



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-61

Formal

Question: Are there any restrictions upon master Commissioners and/or their law partners relating to practicing the cases before the judge of the court appointing the Master Commissioner?

Answer: Yes and no. Master Commissioners and their law partners may practice before the judge but the law partners may not practice before the Master Commissioner.

References: "Compliance with the Code of Conduct" (A)(2) and Judicial Ethics Opinions JE-33, JE-44, JE-47, and JE-49.

Opinion

The Judicial Ethics Committee has received a letter from a Circuit Judge concerning the following query. Are there any restrictions upon Master Commissioners and/or their law partners relating to practicing cases before the judge? The answer is yes and no. Master Commissioners and their law partners may practice before the judge but those law partners may not practice before the Master Commissioner.

"Anyone whether or not a lawyer, who is an officer of a judicial system performing Judicial functions, including an officer such as a referee in bankruptcy, special master, court commissioner or magistrate, is a judge for the purpose of this Code. All judges should comply with the Code except as provided below.

A. Part-time Judge. A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge. A part-time judge:

(1)

(2) should not practice law in the court on which he serves or in any court subject to the appellate jurisdiction of the court on which he serves, or act as a lawyer in a proceeding in which he has served as a judge or in any other proceeding related thereto. This provision shall not, however, prevent a trial commissioner of the District Court or a commissioner of the Circuit Court from practicing in a 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.)

Compliance with the Code of Judicial Conduct,
(A)(2), Code of Judicial Ethics, SCR 4.300.

Judicial Ethics Opinion JE-33 cites the above provision of the Code and reaches the same conclusions. In that opinion the Committee was asked whether a domestic relations commissioner for two counties of a three county judicial circuit could represent clients in domestic relations cases in the third county of the circuit. Citing the Compliance provisions of the Code, the Committee answered this question in the affirmative. The domestic relations commissioner was free to accept domestic relations cases in the third county. He could not accept domestic relations cases in the first two counties because he would be acting in those cases as a commissioner.

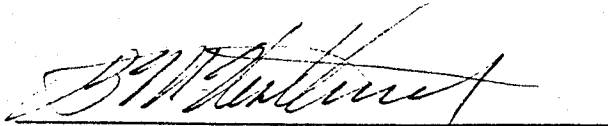
If the Master Commissioner is permitted to practice in the Court of which he is a Commissioner, subject to the above restrictions, then his law partners are also permitted to practice in front of the judge. The law partners are not, however, permitted to practice in front of the Master Commissioner. In cases where the law partners of the Master Commissioner are involved, the Master Commissioner is required to disqualify himself.

In Judicial Ethics Opinion JE-44 the Committee was asked whether the partner of a district court trial commissioner could practice in that court and if so, were there any limitations on the practice in which he could engage? The Committee answered that the law partner could practice in that court as in any other court. But in cases where the Trial Commissioner was acting, the latter must disqualify himself as provided in Canon 3C.

In Judicial Ethics Opinion JE-47 (Informal) the Committee was asked whether where the county attorney and the district court trial commissioner were partners in civil practice, must the trial commissioner disqualify himself in all cases in which the county attorney appears, both civil and criminal? The committee answered the question in the affirmative with the proviso that a disqualification in criminal cases was not required where a failure to act would result in a frustration of the criminal justice process.

In Judicial Ethics Opinion JE-49, the Committee was asked whether where a member of a law firm had 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? The Committee answered this question in the affirmative stating that the appearance of impropriety was enough to bar this type of action by the Master Commissioner.

In summary then a Master Commissioner and his law partners are permitted to practice before the judge in the court where the master commissioner works with the exception that a master commissioner may not sit in any case in which he acted as an attorney or act as an attorney in any case in which he has acted as a Master Commissioner. The Master Commissioner, however, must disqualify himself in any case in which one of his law partners appears.



Chairman
Ethics Committee of the
Kentucky Judiciary