

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-244
Issued: May 1981

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 partner and/or associate of the attorney for the Planning and Zoning Commission represent the applicants for zoning changes before the Planning and Zoning Commission?

Answer 1: No.

Question 2: May a person who shares office space with the attorney who represents the Planning and Zoning Commission represent applicants for zoning changes before the Planning and Zoning Commission?

Answer 2: No.

References: Canon 5, 9; Kentucky Bar Assn v. Roberts, 579 S.W.2d 107 (Ky. 1979); Opinion KBA E-61 E-107, E-167, E-194; SCR 3.130; DR 5-105(D); In re Advisory Opinion of Kentucky Bar Assn, 613 S.W.2d 416 (Ky. 1981), 28 KLS 4

OPINION

Opinion 1

Canon 5 of the Code of Professional Responsibility sets forth that a lawyer should exercise independent professional judgment on behalf of a client. The ethical duty precludes attorneys from accepting employment for representation from two parties with conflicting interests in the same manner.

In Kentucky Bar Assn v. Roberts, 579 S.W.2d 107 (Ky. 1979), the court stated “Regardless of whether (the attorney) actions created an actual conflict of interest, they created a potential conflict between the interests....” The Supreme Court recently stated in In re Advisory Opinion of Kentucky Bar Assn, 613 S.W.2d 416 (Ky. 1981), 28 KLS 4, page 5:

The public demand for professional independence is great. Canon 9 of the Code states as follows: “a lawyer should avoid even the appearance of professional impropriety. As we said in *O’Hara v Kentucky Bar Assn*, 535 S.W.2d 83 (Ky.

1975), “The point is not whether impropriety exists, but that any appearance of impropriety is to be avoided....”

It is the Ethics Committee’s feeling that for a partner or associate of the attorney who represents the Planning and Zoning Commission to appear before the Planning and Zoning Commission gives the appearance of impropriety and cannot be allowed.

Opinion 2

The Ethics Committee has from time to time addressed the issue of office sharing arrangements. See KBA E-61, E-167, E-194. This Committee has adopted the test of office sharing to be “Whether clients or the public might be led to believe the lawyers so affiliated have such a close personal and professional relationship as to *imply* special advantage or unusual influence.” (Emphasis added).

Canon 9 of the Code of Professional Responsibility states: “A lawyer should avoid even the appearance of impropriety.” SCR 3.130 states in part:

... the court recognizes and accepts the principles embodied in the American Bar Association’s Code of Professional Responsibility as a sound statement of the standards of professional conduct required of members of the Bar and the Board may cause to be tried all charges brought under the Code *as well as charges for other unprofessional or unethical conduct tending to bring the bench and bar into disrepute.* (Emphasis added).

DR 5-105(D) provides:

If a lawyer is required to decline employment or to withdraw from employment under DR 5-105, no partner or associate of his or his firm may accept or continue such employment.

It is the feeling of the Ethics Committee that SCR 3.130, Canon 9, and DR 5-105(D) are applicable to the lawyer who is “sharing office space” with another lawyer.

The Committee recognizes that for many reasons lawyers may wish to form a loose association and not form a partnership. We recognize the need for the cutting of expenses by the use of these office sharing mechanisms. However, in our opinion, the appearance of impropriety, as well as, the conduct may tend to bring the bench and bar into disrepute overrides these considerations.

In KBA E-107 we stated “Payment of office expenses necessarily implies the right to some voice in the operation of that office.” It is our feeling that an attorney who shares office space likewise has the same right to control. The Committee is mindful of many different types of “office sharing” arrangements. In order for a lawyer to be free of conflicts of interest with other members of the same office space it is our feeling that the following arrangements must be made in order to avoid the appearance of impropriety, tending to bring the bench and bar into disrepute and

meeting the test of “Whether clients or the public might be led to believe that lawyers so affiliated have such a close personal and professional relationship as to imply special advantage or unusual influence.” These arrangements must consist of the following:

1. Each lawyer must have separate private offices,
2. Each lawyer must have separate secretarial staff,
3. A common phone number may be used but it must be Answered in the form of the number and not by stating the names of the lawyers (DR 2-102(C)),
4. Each lawyer must maintain separate filing systems and complete non-access by any other lawyer or secretaries in the office sharing arrangement,
5. Separate checking and banking accounts must be maintained
6. Separate taxation, workers’ compensation, insurance, and other matters must be maintained,
7. There may be no splitting of fees between the lawyers in the firm other than on an hourly basis where one lawyer “covers” for the other lawyer. Obviously, in this case the lawyer who covers for that other lawyer must have received the consent of the client to do so and the covering lawyer is deemed to have had that particular person as a client as far as future conflicts of interest are concerned,
8. Each lawyer must have separate stationery, and
9. The names of the lawyers at the front of the building are separated by lines which clearly show a non-partnership agreement.

It is the purpose of this opinion to once and for all alert the Bar as to the fact that normally an “office sharing” relationship will result in a conflict of interest as to all members of that office sharing arrangement.

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.