

**JUDICIAL ETHICS AND LAWYER ETHICS**  
**FOR**  
**DOMESTIC RELATIONS COMMISSIONERS**

**June 2004**

**Continuing Judicial Education**  
**Administrative Office of the Courts**

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## COMMISSIONERS OF CIRCUIT COURTS

### KRS 31A.010: Master Commissioners

1. May be appointed for each County by the Circuit Court Judge.
2. Rules governing to be set by Supreme Court.
3. Serve at the pleasure of the Circuit Court.
4. Fees to be set by Supreme Court. However, Circuit Court may allow a reasonable fee for performance of judicial type functions in actions where Master Commissioner does not execute a judicial sale.
5. Chief Circuit Judge to determine office location and hours to be worked.
6. Shall perform functions as directed by Order of Circuit Court.
7. With approval of Chief Circuit Court Judge, Master Commissioner may have deputies and assistants
8. Supreme Court may make rules, regulations and accounting procedures regarding Trial Commissioners.

### CR 53: Commissioners of Circuit Courts

#### CR 53.01: Appointment and Deputies

1. Each Circuit Court may appoint a Master Commissioner and a Receiver as authorized by statute.
2. Subordinate Commissioners and Receivers may be appointed on express authority of Chief Justice.
3. Commissioner or Deputy Commissioner shall not hold other judicial office.
4. Commissioner or Deputy Commissioner may also serve as a District Court Trial Commissioner per SCR 5.010.
5. Master Commissioners shall qualified as attorneys, (as of January 1, 1989).

**CR 53.02: Judicial Sales, Settlements, Receiverships and Qualifications of Commissioner**

1. Judicial Sales.
  - A. Commissioner performing functions and appointed after December 31, 1977 shall be qualified or experience as a fiduciary.
2. Bills of discovery in civil matters may be referred to Commissioner qualified as an attorney.
3. Other references to Commissioners in special cases.
  - A. Cases deemed as special.
    1. Complexity of issues.
    2. Damages which are difficult to calculate.
    3. Multiplicity of claims the priority of which must be established.
    4. Matters of account involving conflicts on numerous transactions.
    5. Similar exceptional circumstances.
    6. Commissioner performing function shall be qualified as an attorney.

**CR 53.03: Domestic Relations Commissioners**

1. Appointment.
  - A. Domestic Relations Commissioner may be appointed for each Circuit by the Chief Circuit Judge.
  - B. Subordinate Commissioners may be appointed on express authority of Chief Justice.
  - C. Qualifications:
    1. Attorney for at least eight years unless otherwise authorized by Chief Justice.
    2. CLE regarding domestic relations law.



3. Attend domestic violence training program at least once every two years.
  4. Part-time Domestic Relations Commissioners and Deputies shall not otherwise engage in the practice of domestic relations law.
  5. Full time Domestic Relations Commissioners and Deputies shall not practice law.
- D. Referrals to Domestic Relations Commissioners.
1. Local Rules may provide for referrals.
  2. However, following must be addressed by Circuit Court.
    - a. Incarceration from finding of contempt after hearing before Court at which additional evidence may be heard and party is given opportunity to purge contempt.
    - b. Proceedings for Restraining Orders and Injunctions.
- E. Temporary child custody, child support and maintenance:
- F. Proceedings before Domestic Relations Commissioner.
1. All matters heard promptly.
  2. Orally, by deposition or by interrogatory.
  3. Indigent cases shall be heard without fee.
  4. Proceedings shall be reported or recorded.
- G. Local Rules:
1. Shall be approved by the Chief Justice.
  2. Shall be uniform in all divisions of the Circuit Court within each County of each Circuit.

**CR 53.04: Powers of Commissioner**

1. Order of reference or Local Rules may specify or limit powers.

2. Subject to such limitations, Domestic Relations Commissioner shall:
  - A. Do all actions and take all measures necessary to perform duties.
  - B. May require production of evidence “embraced” in the reference.
  - C. May rule upon the admissibility of evidence unless otherwise directed by Order of reference.
  - D. May put witnesses under oath.
  - F. May examine witnesses.
  - G. May call the parties and exam them under oath.
  - H. When requested by a party, shall make a record of the evidence offered and excluded subject to the same limitation of CR 43.10, (Court sitting without a jury).

**SCR 53.05: Proceedings**

1. **Meetings.**
  - A. Clerk to provide Order of Reference to Commissioner unless automatic reference.
  - B. Commissioner to forthwith set time for first meeting of parties or their attorneys within 20 days after the date of the Order unless otherwise provided.
  - C. Commissioner to proceed with all reasonable diligence.
  - D. Parties may apply to the Court for an Order requiring Commissioner to speed the proceedings and to make report.
  - E. Commissioner may proceed ex parte or, in his discretion, adjourn proceedings to another date if a party is absent.
2. **Witnesses.**
  - A. Parties may obtain subpoenas pursuant to CR 45 for Commissioner’s hearing.
  - B. Absent witness subject to provisions of CR 37 and CR 45.

