



Commonwealth of Kentucky

Judicial Ethics Committee

Robert F. Stephens District Courthouse
150 North Limestone, Suite 301
Lexington, Kentucky 40507
Phone 859-246-2296 Fax 859-246-2510

Judge Irv Maze
Court of Appeals

Donald H. Combs
Attorney

Judge Jean Chenault Logue
Circuit Court

Judge Jeffrey Scott Lawless
District Court

Arnold S. Taylor
Attorney Chair

**FORMAL
JUDICIAL ETHICS OPINION JE-128**

July 5, 2017

This opinion addresses the following question:

**MAY A CIRCUIT JUDGE APPOINT HIS OR HER SIBLING TO THE
POSITION OF MASTER COMMISSIONER?**

Answer: No.

A Circuit Judge has requested an opinion from the Judicial Ethics Committee, asking whether the judge may or may not appoint a sibling as Master Commissioner, the sibling being otherwise qualified. The Committee has concluded that the sibling may not be appointed, for two reasons.

First, Canon 3C (4) of the Kentucky Code of Judicial Conduct provides, in part:

A judge shall exercise the power of appointment
impartially and on the basis of merit. A judge shall avoid
nepotism and favoritism.

By definition, as stated in the Terminology section of the Code, the sibling is a “Member of the judge’s family” and is within the “Third degree of relationship” to the judge. The Committee believes that the cited Canon and Terminology preclude appointment of the sibling.

The Committee is aware of *Caudill vs. Judicial Ethics Committee*, 986 SW2d 435 (1999), and will not presume to redefine “nepotism”. However, that decision relied on the content of a Canon different from the current version of Canon 3C (4). The former version stated that a judge “should exercise his appointments only on the basis of merit, avoiding nepotism and favoritism.” The *Caudill* holding could be rationally based on the former version being hortatory only, but the current Canon provides that the judge *shall*

July 5, 2017

avoid nepotism. This difference is a change that the Court has made since *Caudill* was adopted, and the change is not insignificant. In the Preamble to the Kentucky Code of Judicial Conduct it is stated:

When the text uses “shall” or “shall not,” it is intended to impose binding obligations the violation of which can result in disciplinary action.

Accordingly, it is the opinion of the Committee that Canon 3C (4) prohibits appointment of the judge’s sibling.

Second, despite the sibling being qualified to serve as Master Commissioner, the Committee believes that the appointment would violate Canon 2A, which provides:

A judge... shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

The Commentary to Canon 2A states:

The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge’s ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired.

The duties and powers of a Master Commissioner are broad. *See*, Administrative Procedures of the Court of Justice IV Sect. 1 et seq. and CR 53.01 et seq. Focusing on only two of those duties demonstrates the distinct possibility that appointment of the sibling “would create in reasonable minds a perception that the judge’s... impartiality” was impaired.

First, it is commonplace for a Master Commissioner to handle foreclosures, a part of which is to report to the Circuit Court for approval of a final judgment. Second, the Master Commissioner may be referred matters by the Circuit Court and directed to take testimony. The Master may be required to make findings of fact and conclusions of law, which findings and conclusions are approved or disapproved by the Court. The potential mindset of a losing litigant is not hard to imagine. The Committee believes that the appearance of impropriety militates against appointment of the sibling.

Sincerely,

/ss/

Arnold Taylor, Esq.
Chair, The Ethics Committee of the Kentucky Judiciary

AT:psw

Formal Judicial Ethics Opinion JE-128

July 5, 2017

cc: The Honorable Irv Maze, Judge (*Via E-Mail*)
Donald H. Combs, Esq. (*Via E-Mail*)
The Honorable Jean Chenault Logue, Judge (*Via E-Mail*)
The Honorable Jeffrey Scott Lawless, Judge (*Via E-Mail*)
Jean Collier, Esq. (*Via E-Mail*)