

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-398
Issued: March 1997

Since the adoption of the Rules of Professional Conduct in 1990, the Kentucky Supreme Court has adopted various amendments, and made substantial revisions in 2009. For example, this opinion refers to Rule 1.12, which was amended. Lawyers should consult the current version of the rules and comments, SCR 3.130 (available at <http://www.kybar.org>), before relying on this opinion.

Question: A lawyer has been asked to serve as a hearing examiner for a City's Human Rights Commission. This would involve the lawyer presiding from time to time on cases involving charges of discrimination under the Kentucky Civil Rights Act, KRS Chapter 344, making proposed findings of fact and conclusions of law for the Human Rights Commission to review, consider and either approve or deny. Some compensation would be provided for these services. The lawyer practices in the areas of employment and civil rights law. The lawyer would have occasion to represent clients, both claimants and defendants, before the local Civil Rights Commission. May the lawyer who serves as a hearing examiner continue to represent clients before the Human Rights Commission in cases unrelated to the cases in which the lawyer is participating or has participated as a hearing examiner?

Answer: Yes.

References: Code of Judicial Conduct, Compliance, A. Part-time Judge; SCR 5.060; KRPC 1.12.

OPINION

This question was referred to the Judicial Ethics Committee, which declined jurisdiction on the ground that the lawyer would not be serving as part of the judicial branch, but would instead be serving as a hearing officer in an administrative body. Accordingly, we accept the question.

We note that even if the lawyer were serving as a part-time judge, and were subject to the Code of Judicial Conduct, [if for example, the lawyer were likened to a Commissioner of the Circuit or District Court] the lawyer would be permitted to practice in the court of which he [she] is [a Commissioner] so long as he [she] has not taken and does not take any action as such [Commissioner] with respect to the matter or matters in which he [she] practices as an attorney. See also SCR 5.060 [Disqualification of Commissioner] "Service as attorney"; KRPC 1.12 [Former judge or arbitrator].

We answer the questions in the affirmative.

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.