3. **Statement of Accounts.** (When matters of accounting are in issue).
  - A. Commissioner may prescribe form in which accounts shall be submitted.
  - B. Commissioner may require or receive in evidence statement by a CPA called as a witness.
  - C. If party objects, or on showing that statement is insufficient, Commissioner may require a different form of statement or provide for oral examination.

## **CR 53.06: Report**

1. **Contents of Report.**
  - A. Commissioner shall prepare report of recommendation and, if required, make findings of fact and conclusions of law.
  
2. **Filing of Report.**
  - A. Commissioner shall file report and sufficient copies of all parties with the Court Clerk.
  - B. Court Clerk shall forthwith serve Report and Notice of Filing on all parties who appeared in action.
  - C. Transcript of proceedings may be ordered by any party at that party's expense.
  - D. If proceedings recorded by videotape, untranscribed tape shall be the official record.
  
3. **Action on Report.**
  - A. Within 10 days after service of Notice of Filing, any may file written Objections.
  - B. Parties may apply to Court for action on Report and on any objections thereto.
  - C. Court, after hearing objections, may:
    1. Adopt the Report.
    2. Modify the Report.
    3. Reject the Report, in whole or in part.
    4. Receive further evidence, or
    5. Send matter back to the Commissioner with instructions.

4. **Stipulation as to Findings.**

- A. When parties stipulate that Commissioner's Findings of Fact shall be final, only questions of law arising from the Report may be considered.

5. **Draft Report.**

- A. Commissioner may submit draft report for comment by parties.

6. **Report as Security.**

- A. Commissioner shall not retain his report as security for compensation.
- B. Commissioner entitled to writ of execution against party responsible for compensation.
- C. Court shall act promptly on the Report.

**CR 53.07: Compensation of Trial Commissioner.**

1. By fee charged on the parties or paid out of any fund or subject matter of the action which is in the custody or control of the Circuit Court.
2. Deputies and other assistants shall be compensated from same source.
3. Rate of compensation shall be fixed by schedule established by Supreme Court.

**CR 53.08: Limit on Compensation.**

1. Unless approved by Chief Justice, Domestic Relations Commissioners' and Master Commissioners' total compensation may not exceed \$48,000.00 per year.
2. If Master Commissioner also serves as Domestic Relations Commissioner, total compensation shall not exceed \$72,000.00 per year, unless higher amount approved by Chief Justice.
3. Fees in excess of Commissioner, office expenses and staff salaries shall be remitted per CR 53.09, however three months of expenses may be retained.

**CR 53.09: Accounting by Trial Commissioner.**

1. Accounting made to Circuit Court.

2. Manner of accounting shall be as directed by Circuit Court. Commissioner shall maintain current record of each case in which a fee has been received.
  - A. Commissioner shall provide each year a complete accounting of all monies received and distributed and all fees collected, to the Finance and Administration Cabinet.
  - B. Excess fees referred to in CR 53.08 shall be remitted with the annual report.
  - C. Copy of report shall be provided to the Administrative Office of the Courts at the same time the Report is filed with the Finance and Administration Cabinet.

## KENTUCKY CODE OF JUDICIAL CONDUCT

### Preamble

Commentary is not intended as a statement of additional Rules.

- “**Shall**”:  
Binding obligation, the violation of which can result in disciplinary action.
- “**Should**”:  
Statement of what is or is not appropriate conduct but is not a binding Rule under which a Judge may be disciplined.
- “**May**”:  
Permissible discretion or, depending on the context, refers to action that is not covered by specific proscriptions.

### Terminology (selected terms)

- “**Knowingly**”:  
Actual knowledge of the question in fact.”  
However, a person’s “knowledge may be inferred from circumstances.”
- “**Require**”:  
Judge being required to take certain action regarding the conduct of others, is a “rule of reason.”
- The Judge will have satisfied this obligation by exercising reasonable direction and control over the conduct of such persons.

### Part-Time Judge

#### SCR 4.300: Application of Code of Judicial Conduct to Part-Time Judges

##### Elements to Determine Who Is a Part-Time Judge

1. Serves on a continuing or periodic basis;
2. Permitted by law to devote time to some other professional or occupation; and
3. Compensation for that reason is less than a full-time Judge.

## **Judicial Canons Which Do Not Apply to Part-Time Judges**

Part-Time Judge may serve as:

1. Officer, director, manager, general partner, advisor or employee of any business entity.
2. Personal representative of a decedent's estate, trustee, guardian, attorney-in-fact or other fiduciary.
3. Arbitrator or a mediator.

Part-time Judge may practice law, otherwise prohibited by Canon 4G.

However, part-time Judge should not practice law:

1. In the Court in which the Judge serves or any Court subject to an Appellate jurisdiction of the Court in which the Judge serves.
2. In a proceeding in which the Judge has served as a Judge or in any other proceedings related thereto.
3. Trial Commissioner of District Court or Commissioner of Circuit Court may practice in the Court in which the person is a Commissioner so long as person does not take any action as Commissioner regarding the matter or matters in which the person practices as an attorney.



