

# STATE OF KANSAS



FILED

Dec 5, 2024

ETHICS  
ADVISORY PANEL

## JUDICIAL ETHICS ADVISORY PANEL

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### JUDICIAL ETHICS OPINION 192

**DECEMBER 5, 2024**

A Kansas judge currently serves as a board member of a community organization which performs a variety of activities toward enhancing the availability and delivery of health and human services to citizens in the judge's county. The judge made it clear to the organization at the time of becoming a board member that the judge would not be able to provide legal advice to, nor solicit contributions for, the organization. The judge has been asked to serve on the organization's executive committee. The judge's service would be a multi-year commitment with consecutive annual terms as treasurer, vice-president and president. The judge seeks an opinion about the appropriateness under the Kansas Code of Judicial Conduct of making the multi-year commitment to the executive committee.

The timing of this request may pose a scheduling problem for the judge. The Judicial Ethics Advisory Panel (the Panel) received this request by email the afternoon of November 21, 2024. The Panel reviewed the request and met as quickly as possible knowing that a holiday occurred shortly after receipt of the opinion request. The judge advised the Panel that the community organization may need her decision about participation during the first week of December. The judge also advised that if timing was an issue, it was possible for the judge to defer joining the executive committee for another year.

### **BACKGROUND**

Generally, opinion requests include research and explanation by a judge about how and/or why a judge believes particular conduct complies with the Kansas Code of Judicial Conduct. The judge provided information about the organization, the judge's current involvement in the organization, steps the judge has already taken as a board member, and steps the judge will take as a member of the executive committee to comply with the law and the Kansas Code of Judicial Conduct. The judge provided a statement that the judge reviewed prior Judicial Ethics Advisory Opinions and believes the judge could serve on the organization's executive committee. There were no specific references to the Code of Judicial Conduct. Further, it is not clear from the opinion request whether or not the community organization is a not-for-profit entity. For purposes of this opinion, based on the judge's description, the Panel assumes the organization is a not-for-profit entity. If the organization is other than a not-for-profit entity, the judge should not rely on this opinion.

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The judge also provided information about the duties of four positions, though, as stated above, she mentions potentially serving terms in three positions. The judge also provided general information about the organization, its purposes and a link to the organization's website.

As treasurer, the judge would: meet and consult with the executive director as needed; keep the board of directors informed about the organization's finances; chair the finance and audit committees; review the organization's financial statements, payroll records, investment strategy; and assist in the development of the budget.

As secretary, which was not mentioned in the judge's consecutive service terms, the judge would be responsible for: minutes; organization records and seal; and other duties delegated by the president or the board of directors.

As vice-president, the judge would assist the president, and, if the president would be unwilling or unable to act as president, the vice-president would be appointed to perform the president's duties until the election of a new president. There may be other duties as assigned.

As president, the judge would, with some exceptions, preside over the board's meetings; call for special meetings as needed; appoint special committees with the board's approval; and other duties as assigned. The president is also an ex-officio member of all committees. The organization is partially grant funded. There would be times the judge would need to co-sign grant submissions. The organization's committees distribute Alcohol Tax Funds on behalf of cities to service provider organizations, including treatment courts, corrections and the prosecutor's office. Those distributions are decided upon and awarded by a subcommittee, subject to approval of the board. The judge recognizes and states that the judge can and does abstain as conflicts arise.

The judge appears to be aware of and understand the Kansas Code of Judicial Conduct and its limitations.

#### **REVIEW OF RELEVANT RULES AND COMMENTS**

The panel has reviewed the opinion request and the Code of Judicial Conduct. The Panel believes the proposed conduct is governed by Canon 1, Rules 1.1, 1.2, 1.3; and Canon 3, Rules 3.1; 3.2; and 3.7.

The Code of Judicial Conduct permits judges to engage in extrajudicial conduct.

