

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-97
Issued: September 1974

This opinion was decided under the Code of Professional Responsibility, which was in effect from 1971 to 1990. Lawyers should consult the current version of the Rules of Professional Conduct and Comments, SCR 3.130 (available at <http://www.kybar.org>), before relying on this opinion.

Question: May an attorney act as trial commissioner of juvenile court in the county where his partner is Commonwealth attorney?

Answer: No.

References: Canon 1, 2, Code of Judicial Conduct

OPINION

An attorney who may assume the office of Commonwealth attorney is in partnership with another attorney having the opportunity to become trial commissioner of juvenile court for that county. The guidance of our Committee has been requested in determining whether both positions may ethically be accepted.

Canon I of the Code of Judicial Conduct requires a judge to uphold the integrity and independence of the judiciary. Closely related to this is Canon 2, which provides that a judge should avoid impropriety and the appearance of impropriety in all his activities. The Commentary to Canon 2 observes that a judge must expect to be the subject of constant public scrutiny and should therefore accept restrictions on his conduct that might be viewed as burdensome by the ordinary citizen. Analysis of these Canons and our prior decisions compels us to conclude that the two positions should not be accepted.

A trial commissioner of juvenile court is charged with the duties of a judge and for ethical considerations must be considered in that light. In the performance of these duties, the commissioner has discretion, in certain instances, to waive jurisdiction over those initially charged in his court. When this occurs it becomes the responsibility of the Commonwealth attorney to present to the grand jury the facts of that charge and, upon indictment, to prosecute. Where both juvenile judge and prosecutor are from the same office, both might be subject to an accusation of mutual complicity in causing the waiver to occur. There is little doubt that, to the alleged offender at least, the suspicion of a conspiracy might be strong. In such circumstances the appearance of impropriety, however unmerited, would exist. A partnership between judge and prosecutor would also call into question the independence of the judiciary. The temptation by the public would be great to assume from their close daily association an unhealthy relationship between the two in the conduct of their offices.

It was such considerations that led us to conclude in Opinion KBA E-57 that a criminal trial commissioner is prohibited from practicing criminal law in the circuit court of his county. Later, in Opinion KBA E-61 we noted that no member of a firm may undertake that which one partner is ethically prohibited from doing, holding that it was improper for a partner of a law firm of which a trial commissioner was a member to represent defendants in criminal cases.

A review of these decisions, as well as the applicable Canons, convinces us that the two offices of Commonwealth attorney and juvenile trial commissioner should not be held by members of the same firm.

Note to Reader

This ethics opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530 (or its predecessor rule). The Rule provides that formal opinions are advisory only.