## **Overview of Kentucky Code of Judicial Conduct**

Code of Judicial Conduct may be generally summarized as follows:

1. Broad language.
2. In some instances, language bordering on aspirational.
3. Some “bright line” rules.

**Canon 1: Uphold Integrity and Independence of the Judiciary.** (JC 1)

**Canon 2: Avoid Impropriety and the Appearance of Impropriety in All of Judge's Activities.**

1. Judge shall promote public confidence in the integrity and impartiality of the judiciary. (JC 2A)
2. Judge may lend prestige of office to advance public interest in the administration of justice. (JC 2B)
3. Judge may actively support public agencies or interests or testify voluntarily on public matters concerning the law, legal system, etc. (JC 2C)
4. Judge shall not: (JC 2D)
  - A. Allow family, social, political or other relationships to impair the Judge's objectivity.
  - B. Lend prestige of judicial office to advance private interests of the Judge or others.
  - C. Convey or permit others to convey the impression that they are in a special position to influence the Judge.
  - D. Testify voluntarily as a character witness.
  - E. Hold membership in any organization that practices "invidious discrimination" on the basis of race, sex, religion or national origin. (JC 2E)
    1. However, organizations which do not stigmatize any excluded person as inferior and therefore unworthy of membership are not considered to discriminate invidiously.

**Canon 3: Perform Duties of Judicial Office Impartially and Diligently.**

Duties take precedence over all of the Judge's other activities. (JC 3A)

1. **Adjudicative Responsibilities** (JC 3B)

A. Judge shall hear and decide cases unless disqualification is required.

B. Judge shall:

1. Be faithful to the law and maintain professional competence.

2. Not be swayed by "partisan interests, public clamor or fear of criticism."

3. Require order and decorum in Court.

4. Be "patient, dignified and courteous."

5. Require similar conduct of lawyers, staff, Court officials, and others under Judge's direction and control.

6. Perform duties without bias or prejudice.

7. Require lawyers to refrain by word or conduct, bias or prejudice when bias or prejudice are issues in the proceeding.

8. Accord every person who has legal interest in proceeding or person's lawyer the right to be heard.

9. Not initiate, permit or consider ex parte communications with attorneys or parties except:

a. Administrative purposes which do not deal with substantive matters or issues on the merits provide:

(1) Judge reasonably believes no party will gain procedural or tactical advantage; and

(2) Judge promptly notifies all parties of the substance of the ex parte communication and allows opportunity to respond.

- b. As part of legal research, obtains advice of disinterested expert on the law.
  - c. May consult with Court personnel.
  - d. With consent of the parties, confer separately with the parties and their lawyers in an effort to mediator or settle the case.
  - e. When expressly authorized by law to do so.
10. Dispose of all judicial matters promptly, efficiently and fairly.
11. Not while case pending or impending make:
- a. Any public comment that might reasonably be expected to effect its outcome or impair its fairness; or
  - b. Any non-public comment that might substantially interfere with the fair trial or hearing.

However, Judge may make public statements in the course of their official duties or explain public information about the procedures of the Court.

Section does not apply to proceedings where Judge is a litigant in a personal capacity.

12. Not commend or criticize jurors for their verdict other than in a Court Order or Opinion. Judge may express appreciation of jurors for their service to the judicial system and community.
13. Not disclose or use for any non-judicial purpose, non-public information acquired in a judicial capacity.

2. **Administrative Responsibilities** (JC 3C)

A. Judge shall:

- 1. Perform without bias or prejudice, maintain professional confidence and cooperate with other Judges and Court officials.
- 2. Require staff and those subject to his direction and control to observe same standards of fidelity and diligence which apply to the Judge.

3. Take reasonable measures to assure prompt handling and proper performance by any supervised Judges.
4. Not make unnecessary appointments, and exercise appointment power impartially and on basis of merit.
5. Avoid nepotism and favoritism.
6. Not approve compensation beyond fair value of services.

3. **Disciplinary Responsibilities** (JC 3D)

A. **Other Judges:**

1. Judge who receives information indicating substantial likelihood that another Judge has committed a violation of Code, should take appropriate action.
2. Judge having knowledge that another Judge has committed a violation of the Code which raises a substantial question as to the other Judge's fitness for office, should inform the appropriate authority.

B. **Attorneys:**

1. Judge receives information indicating a substantial likelihood that a lawyer has committed a violation of the Kentucky Rules of Professional Conduct should take appropriate action.
2. Judge having knowledge that a lawyer has committed a violation of the Kentucky Rules of Professional Conduct which raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, should inform the appropriate authority.

3. Judge who acts in good faith is immune from any civil or criminal action.

4. **Disqualification** (JC 3E)

- A. Judge shall disqualify himself in proceedings in which the Judge's impartiality might reasonably be questioned, including but not limited to the following instances:

1. Personal bias or prejudice concerning a party or party's lawyer.
2. Personal knowledge of disputed evidentiary facts concerning the proceeding.
3. Judge served as a lawyer in the matter.
4. Lawyer with whom the Judge previously practiced law served as a lawyer concerning the matter.
5. Judge has been a material witness concerning matter.
6. Judge knows that he, individually or as fiduciary, or Judge's:
  - a. Spouse,
  - b. Parent,
  - c. Minor child residing in the Judge's house,has a more than de minimis interest in the subject matter or any party to the proceedings which could be substantially affected by the proceedings.
7. Judge, Judge's spouse, or person within the third degree of relationship to either of them, or the spouse of such person:
  - a. Party to the proceedings, or an officer, director or trustee of a party,
  - b. Lawyer in the proceedings,
  - c. Known by the Judge to have a more than de minimis interest that could be substantially affected by the proceedings.
  - d. Judge's knowledge likely to be a material witness in the proceedings.

