
E-82-13 C/I: Criminal court commissioner and public defense work

The State Bar Professional Ethics Committee was asked for its opinion as to the propriety of certain conduct under the following statement of facts:

Facts

You are presently family court commissioner for the county in which you practice, and you are also city attorney for the city in which you practice. Your county has recently established a part-time court commissioner whose duties will primarily consist of presiding at initial appearances in all criminal actions and in both state and municipal forfeiture actions. Your partner engages in criminal defense work and both you and your partner are on the public defender's list for your county.

You ask that if you accept the appointment as criminal intake court commissioner:

1. Is your partner precluded from appearing in any action in which you have acted as court commissioner? Answer: Yes.
2. Is he precluded from representing defendants who have not appeared before you as court commissioner? Answer: No.
3. Are you precluded from representing defendants who have not appeared before you as court commissioner? Answer: No.
4. May either yourself or your partner act as defense attorney in criminal cases brought within other counties in the same judicial district? Answer: Yes.

Opinion

Section 757.22(3) provides that no practicing attorney may have his or her office in the same room (sic) with any district attorney, municipal judge or court commissioner unless he or she is a partner of the district attorney, municipal judge, or court commissioner, in which case he or she shall not practice as an attorney before the municipal judge or court commissioner.

Section 757.23 provides that a court commissioner shall not act or take part in the decision of or make any order in any matter or proceeding in which his or her law partner, or any person connected with him or her as an employer, employee, or clerk, or in the law business in any manner shall be interested or appear as party, agent, attorney, or counsel.

Consequently, your partner is not only prohibited from appearing before you, but in the committee's opinion is prohibited from appearing in any action in which you have acted as a court commissioner.