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COMMONWEALTH OF KENTUCKY
ETHICS COMMITTEE OF THE KENTUCKY JUDICIARY
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FRANKFORT, KENTUCKY 40601

ADMINISTRATIVE OFFICE
OF THE COURTS

ANTHONY M. WILHOIT
Court of Appeals

THOMAS J. KNOPF
District Court

JOSEPH H. ECKERT
Circuit Court

B.M. WESTBERRY, CHAIRMAN
Attorney

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Attorney

JUDICIAL ETHICS OPINION JE-33

Informal

QUESTION: May a domestic relations commissioner for two counties of a three-county judicial circuit represent clients in domestic relations cases in the third county of the circuit?

ANSWER: Yes.

REFERENCE: SCR 4.300, Code of Judicial Conduct Compliance Provisions, introductory paragraph and section A(2).

OPINION:

The introductory paragraph of the Compliance Provisions of the Code of Judicial Conduct states that a court commissioner is a judge for the purpose of the Code. Section A(2) of the Compliance Provisions states that part-time judges -- and this, of course, includes court commissioners -- should not practice law in the court on which they serve. But section A(2) then continues with the following language:

. . . This provision shall not, however, prevent . . . a commissioner of the Circuit Court from practicing in the court of which he is a commissioner so long as he has not taken and does not take any action as such commissioner with respect to the matter or matters in which he practices as an attorney.
(Emphasis added)

Since the appointment involved here is for only two of the three counties of the circuit, the commissioner has no power to act as a commissioner in the third county. Therefore there can be no conflict between his duties as commissioner and his duties as an attorney representing a client. For that reason, he is free to accept domestic relations cases in the third county. In the two counties covered by his appointment, however, he should refuse domestic relations cases since he could not at the same time represent a client in the case and sit as a commissioner on the same case.


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