5. **Ongoing Obligation:**

A. **Judge shall:**

1. Keep informed about his personal and fiduciary economic interests.

2. Make a reasonable effort to keep informed about the personal economic interests of Judge's spouse and minor children residing in Judge's household.

6. **Remittal of Disqualification** (JC 3F)

A. If Judge is disqualified under Section 3E, Judge may:

1. Disclose on the record the basis for disqualification;
2. Ask the parties and their lawyers to consider, out of the presence of the Judge, whether they waive disqualification; and
3. Thereafter, if parties and lawyers agree that Judge should not be disqualified, and Judge is willing to participate, Judge may participate after agreement signed by all parties and lawyers is incorporated in the record of the proceedings.

**Canon 4: Extra-Activities to Be Conducted to Minimize the Risk of Conflict with Judicial Obligations.**

Extra-Judicial activities should not: (JC 4A)

- A. Cast reasonable doubt on a Judge's capacity to act impartially as a Judge.
- B. Demean the judicial office.
- C. Interfere with the proper performance of judicial duties.

1. **Avocational Activities:** (JC 4B)

- A. Judge may:
  - 1. Speak,
  - 2. Write,
  - 3. Lecture,
  - 4. Teach,
  - 5. Participate in other extra-judicial activities,

concerning the law, legal system, administration of justice and non-legal subjects, subject to the Code.

2. **Governmental, Civic or Charitable Activities.**

- A. Judge shall not: (JC 4C)
  - 1. Appear at a public hearing before or otherwise consult with an executive or legislative body or official except regarding matters concerning the law, etc., except when Judge is acting pro se in matters involving the Judge or the Judge's interests.
  - 2. Accept appointment to a governmental committee or concerned with issues of fact or policy on matters other than the improvement of law, etc.
- B. Judge may accept appointment to a governmental committee or commission where a judicial appointment is authorized or required by law.



- C. Judge may represent a country, State or locality on ceremonial occasions or in connection with historical, educational or cultural activities.
- D. Judge may serve as an officer, director or trustee or a non-legal advisor of an organization or governmental agency devoted to the improvement of law, etc., or a not-for-profit educational, religious, charitable, fraternal or civic organization, subject to the limitations and requirements of the Code.
- E. Judge shall not serve as an officer, director, trustee or a non-legal advisor if it is likely that the organization:
  - 1. Will be engaged in proceedings that would ordinarily come before the Judge.
  - 2. Will be engaged frequently in adversary proceedings in the Court in which the Judge is a member or in any Court subject to the appellate jurisdiction of the Court of which the Judge is a member.
  - 3. By reason of organization's purpose, will have a substantial interest in other proceedings in the Court in which the Judge is a member or in any Court subject to the appellate jurisdiction of the Judge's Court.
- F. Judge as an officer, director, trustee or non-legal advisor, or a member, or otherwise:
  - 1. May assist organization in planning fund raising and management and investment of organization's funds.
    - a. However, Judge may not personally participate in any fund raising activities.
    - b. Judge may make recommendations to public and private-fund granting organizations on projects and programs concerning the law, etc.
- G. Judge shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or if the membership solicitation is essentially a fund raising mechanism.
- H. Judge shall not use or permit the use of the prestige of the judicial office for fund raising or membership solicitation.

3. **Financial Activities** (JC 4D)

A. Judge shall not engage in financial or business dealings that:

1. May reasonably be perceived to exploit the Judge's judicial position.
2. Involve the Judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the Judge's Court.

B. **Investments:**

Judge may hold and manage investments of the Judge and members of the Judge's family, including real estate and engage in other remunerative activity, subject to the requirements of the Code.

1. However, Judge shall not be involved in any business entity:
  - a. Generally held in disrepute in the community.
  - b. Likely to be engaged in proceedings that would ordinarily come before the Judge.
  - c. Likely to be engaged frequently in adversary proceedings in the Court of which the Judge is a member or any Court subject to the appellate jurisdiction of the Judge's Court.
2. Judge involved in such business activity may assist business in planning fund raising and may participate in management and investment of business' funds:
  - a. However, Judge shall not personally participate in:
    - (1) solicitation of funds;
    - (2) raising of capital;
    - (3) selling of stock;

in such a manner as to use or permit the use of the prestige of judicial office for the promotion of the business activity.

C. **Disqualification:**

1. Judge shall manage his investments and other financial interests to minimize the number of cases in which the Judge is disqualified.
  - a. As soon as Judge may do so without serious financial detriment, Judge should divest himself of investments and other financial interests which could require frequent disqualification.

