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COM OF KENTUCKY
ETHICS COMMITTEE OF THE KENTUCKY JUDICIARY
403 WAPPING STREET
FRANKFORT, KENTUCKY 40601

INSTRUMENTIVE
OF THE courts
THOMAS J. KNOPE
District Court

Court of Appeals

JOSEPH H. ECKERT
Circuit Court

B.M. WESTBERRY, CHAIRMAN
Attorney

UHEL O. BARRICKMAN
Attorney

JUDICIAL ETHICS OPINION JE-44

Formal

- QUESTION #1:** What is the meaning of "personally" as used in SCR 5.060?
- ANSWER:** It has its ordinary dictionary meaning: in person, directly.
- QUESTION #2:** May the partner of a district court trial commissioner practice in that court? If so, are there any limitations on the practice in which he may engage?
- ANSWER:** He may practice in that court as in any other court. In cases in which the trial commissioner is acting, the latter must disqualify himself in appropriate cases as provided in Canon 3C.
- REFERENCES:** SCR 5.060.
- OPINION:** (January 1983)

SCR 5.060 states in part that "a trial commissioner shall not personally engage in the practice of criminal law in the district court of the district in which he serves as commissioner...." We have no reason to suppose that the word "personally" has any connotation other than its usual dictionary definition. The Random House Dictionary of the English Language (Random House 1966) defines it as "through direct contact; in person; directly." Applying that definition to SCR 5.060, we interpret the rule to mean that the prohibition on the practice of criminal law applies only to the trial commissioner himself and not to his partners and associates:

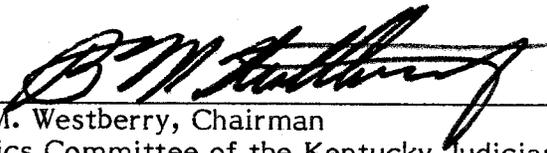
Question #2:

We have recently held, in our JE-43, that the partner of a trial commissioner may practice in the trial commissioner's court at least in those cases in which the latter is not involved. We agree with Kentucky Bar Association Ethics Opinion E-214 that the trial commissioner's partner may not practice before him, but we think that it is incumbent on the trial commissioner to disqualify himself in those cases, as provided in Canon 3C, rather than requiring the partner to refuse representation to the client. We so stated in our JE-43, and American Bar Association Informal Opinion 1306 is in accord. That opinion addressed the question of appearances by former associates of a judge, and stated that "the decision is the judge's to make, not the attorney's-"

JE-44
January 1983
Page two

Again, the rule stated in E-214 has no application where the trial commissioner has completed his work before the partner appears on behalf of his client. If, for example, the trial commissioner has issued an arrest warrant and will take no further action in the case, there is no impropriety in the partner's representation of the accused, for he cannot be said to be practicing before the trial commissioner.

We also agree with E-214 in its refusal to make a more lenient rule for rural communities. As stated there, "the appearance of impropriety is simply too obvious." Lest our JE-8 be taken to mean that rules of disqualification do not apply in criminal cases, we point out that the decision there applies only to prosecutors, who, as we said, do not represent clients nor do they have a financial interest in the outcome of the litigation. That opinion must be limited to its facts.



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