



STATE OF KANSAS

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March 25, 1981

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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.

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Dear Mr. Emler:

You have requested our opinion regarding whether a municipal  
court judge may properly serve as defense counsel in district  
court without violating the Code of Judicial Conduct, K.S.A.  
1980 Supp. 20-176, or the Code of Professional Responsibility,  
K.S.A. 1980 Supp. 7-125.

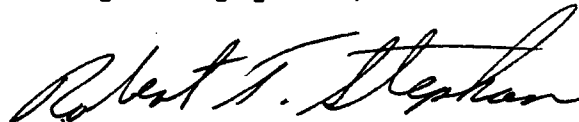
The Kansas Supreme Court recently resolved this question in  
State v. Rice, 227 Kan. 416 (1980). In that case an allegation  
of conflict of interest and/or a possible violation of the  
Code of Professional Responsibility was raised because the  
defense counsel's partner was also a municipal court 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:

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"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