



COMMONWEALTH OF KENTUCKY

ETHICS COMMITTEE OF THE KENTUCKY JUDICIARY

403 WAPPING STREET
FRANKFORT, KENTUCKY 40601

JOHN P. HAYES
Court of Appeals

JOSEPH H. ECKERT
Circuit Court

B. M. WESTBERRY, CHAIRMAN
Attorney

THOMAS J. KNOPF
District Court

UHEL O. BARRICKMAN
Attorney

JUDICIAL ETHICS OPINION JE-23

Formal

QUESTION: Must a commissioner of the Court of Justice resign when he becomes a candidate for a public office?

ANSWER: Yes, if the office which he is seeking is a non-judicial office. He need not resign if he is seeking a judgeship in the Court of Justice.

REFERENCES: SCR 4.300, Code of Judicial Conduct, Canon 7A(3) and Compliance Provisions.

OPINION: (February, 1981):

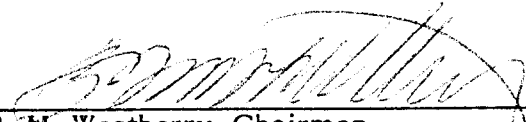
SCR 4.300, the Code of Judicial Conduct, provides in its compliance provisions that "a court commissioner ... is a judge for the purpose of this Code." A court commissioner is, therefore, bound by Canon 7A(3) which provides that "a judge should resign his office when he becomes a candidate either in a party primary or in a general election for a non-judicial office."

The terms "judicial" and "judicial office" refer to judges and judgeships and are so used throughout the Code of Judicial Conduct. See, for example, the blackletter statement of Canon 7: "A judge should refrain from political activity inappropriate to his judicial office." (Emphasis added.)

It is clear, then, that the only offices for which a commissioner or judge may become a candidate without resigning his office are judgeships within the Court of Justice. He must resign when he becomes a candidate for any other office, including that of Commonwealth's attorney and county attorney, as well as all offices in the executive and legislative branches of government. For a case holding that a Commonwealth's attorney is not a judicial officer, see Commonwealth ex rel. Breckinridge v. Wise, 351 S.W.2d 493 (1961).

As for the timing of the resignation, we think that Canon 7A(3) does not prohibit preliminary surveys of financial and voter support, for the prospective candidate needs to learn whether he has a realistic chance of election. Once having made his decision to run, however, he must resign whenever he announces his intentions to the public, whether by filing with the county clerk, making a press

release, or any other method by which he lets his candidacy become generally known. To hold otherwise would permit the very appearance of impropriety to which the strictures of Canon 7A(3) are directed.



B. M. Westberry, Chairman
Ethics Committee of the Kentucky Judiciary