March 25, 1981

ATTORNEY GENERAL OPINION NO. 81-73

Mr. Jay Scott Emler
115 West Lincoln
Lindsborg, Kansas 67456

Re: Attorneys At Law -- Supreme Court Rules; Admission, Discipline, Disbarment -- Municipal Court Judge Serving as Defense Counsel in District Court

Courts -- Supreme Court Rules Relating to Judicial Conduct -- Municipal Court Judge Serving as Defense Counsel in District Court

Synopsis: A municipal court judge is not ethically barred from serving as criminal defense counsel in district court except in those cases on appeal from his or her municipal court. Cited herein: K.S.A. 1980 Supp. 7-125, 20-176.

Dear Mr. Emler:


The Kansas Supreme Court recently resolved this question in State v. Rice, 227 Kan. 416 (1980). In that case an allegation of conflict of interest and/or a possible violation of the Code of Professional Responsibility was raised because the defense counsel's partner was also a municipal court judge. The court noted that the Code generally precludes a lawyer from accepting employment if the lawyer's partner or associate would be disqualified from accepting that matter. However, the court concluded at Syllabus 4:
"Lawyers holding part-time positions as judges or prosecuting attorneys should not appear as counsel for defendants in criminal matters in the court in which they have responsibility. However, they may be far enough removed that they can appear in other courts, in which they have no substantial responsibility by reason of their government employment, as counsel for criminal defendants without giving an appearance of impropriety and without creating a conflict of interest."

Therefore, a municipal court judge may serve as a criminal defense counsel in district court without violating his or her professional duties except in matters appealed to district court from the municipal court.

Very truly yours,

ROBERT T. STEPHAN  
Attorney General of Kansas

Brenda L. Hoyt  
Assistant Attorney General

RTS:BJS:BLH:hle