

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-248
Issued: July 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: May an Assistant County Attorney who does exclusively Title IV-D cases and does absolutely no prosecutions either in misdemeanor or traffic court represent clients in the defense in criminal cases?

Answer: No.

References: KRS 15.740, 69.300; Opinion KBA E-243, E-194, E-167, E-159

OPINION

The above request comes to us as a direct result of the Aid to Families with Dependent Children (hereinafter referred to as AFDC). This part of the Social Security Act, in essence, provides for enforcement of both civil and criminal obligations of parents to support their minor children. It is conceivable and sometimes possible for the Commonwealth to contract with an attorney to perform these functions. However, the law provides that the County Attorney shall be responsible for paternity cases. It is, of course, possible for the County Attorney's office to provide both a civil division, as well as, a criminal division. Thereby having one lawyer doing exclusively civil work.

This Committee has consistently held that an Assistant County Attorney may not perform any defense work in criminal cases. *See* KBA E-159, KBA E-167, ICBA E-194, and KBA E-243.

Interestingly, the legislature has also enacted specific statutes, dealing with this subject. KRS 15.740 expressly prohibits County Attorneys from acting as defense counsel in criminal prosecutions. The Statute states that "(the) ... County Attorney shall not act as defense counsel in any criminal prosecution in any State or Federal Court in this Commonwealth, except in cases in which he is a party."

KRS 69.300 states that Assistant County Attorneys "shall have the same powers and perform the same duties that County Attorneys have and perform...." A reasonable and fair interpretation of KRS 69.300 leads us to conclude that since the legislature vested assistants with the same powers and duties of the County Attorney, it likewise intended assistants to be subject to the same limitations. Our reading of KRS 15.740 expressly prohibits Assistant County Attorneys from acting as defense counsel in any criminal prosecutions in this Commonwealth.

As we have stated repeatedly: “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.” See KBA E-190 and E-230.

Accordingly, it is the feeling of the Ethics Committee, that any lawyer who performs Title IV-D cases, for the Commonwealth in any respect, may not practice criminal law in any respect in the Commonwealth.

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.