D. **Gifts:**

1. Judge shall not accept, and shall urge members of the Judge's family living in his household to not accept a gift, bequest, favor or loan from anyone except:
  - a. Gift incident to a public testimonial.
  - b. Resource materials supplied by publishers on the complimentary basis for official use.
  - c. Invitation to attend a Bar-related function or an activity devoted to the improvement of the law, etc.
  - d. Gift, award or benefit incident to the business, profession or other separate activity of a spouse or other family member of the Judge residing in the Judge's household, provided that the gift, etc., could not reasonably be perceived as intended to influence the Judge.
  - e. "Ordinary social hospitality or customary expressions of sympathy."
  - f. Gift from a relative or friend for a special occasion if the gift is fairly commensurate with the occasion and the relationship.
  - g. Gift, bequest, favor or loan from a relative or close friend whose appearance or interest in a case would in any event require disqualification under Section 3E.
  - h. Loan from a lending institution in its regular course of business on the same terms generally available to persons who are not Judges.

- i. Scholarship or fellowship awarded on the same terms and basis as the same criteria applied to other applicants.
- j. Any other gift, bequest, favor or loan, only if the donor is not a party who has come or is likely to come, or whose interests have come or likely to come, before the Judge.

4. **Fiduciary Activities** (JC 4E)

- A. Judge shall not serve as personal representative of decedent's estate or trustee, guardian, attorney-in-fact, or other fiduciary except for estate, trust or person of member of Judge's family and only if such service will not interfere with the proper performance of judicial duties.
- B. Judge shall not serve as fiduciary if it is likely that the fiduciary will be engaged in proceedings that would ordinarily come before the Judge or if the estate, trust, or award becomes involved in adversary proceedings in the Court on which the Judge serves or one under its appellate jurisdiction.
- C. Restrictions which apply to Judge's personal financial activities also apply to Judge while acting in a fiduciary capacity.

5. **Arbitrator or Mediator** (JC 4F)

- A. Judge shall not act as arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law.

6. **Practice of Law** (JC 4G)

- A. Judge shall not practice law.
- B. Judge may act pro se.
- C. Judge may, without compensation, give legal advise to, and draft or review documents for, a member of the Judge's family.

7. **Compensation, Reimbursement and Reporting** (JC 4H)

- A. Compensation and Reimbursement

All candidates for judicial office and Judges shall comply with KRS 61.710 et seq.

8. Disclosure of Judge's Income, Debts, Investments and Other Assets is required only as provided for in the Canon, Sections 3E and 3F, or as otherwise required by law.

**Canon 5: Judge or Judicial Candidate Shall Refrain from Inappropriate Political Activity.**

1. **Political conduct in general.** (JC 5A)

A. Judge or judicial candidate for judicial office shall not:

1. Act as a leader or hold any office in a political organization.
2. Make speeches for or against a political organization or candidate.
3. Publically endorse or oppose a candidate for public office.
4. Solicit funds for or pay assessment or make contribution to a political organization or candidate, except for purchasing tickets to political gatherings for the Judge or candidate and one guest.

B. Judge or judicial candidate for election into judicial office:

1. May purchase tickets to political gatherings for the Judge or candidate and one guest.
2. May attend political gatherings.
3. May speak at such gatherings on the Judge's or candidate's own behalf.
4. Shall not identify himself or herself as a member of a political party in any form of advertising or when speaking to a gathering.
5. May identify himself or herself as a member of a particular political party, if:
  - a. question not initiated by the Judge or candidate, and
  - b. only in answer to a direct question.
6. Shall resign if he becomes a candidate for a non-judicial office.

- a. However, Judge may continue to hold judicial office while being a candidate or serving as a delegate to, a State Constitutional Convention, if otherwise permitted by law.
  - 7. Shall not engage in any other political activity.
    - a. Except on behalf of measures to improve the law, legal system or administration of justice, as provided for in Canon 2B and 2C.
- 2. **Campaign Conduct.** (JC 5B)
  - A. Judge or judicial candidate for election to judicial office:
    - 1. Shall maintain dignity appropriate to judicial office.
    - 2. Shall encourage members of the candidate’s family to adhere to the same standards of political conduct as the Judge or candidate.
    - 3. Shall prohibit public officials or employees subject to his direction and control from doing what the candidate is prohibitive from doing under this Canon.
    - 4. Should not allow any other person to do for the candidate what the candidate is prohibited from doing under this Canon:
      - a. Except campaign committees for Judge or judicial candidate may solicit campaign funds.
    - 5. “Shall not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office.”
    - 6. “Shall not make statements that commit or appear to commit the candidate with respect to cases, controversies, or issues that are likely to come before the Court.”
    - 7. Shall not misrepresent any other candidate’s identity, qualifications, present position or other facts.
    - 8. Shall file the report required of candidates pursuant to KRS 61.710 et seq.
  - B. Judge or judicial candidate shall not solicit campaign funds.

1. However, Judge or judicial candidate may establish Committee to:
  - a. Secure and manage expenditure of campaign funds.
  - b. Obtain public statements of support for the candidate.
- C. Committee may solicit funds no earlier than 180 days before a primary election.
- D. Committee may not solicit funds after a general election.
  1. Candidate shall not use or permit the use of campaign contributions for the private benefit of him or his family.

