

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-136
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 a part-time United States Magistrate (in a federal judicial district in which there are several other part-time magistrates as well as a full-time magistrate) represent local governmental organizations and agencies on a retainer basis?

Answer: Qualified yes.

References: 18 U.S.C. 3401; 28 U.S.C. 636(b); EC 5-17, 8-8; ABA Formal Opinion 13S (1935)

OPINION

A part-time United States Magistrate may not represent or advise local governmental organizations or agencies in any matter that may come before him in his official capacity.

Local governmental agencies and organizations frequently have dealings with the United States, sometimes of an adversary nature. But there is no attorney-client relationship between the magistrate and the United States, and in general there is no reason why he should not be on the other side from the United States in civil matters unrelated to his duties as magistrate.

Representation of certain local governmental organizations and agencies in civil matters will sometimes require the magistrate to disqualify himself from hearing certain matters that come before him, especially if he has been assigned duties in civil matters under 28 U.S.C. 636(b). *E.g.*, if he has been retained to advise a sheriff, he could not perform duties under 28 U.S.C. 636(b) in a federal civil rights action against the sheriff. If he represents a city, he probably should not conduct a preliminary hearing or try a minor offense (18 U.S.C. 3401) in which a city police officer appears as a witness.

The question is whether or not a part-time magistrate has a duty to avoid all private representation that carries with it a substantial possibility that he may have to disqualify himself in particular matters as they arise, Code of Professional Responsibility, EC 5-17, 8-8; ABA Formal Opinion 135 (1935).

It is always difficult to predict whether particular private representation will or will not bring an office-holding lawyer into conflict with his official duty, but it is more difficult than usual in the case of a part-time magistrate because the scope of his duties is subject to unpredictable

change depending on the discretion of the United States District Court, 18 U.S.C. 3401, 28 U.S.C. 636(b). Unlike some other kinds of officers, a part-time magistrate is not unique in his district in the district in question there are a full-time magistrate and several part-time magistrates, all of whom can perform the duties of a part-time magistrate, so that disqualification in a particular matter casts no burden on the United States. Again unlike some other kinds of officers, a part-time magistrate is easily relieved of office if the frequency of his disqualifications becomes serious.

We feel that the frequency of a magistrate's disqualifications is a matter for the tolerance of the United States District Judges. We do not believe he has any ethical duty to avoid all representation which carries with it a substantial possibility that he may have to disqualify himself in some particular matter. Accordingly, we conclude that a part-time United States Magistrate may represent local governmental organizations and agencies in civil matters on a retained basis.

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.