

## KENTUCKY BAR ASSOCIATION

### Ethics Opinion KBA E-79

Issued: November 1973

**Question:** May an attorney employed by the Department of Transportation for the Commonwealth of Kentucky, whose duties include matters involving eminent domain, Workmen's Compensation, reverse condemnation and the Board of Claims, ethically accept a part-time position as police judge in a city of the fourth class?

**Answer:** Yes

**References:** Canon 31

### OPINION

A district attorney for the Commonwealth of Kentucky wishes to accept a part-time position as police judge in a city of the fourth class. He advises that his duties as police judge would be conducted at night and would involve hearing minor traffic violations. As district attorney he is confined to matters concerning eminent domain, Workmen's Compensation, reverse condemnation and the Board of Claims. None of his duties are performed at the police court level. Under these circumstances he inquires whether there is any ethical prohibition against acceptance of the position. While the attorney has not so indicated, the Committee assumes in furnishing this opinion that there is nothing in the rules of his employment with the state which would forbid outside work of the type under consideration.

Canon 31 of the old Canons of Judicial Ethics provides that a judge who also engages in the practice of law is in a position of great delicacy and must be scrupulously careful to avoid conduct through which he utilizes or seems to utilize his judicial position to further his professional success. It is also clear from the Code of Professional Responsibility that an attorney may not accept employment that would require performance of inconsistent duties.

On the facts presented, the Committee finds nothing that would do violence to either standard. There is no inherent inconsistency in the two positions, and the attorney's duties as judge would not seem calculated to further his professional success. From the standpoint of appearances, it is unlikely that an attorney for the Department of Highways would be identified in the public mind with any duties normally associated with a city police court. Accordingly, we believe the attorney may ethically accept the position in question.

As a caveat, however, he would of course be expected to disqualify himself from acting as police judge in any matters coming within his area of responsibility as district attorney. The Committee also feels that he should refrain from acting in the event a litigant in any action being handled by him as district attorney appears before his court.

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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). 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."*