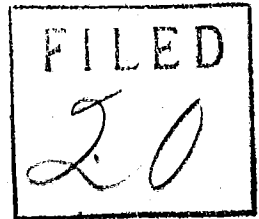


PROBATE CLERK: In counties wherein probate judge and magistrate judge are one, the probate and magistrate clerk may practice law in all courts except the probate and magistrate court.

October 29, 1946



11-15  
Honorable Marshall Craig  
Prosecuting Attorney  
Mississippi County  
Charleston, Missouri

Dear Sir:

Receipt of your recent request for an opinion from this department is hereby acknowledged. The question presented is whether or not, in counties wherein the probate judge is also judge of the magistrate court, the clerk of the probate and magistrate court may practice law in the other courts of such county.

Section 2024, R. S. No. 1939, referred to in your request, provides as follows:

"No judge of any court of record, except judges of the county courts, shall practice or act as counselor or attorney in any court within this state, except as otherwise permitted by law: Provided, that no such judge shall practice or act as counselor or attorney in any cause pending in any court of which he is judge, nor shall any clerk or deputy clerk, while he continues to act as such, plead, practice or act as counselor or attorney in any court within the county for which he is such clerk or deputy clerk, in his own name or in the name of any other person, under any pretense whatever." (Underscoring ours.)

The solution to your question depends upon whether or not the words "\* \* for which he is such clerk or deputy clerk \* \*" refer to the word "court" or the word "county." Of course,

each sentence, phrase, and word should be given some meaning if possible. *Norberg v. Montgomery*, 173 S. W. (2d) 387, 351 Mo. 180.

Section 2024, quoted supra, is found in Chapter 10, Article 1, R. S. Mo. 1939, and that particular chapter and article deal with the general powers and duties of courts of record. It is, therefore, apparent that the underscored portion of Section 2024 refers to the clerks of the various courts and not the clerks of the county. With that reference in mind, Section 2024 may be interpolated, in the present situation, to read that, the clerk of the probate and magistrate court, while he continues to act as such, may not plead, practice, or act as counselor or attorney in the probate and magistrate court within the county for which he is such clerk. This does not preclude him from practicing law in those other courts in the county for which he is not a clerk, which would, of course, include the circuit court.

In substantiation of this, Section 2026, R. S. Mo. 1939, provides:

"No judge, justice of the peace, clerk or deputy clerk of any court shall have any partner practicing in the court of which he is judge or justice, clerk or deputy clerk."

This is merely a further safeguard against the same evil. Section 2024, quoted supra, was originally enacted in the Laws of 1881, page 97, and was reenacted in the Revised Statutes of 1885, page 160, Section 54. Section 2026, quoted supra, was originally enacted in 1885 and is found first, along with the present Section 2024, R. S. Mo. 1939, in the Revised Statutes of 1885, page 160, as Section 55. Apparently, Section 2026, R. S. Mo. 1939, was intended to plug the loop-hole left by Section 2024. Therefore, these two sections may be read together to find the purpose of both. Following this purpose to its logical conclusion, the result would be that neither the clerk nor his partner could practice law in that court in which the clerk officiated. This further leads to the result that neither the clerk nor his partner should be precluded from practicing law in other courts of that county.

Conclusion

It is, therefore, the opinion of this department that in counties wherein the probate judge is also judge of the magistrate court, an attorney who is the clerk of the probate and magistrate court, shall not plead, practice, or act as counselor or attorney in any probate or magistrate court within the county for which he is such clerk while he continues to act as such. He may, however, practice law in any other court within the county.

Respectfully submitted,

J. MARTIN ANDERSON  
Assistant Attorney General

APPROVED:

---

J. E. TAYLOR  
Attorney General

JMA:EG