Rule 3.1 provides:

A judge may engage in extrajudicial activities, except as prohibited by *law* or this Code. However, when engaging in extrajudicial activities, a judge shall not:  
(A) participate in activities that will interfere with the proper performance of the judge's judicial duties;

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(B) participate in activities that will lead to frequent disqualification of the judge;

(C) participate in activities that would appear to a reasonable person to undermine the judge's *independence, integrity, or impartiality*; or demean the judicial office; or

(D) engage in conduct that would appear to a reasonable person to be coercive.

"Judges are encouraged to engage in appropriate extrajudicial activities." Rule 3.1, Comment 1.

The Code distinguishes extrajudicial conduct that "concerns the law, the legal system, or the administration of justice" from other extrajudicial conduct. Some activities are permitted only if the organization or activity "concerns the law, the legal system, or the administration of justice"

- "soliciting membership" Rule 3.7(A)(3).
- participate at an event of the organization that "serves a fundraising purpose" Rule 3.7(A)(4).
- "making recommendations to a . . . fund-granting organization or entity" Rule 3.7(A)(5).

For activities that do not involve "the law, the legal system, and the administration of justice", the activity must be one "not conducted for profit." Rule 3.1, Comment 1; Rule 3.7(A).

For the purposes of this opinion, the panel assumes that the organization the judge seeks to serve as an officer of is a non-profit community or charitable organization. With this in mind, Rule 3.7(A)(6) specifically applies to this matter. It permits a judge to serve as "an officer, director, trustee, or nonlegal advisor" of a nonprofit organization "unless it is likely that the organization . . . will be engaged in proceedings that would ordinarily come before the judge . . . or will frequently be engaged in adversary proceedings in the court of which the judge is a member."

Rule 3.7 allows a judge to "assist . . . in planning related to fundraising" and to "particip[ate] in the management and investment of . . . funds." Rule 3.7(A)(1).

## DISCUSSION

The Panel has identified several Rules which apply to the judge's opinion request. The Panel has also identified the Comments to the Rules which the Panel believes further explain the Rules. The extrajudicial activities described in the judge's opinion request appear to be related to a charitable or civic not-for-profit organization but doesn't specifically address the issue. The judge stated that in the judge's current position as a board member, the judge is aware of the prohibitions on direct solicitation and providing legal advice. However, progressing into the executive committee certainly involves greater responsibilities and an increased time commitment

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to the organization. The judge recognizes and has planned for the additional time commitment. While the Rules and Comments permit and encourage involvement in extrajudicial activities, it can be a delicate balance for a judge as increased responsibilities arise. It appears from the information the judge provided that the judge is aware that the judge may need to step away from or find alternatives for handling some matters as they arise. It will be incumbent on the judge to be vigilant and prepared so that the delicate balance is struck to better insure the judge is compliant with the Code of Judicial Conduct.

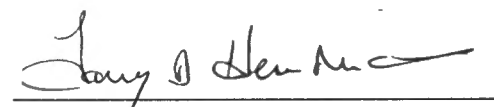
**Question:** Can the judge serve on the executive committee of the described community organization?

**Answer:** Yes, as long as the specific assumption is correct, and with several cautionary statements.

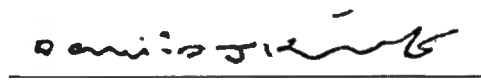
**Assumption:** The community organization identified in the opinion request is a not-for-profit entity.

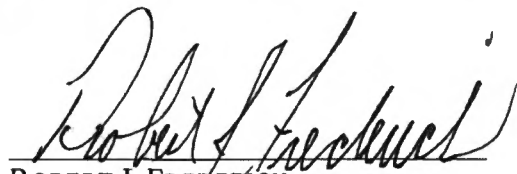
The judge is cautioned that the judge's judicial position and judicial duties are paramount. There are multiple Rules and Comments to the Rules that the judge should be familiar with and follow during the judge's different roles on the executive committee. While the Panel has highlighted several relevant Rules and Comments, the judge is reminded that the judge is bound by the full Code of Judicial Conduct. There will or may be times in which the judge's extrajudicial activities may be limited or prohibited while serving as a judge while serving on the executive committee.

  
MARK S. BRAUN, CHAIR

  
LARRY D. HENDRICKS

  
DAVID B. DEBENHAM

  
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