

**KENTUCKY BAR ASSOCIATION**  
**Ethics Opinion KBA E-131**  
Issued: January 1976

***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 the partners, associates, and employers of a part-time United States Magistrate defend criminal cases in state courts?

**Answer:** Qualified yes.

**References:** *In re Kenton County Bar Assn*, 314 Ky. 664, 236 S.W.2d 906 (1951); Canon 9; Opinion KBA E-61 (1972), E-94 (1974), E-119 (1975)

**OPINION**

Partners, associates, and employers of a part-time United States Magistrate may not defend criminal cases in state courts where the facts indicate a possible federal charge might come before the Magistrate, or where the lawyer might be required to question some official action of the Magistrate. (E.g., he might be required to contend that the Magistrate had issued a search warrant improperly.) With that qualification, we believe the partners, associates, and employers of a part-time United States Magistrate may defend criminal cases in state courts.

If the Magistrate himself may defend such cases, and we believe he may, obviously his partners, associates, and employers may defend them.

*In re Kenton County Bar Assn*, 314 Ky. 664, 236 S.W.2d 906 (Ky. 1951), holds that no judge of a “subordinate” court may defend criminal cases in his own county. This opinion can be read to mean that no judicial officer or quasi-judicial officer may defend criminal cases in his own county. We are not inclined to give the Kenton County opinion so expansive an interpretation. The Court pointed to no real incompatibility between defense of criminal cases and performance of judicial duties in unconnected cases. Instead, it found that such representation presented an appearance of impropriety, now denounced by Canon 9 in the Code of Professional Responsibility.

Application of the appearances rule requires us to determine (1) what laymen believe about particular conduct and (2) whether it is or is not reasonable for laymen to entertain such a belief. See Opinion KBA E-119 (1975) We will not make mere guesses about what the lay public believe. Without intending to belittle the office in any way, we must say that few laymen even know who the part-time United States Magistrate is, and even fewer know what his duties are. We doubt that the lay public would entertain any belief at all about a part-time Magistrate’s defense of criminal

cases in state courts. We therefore decline to extend the Kenton County rule to prohibit defense of such cases by a part-time United States Magistrate, his partners, associates, and employers.

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***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.*