



COMMONWEALTH OF KENTUCKY
ETHICS COMMITTEE OF THE KENTUCKY JUDICIARY

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FRANKFORT, KENTUCKY 40601

ANTHONY M. WILHOIT
Court of Appeals

THOMAS J. KNOPF
District Court

JOSEPH H. ECKERT
Circuit Court

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JUDICIAL ETHICS OPINION JE-60

Formal

QUESTION: May a recently elected circuit judge, who has presided in the same area as district judge for the last five years, preside as circuit judge in criminal cases in which he earlier handled the preliminary hearing and other matters as district judge?

The particular judge who presented the above question to the Committee has presided as district judge in the same area for five years where he has now been elected circuit judge. His question is: Will he be able to preside as judge in a criminal case where he presided as district judge for the preliminary hearing in that case?

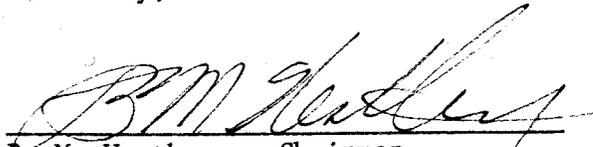
Of course, in any case a judge may always disclose the basis of any disqualification and obtain a waiver from all parties. However, in the majority of criminal cases a judge would not need to consider himself disqualified. If there is any code disqualification provision applicable to this case at all, it would have to be SCR 4.300, Canon 3, Subsection (C)(1)(a) - "he has personal knowledge of disputed evidentiary facts concerning the proceeding...." Yet, what a judge learns in court about a case is not "personal knowledge."

Further, the Criminal Rules do not require preliminary hearings to be held in district court. And, KRS 24A.110(3) states that district and circuit court have concurrent jurisdiction over preliminary criminal matters. Theoretically, at least, a preliminary hearing could be held in circuit court. If that is the case, then a circuit judge who formerly was a district judge and who handled a preliminary hearing in a particular case is not disqualified.

There really appears to be only two situations in which a circuit judge, like the one who posed the question to us would appear to have a problem: (1) if as district judge he made a decision involving bail and that decision was being appealed; or (2) he, as circuit judge, is asked to reconsider an evidentiary matter that he decided as district judge.

Otherwise, there appears to be no disqualification.

Sincerely,


B. M. Westberry, Chairman
Judicial Ethics Committee