## JUDICIAL ETHICS COMMITTEE

### SCR 4.310

#### Judicial Ethics Committee

1. Five members:
  - A. Judge from the Court of Appeals.
  - B. Judge from the Circuit Court.
  - C. Judge from the District Court.
  - D. Two members of the KBA appointed by the Board of Governors.
2. No members may also a member of the Judicial Conduct Commission.
3. Four year terms.

#### Judicial Ethics Opinions

1. Opinion regarding propriety of any action or conduct for construction or applications of the Canons.
  - A. Any Justice, Judge or Trial Commissioner may request Opinion.
  - B. Informal Ethics Opinion.
    1. If Committee finds question is of limited significance.
  - C. Formal Ethics Opinion
    1. If Committee finds question of “sufficient public interest and importance.”
    2. Committee may issue formal Opinions on its Motion.
  - D. Informal and Formal Opinions are advisory only.
    1. However, Commission and Supreme Court shall consider reliance by Judge upon that Opinion.



E. Judicial review of formal ethics Opinion by Supreme Court.

**Opinions on the Internet**

1. Opinions available on-line.
2. Court of Justice website, State Library section.
3. By Party Affected: Within 30 days after end of the month in which the Opinion was published.
4. By Supreme Court: At any time. (Per Amendment effective January 1, 2004).

## **JUDICIAL CONDUCT COMMISSION**

**Created by Kentucky Constitution §121**

SCR 4.000 et seq.

Information Pamphlet: Complaints about Judicial Conduct

Decisions of Judicial Conduct Commission subject to judicial review by the Supreme Court per Kentucky Constitution §121.

## **PARTICULAR TOPICS**

- I. Misuse of office.
- II. Limitations on law practice.
- III. Law practice requiring disqualification.
- IV. Business and financial activities.
- V. Political Activities.
- VI. Disqualification.

## **I. MISUSE OF OFFICE**

Pursuant to Canon 2B, judicial decisions should be based on the merits and should not benefit a client.

Improper use of prestige of office.

### **Prohibited Conduct**

Asking of favors:

- Other Judges
- Court personnel
- County Attorney/Commonwealth's attorney
- Police/Sheriff/Law Enforcement

Advancing Judge's law practice

Examples:

- Letterhead stationery
- Identifying Judge on public announcements of law firm
- Insisting persons refer to Judge as "Judge" in private practice

## II. LIMITATIONS ON LAW PRACTICE

### Judicial Ethics Opinions

**JE-17:** Trial Commissioner, subject to limitation of SCR 5.060, may represent a client in litigation against the Commonwealth of Kentucky.

-Committee disagrees with KBA E-214 rendered before creation of Committee.

-KBA, in E-214, held Trial Commissioner may not represent a party bringing suit against the Commonwealth.

**JE-20:** Master Commissioner who hears domestic relations matters may practice non-related domestic relations cases in a county where there is no other attorney willing to accept appointment as a Special Commissioner.

-However, Commissioner may not take any action as Commissioner regarding any case in which he practices as an attorney.

-NOTE: "matter or matters" refers to particular cases and not types of cases.

**JE-22:** Attorney employed by City may serve as Trial Commissioner subject to limitations of SCR 5.060.

**JE-33:** Domestic Relations Commissioner for two counties of a three county judicial circuit may represent domestic relations clients in the third county.

-Domestic Relations Commissioner has no power to act as a Commissioner in the third county.

**JE-54:** Trial Commissioner may not engage in the private practice of law out of his Trial Commissioner's office provided in the Courthouse for the Judge and/or the Trial Commissioner.

### Appearance of Impropriety Problem

**JE-61:** Master Commissioner and his law partners may practice before the Judge who appointed him Master Commissioner.

-However, law partners may not practice before the Master Commissioner.

**JE-68:** Master Commissioner may be appointed as a Domestic Relations Commissioner if he forfeits his domestic relations' law practice in the Circuit in which he is a Commissioner and does not sit as a Domestic Relations Commissioner in any case in which his law firm is involved.

**JE-76:** Assistant County Attorney may not serve as a Domestic Relations Commissioner.

**Dixon v. Commonwealth**, Ky., 890 S.W.2d 629 (1994). Search warrant signed by Trial Commissioner was invalid as not having been issued by a "neutral and detached magistrate." County Attorney and Trial Commissioner were partners in the practice of law. Although County Attorney/law partner did not request search warrant from Trial Commissioner/law partner, their association gave rise to the appearance of impropriety.

### **III. LAW PRACTICE REQUIRING DISQUALIFICATION**

#### **Case in which Current Client is a Party**

1. Disqualification required.
2. JE-70

#### **Case in which Current Client is a Witness**

1. Disqualification required.

#### **Case in which Former Client is Party, Witness or Attorney**

1. Disqualification not automatic.
2. Disqualification determined on a fact-based analysis.

#### **When a Client is a “Former” Client?**

1. Factors to consider include.
  - A. Number of times the Judge represented the former client.
  - B. Amount of work the Judge performed for the client.
  - C. Amount of the fee.
  - D. Whether representation was routine or involved morality of client’s conduct.
  - E. Duration of attorney/client relationship.
  - F. Existence of social relationship between the Judge and the former client.
  - G. Any special circumstances which would create a likely appearance of impropriety.

