



COMMONWEALTH OF KENTUCKY
ETHICS COMMITTEE OF THE KENTUCKY JUDICIARY
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CIRCUIT COURT

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ATTORNEY

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DISTRICT COURT

UHEL O. BARRICKMAN
ATTORNEY

Judicial Ethics Opinion

JE - 76

Formal Opinion

Question #1: May an assistant county attorney serve as domestic relations commissioner?

Answer #1: No.

Question #2: If the assistant county attorney may not serve as domestic relations commissioner, would the prohibition be avoided in a county where the county attorney's office did not handle any criminal complaints for non-support nor the IVD program for collecting child support?

Answer #2: No.

Question #3: Must the domestic relations commissioner disqualify if attorneys with whom she shares office space appear before her?

Answer #3: Yes.

Question #4: If the domestic relations commissioner has deputies, may the deputies hear cases in which attorneys sharing office space with the domestic relations commissioner are involved?

Answer #4: Yes.

Question #5: May an attorney who shares office space with the domestic relations commissioner be in charge of the child support collection office in that county?

Answer #5: Yes.

I. THE OFFICES OF JUDGE AND
PROSECUTOR MAY NOT BE HELD
BY THE SAME PERSON.

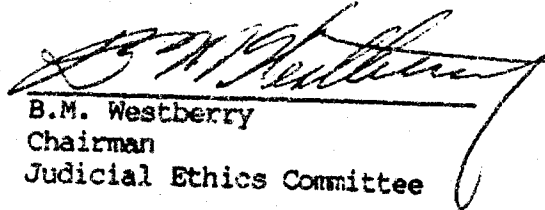
Corpus Juris Secundum, in its discussion of incompatible offices states that the issue is "whether the occupancy of both offices is detrimental to the public interest...." 67 C.J.S. Officers § 27 (1978). E. McQuillan states that two offices are incompatible where their functions are "inherently inconsistent or repugnant." 3 E. McQuillan, The Law of Municipal Corporations § 12.67 (1982). While there is no statutory or constitutional incompatibility of the offices of county attorney and domestic relations commissioner in Kentucky, we believe the simultaneous holding of the offices of prosecutor and judge violates the appearance of impropriety. See People v. Rapsey, 107 P.2d 388 (Cal. 1940) in which it was held that the same person could not hold the offices of city judge and city prosecutor at the same time.

II. A DOMESTIC RELATIONS COMMISSIONER
MUST DISQUALIFY WHEN ATTORNEYS WITH
WHOM SHE SHARES OFFICES APPEAR
BEFORE HER.

The Code does not speak to the issue as to whether a part-time judge must disqualify when attorneys with whom he shares offices appear before him. See SCR 4.300 Canon 3C. The Committee believes, however, that the general public cannot be expected to comprehend the difference between sharing office space and being together in a firm. Therefore, in order to avoid the appearance of impropriety, where the domestic relations commissioner shares a secretary and a library with other attorneys, she should disqualify whenever those attorneys appear before her. The necessity for disqualification would be removed, however, if the office was redesigned so as to have separate receptionists, separate waiting rooms and separate secretaries.

A narrow majority of the Committee believes that the deputies of the domestic relations commissioner, if not involved in the same office sharing arrangement, may hear those cases which the domestic relations commissioner may not hear.

The Committee also believes that the Code does not prohibit a domestic relations commissioner from sharing offices with the attorney in charge of child support collection because the attorney would not appear before the domestic relations commissioner.



B.M. Westberry
Chairman
Judicial Ethics Committee