



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

ANTHONY M. WILHOIT
Court of Appeals

THOMAS J. KNOPF
District Court

JOSEPH H. ECKERT
Circuit Court

B. M. WESTBERRY, CHAIRMAN
Attorney

UHEL O. BARRICKMAN
Attorney

JUDICIAL ETHICS OPINION JE-49

Formal

QUESTION: Where a member of a law firm has been appointed as a master commissioner of a circuit court, does the fact that another member of the firm, who represents either the plaintiff or the defendant in the action, preclude the master commissioner from selling the property, where the only act to be performed by the master commissioner is the advertising and sale of the real estate?

ANSWER: Yes. The appearance of impropriety is enough to bar this type of action by the master commissioner. SCR 4.300, Canon 2.

REFERENCES: Kentucky Revised Statute 26A.015(2)(b); SCR 4.300(3)(c)(1)(b); CR 53.02; Crawley v. Manion, Ky., 228 S.W. 1032 (1921); Dear v. Locke, 262 N.E.2d 27 (1970); KRS 31A.040.

Kentucky Revised Statute 26A.015(2)(b), the disqualification provision for judges and master commissioners states in relevant part:

Any judge or justice of the Court of Justice or master commissioner shall disqualify himself in any proceeding:

....

- (b) Where in private practice or government service he served as a lawyer or rendered a legal opinion in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter in controversy, or the judge, master commissioner or such lawyer has been a material witness concerning the matter in controversy; . . .

If the fact of a prior association with a lawyer presently involved in the controversy would require a disqualification, then certainly a current association would require such disqualification. See also SCR 4.300, Canon 3(C)(1)(b) to the same effect.

The feeling of the questioner must have been that selling the property was a ministerial act involving no exercise of discretion. But, such is an incorrect assessment. The case of Crawley v. Manion, Ky., 228 S.W. 1032 (1921) provides:

In so far as the master commissioner is not restricted by law or the judgment of the court, he has a reasonable discretion as to the manner of making a judicial sale.


The case of Dear v. Locke, 262 N.E.2d 27 (1970) then provides that where discretion is involved that the act is judicial as opposed to ministerial in character.

Civil Rule 53.02 provides that a master commissioner may execute a judicial sale, but he must be qualified as an attorney or experienced as a fiduciary.

The remedy for a master commissioner in this situation is the appointment of a special commissioner as provided by KRS 31A.040:

- (1) When the master commissioner is interested as an attorney or party; or
- (2) When there is a conflict of interest; or
- (3) When he is unable to discharge the duties of his office for any reason;

the judge of the court before whom the action is pending shall appoint a special commissioner, who shall meet the same qualifications as a master commissioner, and require him to take an oath and to execute a bond as the regular commissioner is required to do.



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