#### **Case in which Party is an Adverse Party in a Case Handled in the Judge’s Law Practice**

1. Disqualification required.

**Case in which Party is Represented by Attorney Affiliated with the Judge in his Law Practice**

1. Disqualification required.
2. Types of affiliation.
  - A. Partner
  - B. Associates
  - C. “of Counsel” Lawyer
  - D. Office sharing
  - E. Fee-sharing
  - F. -Co-Counsel

**Judicial Ethics Opinions**

**JE-43:** Partner of a Trial Commissioner may not appear in a case in which the Trial Commissioner is involved.

-However, partner of Trial Commissioner may appear in Trial Commissioner’s Court if Trial Commissioner is not involved.

-Since Trial Commissioner himself can practice in his Court, if he was not involved, no objection as to partner so practicing.

**JE-44:** Partner of Trial Commissioner may practice in Trial Commissioner’s Court but not in cases in which Trial Commissioner/partner presides. In those cases, Trial Commissioner should disqualify himself.

-Limitation in SCR 5.060 to Trial Commissioner not “personally” engaged in the practice of criminal law in the District Court in the district where he serves as a Trial Commissioner, only applies to the Trial Commissioner and not to his partners and associates.



**JE-47:** Trial Commissioner must disqualify himself in all cases in which the County Attorney, his law partner, appears in either civil or criminal cases.

-However, in an emergency situation where the failure to act would result in a frustration of the criminal judicial process, the Trial Commissioner may act.

-Fact that Partnership was only for civil matters was irrelevant.

-Committee followed reasoning of KBA E-214 in which KBA held that an attorney should not appear before a Commissioner where the attorney and the Commissioner are engaged as partners, in any form, in the practice of law.

-Appearance of Impropriety Problem.

**JE-49:** Even though Master Commissioner is only selling the property, the Master Commissioner would be disqualified if a member of his law firm represents either a Plaintiff or Defendant in that lawsuit.

-Appearance of Impropriety Problem.

**JE-76:** Domestic Relations Commissioner must disqualify himself if attorneys with whom she shares office space appears before her.

-However, Deputy Domestic Relations Commissioners may hear cases in which attorneys sharing office space with the Domestic Relations Commissioner are involved.

-Committee notes that general public cannot be expected to comprehend the difference between sharing office space and being in a firm.

#### IV. BUSINESS AND FINANCIAL ACTIVITIES

##### Judicial Ethics Opinions

**JE-37:** Person serving as member of Alcohol Beverage Control Board may also serve as Domestic Relations Commissioner.

-Example of conduct which a part-time Judge may undertake, which may not be undertaken by a full-time Judge.

**JE-56:** Master Commissioner who is stockholder in a bank is disqualified from handling foreclosure suits involving that bank.

-Trial Commissioner's financial interest in a party to the proceeding requires disqualification.

## V. POLITICAL ACTIVITIES

- JE-18:** Master Commissioner must resign if he becomes a candidate for the Office of County Attorney, a non-judicial office.
- JE-23:** Commissioner must resign when he becomes a candidate for a non-judicial office.
- However, resignation not required if he is seeking a judicial office.
  - Prohibition does not require disqualification before Commissioner may conduct preliminary surveys of financial and voter support to determine if he has a realistic chance of election.
  - Once decision to run has been made, he must resign when he announces his intentions to the public, i.e., when his candidacy for a non-judicial office becomes generally known.
- JE-52:** Trial Commissioner may not serve as a campaign treasurer to for a judicial candidate.
- This would constitute a public endorsement of a political candidate.
- JE-58:** Master Commissioner, whose function is limited to conducting sales of property pursuant to Court judgment, may not hold office in a political party or be a candidate for election to non-judicial office and, Domestic Relations Commissioner may not hold office in a political party or be a candidate for election to a non-judicial office.
- JE-77:** Domestic Relations Commissioner may campaign for the adoption of a constitutional amendment. Campaigning for or against a constitutions amendment may be specifically permitted by Canon 4.

## VI. DISQUALIFICATION

### Judicial Canon 3E

1. Waiver of such disqualification, Judicial Code 3F.
2. **KRS 26A.015: Disqualification of Justice or Judge of the Court of Justice, or Master Commissioner.**
  - A. Justice, Judge or Master Commissioner shall disqualify himself where:
    1. Has a personal bias or prejudice against a party.
    2. Has personal knowledge of disputed evidentiary facts concerning the proceedings.
    3. Has expressed an opinion concerning the merits of the proceeding.
    4. When in private practice or government service, he served as a lawyer or rendered a legal opinion in the matter in controversy.
    5. Lawyer with whom previously practiced, during such association, was a lawyer concerning the matter in controversy.
    6. Judge has been a material witness.
    7. Judge knows he, individually or as a fiduciary, or a spouse or minor child residing in his house, has a pecuniary or propriety interest in the subject matter in controversy or in a party to the proceeding.
    8. He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such person:
      - a. Party to the proceeding or officer, director or trustee of a party.
      - b. Acting as a layer in the proceeding and disqualification is not waived by stipulation of counsel filed in case.
      - c. Known by the Judge or Master Commissioner to have an interest that could be substantially effected by the outcome of the proceeding.

