

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-322
Issued: July 1987

Modified by E-444 (2018)

Several questions have arisen regarding office sharing arrangements between criminal defense attorneys and full or part-time Commonwealth or County Attorneys. There are consolidated in this opinion.

Question 1: May an attorney who defends criminal cases share office space with a full or part-time prosecutor?

Answer 1: No.

Question 2: Will the answer to Question 1 change if the part-time government lawyer's duties are limited to some special function?

Answer 2: Yes.

Question 3: May an attorney who defends criminal cases rent office space in a building that is also occupied by a full or part-time Commonwealth or County Attorney?

Answer 3: Qualified yes.

OPINION

Question 1

“Office sharing” is a common method of association akin to practicing in a firm, in that common space is rented, or expenses, facilities, or personnel are shared. In individual cases, problems may arise from such an arrangement relating to: (1) preserving the confidences and secrets of clients; (2) avoiding an appearance of affiliation that might mislead clients; (3) safeguarding against improper division of fees; and (4) avoiding the appearance of prohibited solicitation. In addition, the disqualification normally imputed to partners and associates may likewise bar representation by a lawyer sharing space with another lawyer who has a conflict of interest. *Cf.* KBA E-243 (1981).

Question 2

On the other hand, it may be advantageous for a county or local government to contract with a private attorney to prosecute only certain types of cases, such as URESA or TAPP cases, and otherwise have no involvement with the offices of the County or Commonwealth Attorney. In such circumstances, it is appropriate to preclude office sharers from accepting cases adverse to the state, county, or local government in such cases, but inappropriate to require a broader disqualification from all criminal defense work.

Question 3

At first blush, the answer to Question 3 seems obvious, if the “offices” involved are truly separate and involve no common reception, conference, or filing areas, no common telephone lines, and no common personnel. In other words, offices within a building might be sufficiently separate to ameliorate the concerns raised by “office sharing.”

On the other hand, it should be acknowledged that the trial strategies or work product of one attorney could be compromised by the knowledge of his or her adversary as to who visits office for appointments. For example, in a particular case it may be necessary for the defense attorney to consider meeting undisclosed to the prosecution somewhere other than at lawyer’s office. *Cf.* South Carolina Op. 85-17 (1985).

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.