

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-196
Issued: October 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 City Attorney act in a criminal case in which charges are brought by the police in that city in either District or Circuit Court?

Answer: No.

References: Opinion KBA E-81; DR 5-105; KRS 69.560

OPINION

It is the opinion of the Ethics Committee that Opinion KBA E-81 has been effectively eliminated by the Judicial Amendment and revision of KRS 69.560. With adoption of this opinion, Opinion KBA E-81 is effectively eliminated and replaced by this opinion. The duties of a City Attorney have been amended to exclude any prosecutorial duties. The City Attorney now is concerned only with administrative affairs of the city. In advising the city police the lawyer is called upon to draft policies, statements for the police, as well as to assist them in any questions they may have concerning making an arrest and filing charges. DR 5-105(A) provides that "a lawyer shall decline proffered employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment or if it would be likely to involve him in representing different interests." It is the Committee's opinion that a City Attorney is likely to be adversely affected in his use of independent professional judgment in taking criminal defense cases where the charges are brought by the police of that city. In his obligation as a lawyer to the criminal client, the lawyer has a duty to represent that client competently and within the bounds of the law. Thus the lawyer may possibly have to question the propriety of the police in the arrest and/or policies.

By being employed by the city and an accused criminal client in litigation, the attorney's conduct would have a tendency to diminish the public's legal respect for the legal profession, which conduct would bring the bench and bar in disrepute. Each and every time a lawyer accepts employment in a case or controversy there is necessarily another client's interest that the lawyer may not accept. It is our opinion that once a lawyer consents to being City Attorney for a municipality the lawyer thereby is excluded from practicing criminal cases in which the charges are brought by the police of that city in any judicial court.

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.