- d. The knowledge of the Judge or Master Commissioner is likely to be a material witness in the proceeding.
- 9. Has knowledge of any other circumstance in which his impartiality might reasonably be questioned.
- 3. Any Judge or Justice disqualified shall be replaced by the Chief Justice.
- 4. Any Master Commissioner disqualified shall be replaced by the Trial Court.

**KRS 26A.020: Designation of Retired Justice or Judge as Special Judge**

- 1. Summary proceeding for making direct request to Chief Justice for Disqualification of Circuit Judge or a District Court Judge.
- 2. Under express language of statute, would not apply to a Court of Appeals Judge, Supreme Court Justice, or a Commissioner.

## LEGAL ETHICS

### SCR 3.130-1.12: Former Judge or Arbitrator

Part of the Kentucky Rules of Professional Conduct applicable to attorneys.

#### Summary of Provisions:

1. Lawyer may not represent anyone regarding a matter in which the lawyer participated personally or substantially as a Judge or law clerk of such a Judge, unless all parties consent after disclosure.
2. Lawyer shall not negotiate employment with any person involved as a party or an attorney in a matter in which the lawyer is participating personally and substantially as a Judge.
3. Lawyer serving as a law clerk to a Judge may negotiate employment with a party or attorney involved in a matter in which the clerk is participating personally and substantially.  
  
-However, lawyer must notify Judge.
4. If lawyer disqualified under numerical paragraph 1, all lawyers in law firm may knowingly undertake or continue representation in the matter unless:
  - A. Disqualified lawyer is screened from any participation in the matter and receives no part of the fee; and
  - B. Written notice is promptly given to the “appropriate tribunal” to enable it to determine compliance with the provisions of this Rule.
5. Arbitrator selected as a “partisan of a party” in a multi-member arbitration panel is not prohibited from subsequently representing that party.

#### KENTUCKY SUPREME COURT DECISIONS

**Kentucky Bar Association v. Bates**, Ky., 26 S.W.3d 788 (2000): Public reprimand for attorney/Trial Commissioner who signed Emergency Protective Order as Trial Commissioner in favor of client in divorce action.

**Kentucky Bar Association v. Fitzgerald**, Ky., 652 S.W.2d 77 (1983): Public reprimand for attorney who was retained in a case in which the attorney had previously acted as a Judge. Attorney had been previously privately reprimanded for the same type of conduct.

**Sanderson v. Ethics Committee of the Kentucky Judiciary**, Ky., 804 S.W.2d 10 (1991): JE-79 upheld. Person may not simultaneously hold the position of Domestic Relations Commissioner and Assistant County Attorney. Violation of Canon No. 2 of the Code of Judicial Conduct, which requires even the avoidance of the appearance of impropriety. Statement in JE-79 that the two offices are incompatible is not upheld.

**KBA ETHICS OPINIONS:**

**KBA E-20** (May 1964): Former Judge may represent a party in a case which was filed while he was Circuit Judge so long as he did not address the merits of the case, but only addressed “perfunctory Motions.”

**KBA E-41** (January 1971): Former Judge may represent a party in a contempt proceeding arising from the alleged violation of a judgment rendered by the former Judge as Judge.

**KBA E-214** (March 1979):

1. Lawyer appointed as Trial Commissioner may practice law before a Judge who appointed the lawyer.
2. Partner or association of Trial Commissioner may not practice before Trial Commissioner.
3. Lawyer may not serve as a Trial Commissioner and as an Assistant Commonwealth’s Attorney or Assistant County Attorney at the same time.
4. Lawyer may not serve as a Trial Commissioner at the same time a member of his firm serves as an Assistant Commonwealth Attorney or Assistant County Attorney.
5. Lawyer who is Trial Commissioner of a District Court may practice criminal law in the Circuit Court.
6. Trial Commissioner may not represent a party bringing in a suit against the Commonwealth of Kentucky.

A. NOTE: This last answer reversed by JE-17.

**KBA E-287** (May 1984): Neither former Judge nor his partners and associates may represent a party in a case, the merits of which the former Judge has acted as Judge.

**KBA E-301** (January 1985): Former Judge’s law firm may participate in a case in which the ex-Judge addressed the merits of the case, while Judge, if:

1. Parties consent; and
2. Effective mechanism established and approved by Court to screen the former Judge.

**KBA E-398** (March 1997): Lawyer, who practices in the area of employment and civil rights law, may serve as a hearing examiner for a city's Human Rights Commission and may continue to represent clients before the Human Right Commission in cases unrelated to the cases in which the lawyer participates or has participated as a hearing examiner.

NOTE: Judicial Ethics Committee declined jurisdiction on the ground that Hearing Officer of administrative body is not part of the judicial branch.

**KBA E-413** (May 2000): Master Commissioner may maintain IOLTA account for all transactions related to Master Commissioner duties.