longer representing the client. Here the lawyer proposes to continue to be employed by the city and be under contract of employment to bring suit against the city.

DR 5-105(A) provides that a lawyer shall decline employment if the exercise of his independent professional judgment will be or is likely to be adversely affected. Canon 9 provides that “a lawyer should avoid even the appearance of professional impropriety.”

Although DR 5-101(A) and DR 5-101(C) allow representation with full consent and full disclosure of the parties, the Committee is of the opinion that a lawyer may not serve two masters at the same time. A lawyer has a duty to represent the client zealously within the bounds of the law. By being employed by both parties (city and client) in litigation the attorney’s conduct would have a tendency to diminish the public’s respect for the legal profession and such conduct would bring the bench and bar into disrepute.

Every time a lawyer accepts employment in a case or controversy there is necessarily another client(s) interest that the lawyer may not accept employment. The employment by a city is but one of these employments.

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.