

**KENTUCKY BAR ASSOCIATION**  
**Ethics Opinion KBA E-180**  
Issued: May 1978

***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 an attorney who is also a domestic relations trial commissioner for a judicial circuit accept employment by a client in a domestic relations matter in that circuit, which matter would then be heard by the circuit judge?

**Answer:** No.

**References:** Canon 9; DR 9-101(A)(C); Opinion KBA E-57 (1972), E-61 (1972)

### **Opinion**

The question which is presently before the Committee has been the subject of previous Ethics Opinions (E-57 (1972), E-61 (1972)). These opinions essentially state that an attorney who serves as a trial commissioner in a particular area of the law, e.g., criminal law or probate law, may not ethically represent clients in matters involving that area of the law in the courts of the same judicial circuit in which the attorney is acting as a judicial officer.

Canon 9 of the Code of Professional Responsibility provides that an attorney shall avoid even the appearance of impropriety. DR 9-101(A) specifically prohibits an attorney from accepting private employment in a matter in which he has taken action upon the merits while serving in a judicial capacity. The duties of a trial commissioner normally include the taking of all evidence and making findings of fact and recommendations of law to the court. DR 9-101(A) clearly prohibits an attorney from combining the responsibilities of trial commissioner and advocate in the same case since such conduct would give the appearance that the attorney was securing an unfair advantage before the court. In addition, acting in these dual capacities would violate the principles of the adversary system where parties are entitled to have their cases decided by an impartial arbiter.

Even if the attorney has not served as trial commissioner in a particular domestic relations case, he still may not ethically represent a client in that case in circuit court since the appearance of impropriety would continue to exist. The trial commissioner is appointed by the circuit judge and many members of the public might believe that persons represented by the trial commissioner would be able to obtain an unfair advantage thereby undermining the integrity and honor of the bench and bar. A lawyer

who serves as trial commissioner is reminded of DR 9-101(C) which provides: “A lawyer shall not state or imply that he is able to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official.”

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***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.*