



COMMONWEALTH OF KENTUCKY

**ETHICS COMMITTEE OF THE KENTUCKY JUDICIARY**

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**JOSEPH H. ECKERT**  
Circuit Court

**Anthony M. Wilhoit**  
Court of Appeals

**JUDICIAL ETHICS OPINION JE-26**

**FORMAL**

**QUESTION:** If the only attorney eligible is a close relative of the Circuit Judge should the judge appoint such attorney as master commissioner?

**ANSWER:** No.

**REFERENCES:** Retirement and Removal Commission rulings July 21, 1978, and April 20, 1979; SCR 4.300, Code of Judicial Conduct, Canons 2 and 3B(4).

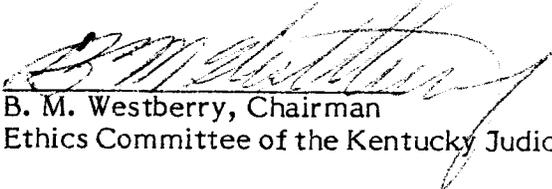
**OPINION:** (April, 1981)

In 1978 the Judicial Retirement and Removal Commission issued a reprimand to a judge who appointed his son to a judicial office, finding that such appointment is a violation of Canon 3B(4) of the Code of Judicial Conduct. The ruling was reported in Kentucky Bar Association Reporter (v. 4, no. 11, September, 1978).

Although that opinion concerned the appointment of the judge's son to a judicial office, we think it applies equally to the appointment of any close relative, and that such an appointment is prohibited by Canon 3B(4) and Canon 2 of the Code of Judicial Conduct. The relevant part of Canon 3B(4) states that a judge "should exercise his power of appointment only on the basis of merit, avoiding nepotism and favoritism". Canon 2 states that he "should avoid impropriety and the appearance of impropriety in all his activities". Even if there were in fact no favoritism in the appointment of a close relative, the appearance of favoritism would be great and must be avoided.

The question states that the only attorney eligible for the appointment is a close relative. It is doubtful that he is in fact the only attorney eligible, for the Kentucky Bar Association lists over 20 attorneys in the county in question. The only requirement for appointment as a master commissioner is that he be an attorney.

If none of the attorneys is willing to accept appointment, the appearance of nepotism and favoritism would still exist upon the appointment of a close relative, for the public cannot be expected to know that no other attorney is willing to serve and the appearance of impropriety would exist. Therefore we cannot make an exception to the ruling of the Judicial Retirement and Removal Commission for this kind of situation. It might be pointed out that that Commission reprimanded a judge in 1979 because his "relationship with his trial commissioner conveyed the impression that the trial commissioner was in a special position to influence him. . .". Kentucky Bar Association Reporter, (v. 5, no. 3, June, 1979).



B. M. Westberry, Chairman  
Ethics Committee of the Kentucky Judiciary