

Opinion vacated, *Jefferson District Court Judges v. Ethics Committee of Kentucky Judiciary*, 364 S.W.3d 94 (Ky. 2011).



COMMONWEALTH OF KENTUCKY
ETHICS COMMITTEE OF THE KENTUCKY JUDICIARY
ADMINISTRATIVE OFFICE OF THE COURTS
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JEFFREY SCOTT LAWLESS
DISTRICT COURT

**FORMAL
JUDICIAL ETHICS OPINION JE-121**

March 29, 2011

The Committee has received inquiries whether a judge's staff attorney or law clerk could be appointed to the additional position of trial commissioner, if:

(A) the two positions are kept "separate," that is, time spent in each position would be separately accounted for, and

(B) the staff attorney/law clerk did not work on anything he or she had worked on as trial commissioner, and *vice versa*.

The Committee believes that the answer to the posed question is "no," and while the inquiring judges were content with private opinion letters, a majority of the Committee believes that a formal opinion on the subject is warranted.

There are several reasons for this decision. First, a judge is required by Canon 3A to give first place to his or her judicial duties and as the position of staff attorney or law clerk is full-time, the trial commissioner would not be able to comply with this ethical requirement. Second, there is an appearance of impropriety. The dual employment would create concerns in the minds of the public about the relationship between the Judge and the Trial Commissioner. The Committee did not believe that the appearance problem could be solved by having the trial commissioner recuse from any project he or she had worked on as staff attorney or law clerk, or *vice versa*.

An additional element of the inquiry was whether the appointment could be made if the staff attorney or law clerk for Judge A were appointed as the trial commissioner for Judge B. The Committee does not believe that this scenario would alter the situation.

Please be aware that opinions issued by or on behalf of the Committee are restricted to the content and scope of the Canons of Judicial Ethics and legal authority interpreting those Canons, and the fact situation on which an opinion is based may be affected by other laws or

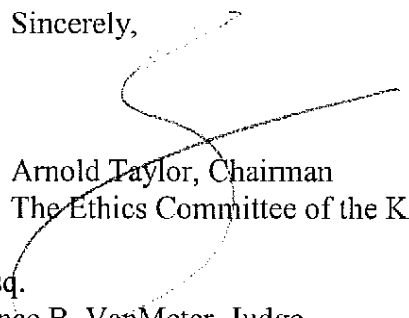
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regulations. Persons contacting the Judicial Ethics Committee are strongly encouraged to seek counsel of their own choosing to determine any unintended legal consequences of any opinion given by the Committee or some of its members.

Sincerely,



Arnold Taylor, Chairman
The Ethics Committee of the Kentucky Judiciary

cc: Donald H. Combs, Esq.
The Honorable Laurance B. VanMeter, Judge
The Honorable Jean Chenault Logue, Judge
The Honorable Jeffrey Scott Lawless, Judge
Jean Collier, Esq.