

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-16
Issued: November 1963

Question: May a County Court Probate Commissioner appear to represent a client in a routine probate proceeding before the probate division of the County Court over which he occasionally presides as Judge *Pro Tempore*?

Answer: No.

OPINION

Is it improper for a County Court Probate Commissioner to appear representing a client in a routine probate proceeding, before the Probate Division of the County Court over which he occasionally presides as Judge *Pro Tempore*?

This question was considered by the Court of Appeals in *In re Kenton County Bar Assn.*, 314 Ky. 664, 236 S.W.2d 906 at page 909.

In answer to the question, "Is it improper for a lawyer to practice in a Court over which he occasionally presided as a Judge *Pro Tempore*" the opinion approved by the Court stated "However, if a lawyer accepts such temporary appointments frequently so that he may be identified in the minds of some people with the judicial position, he thereby disqualifies himself for further practice in that Court until that impression has been removed."

The question now submitted for answer involves more than the Kenton County Bar case. Here a new element is presented in that the lawyer not only serves occasionally as Judge *Pro Tempore*, but is also a County Court Probate Commissioner associated with the Court itself. As the opinion in the Kenton County Bar case stated, "... the propriety of such conduct depends on the nature and incidence of appointment."

Where any lawyer by the very nature of his appointment serves in a capacity which tends to associate him in the public mind as presiding over a Division of a Court, then he should not appear representing clients before that Division of the Court. If he accepts the benefits of the office, then he must also accept the limitations that go with the office.

It is the opinion of the Committee that the question must be answered in the affirmative and that such representation would be improper. The Committee considers that this opinion is applicable only to the representation of clients before the Probate Division of the County Court.

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). Note that the Rule provides: “Both informal and formal opinions shall be advisory only; however, no attorney shall be disciplined for any professional act on his part performed in compliance with an opinion furnished to him on his petition, provided his petition clearly, fairly, accurately and completely states his contemplated professional act.”