



# The Supreme Court of Kansas

Kansas Judicial Center  
Topeka, Kansas 66612-1507

JUDICIAL ETHICS ADVISORY PANEL

Judicial Ethics Opinion JE 81

March 23, 1998



Background facts: A judge in a multi-judge district was first assigned to hear the probate docket early this year. On January 29, 1998, the judge signed a journal entry of final settlement of the estate of a decedent with which the judge had had no prior contact. On January 30, 1998, letters of conservatorship were granted by the court in the matter of the conservatorship of a minor child.

The judge and spouse were interested in purchasing a home. They attended an open house, conducted by a realtor (the Listing Realtor), in March. They were interested, and asked their own realtor to get a key, so that they might inspect the home more closely. He did so. They inspected the home and later submitted a bid through their realtor, who passed it on to the Listing Realtor. The owner made a counter offer, and it was passed up to the judge through the same channels. The judge and spouse accepted the counter offer and on March 9 a contract was signed. Then, for the first time, the judge learned that the owner passed away "a couple of years ago" and the heir now owned the house.

However, on March 16, the judge learned from the attorney representing the heirs that the estate in which the judge had signed the journal entry of final settlement in January, "had been converted to a conservatorship for a minor who had a one-half interest in the remainder of the assets of the estate," and that the seller has only a life estate. Court approval will be necessary in order for the sale to be consummated.

The judge immediately filed a recusal in the matter, and asked the administrative judge to reassign the matter to another judge. The judge has had no contact with any individuals who have an interest in the property. The attorney for the owners assures the judge that the life estate holder, the adult remainderman and the conservator for the minor remainderman will execute appropriate documents, waiving any conflict or appearance of impropriety and admitting that the purchase and sale was an arm's length transaction.

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Judicial Ethics Opinion JE 81 cont'd  
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Question: Under these circumstances, would the judge violate Canons 1, 2A, 4A(1), 4D(1) {1997 Kan. Ct. R. Annot. 427, 435, 437} or any other Canons of Judicial Ethics by completing the purchase of this real estate?

Answer: Yes. A judge should not purchase assets from the estate of a minor from the conservator, while such proceedings are pending before the court upon which the judge is sitting.

Such a purchase is a business dealing which might "reasonably be perceived to exploit the judge's judicial position." Canon 4D(1). The judge's conduct as outlined above appears to be entirely at arm's length and in good faith; however, a judge buying property from an estate pending in the judge's court cannot but undermine public confidence in the integrity and impartiality of the judiciary. Canons 1, 2A, 4A(1) and 4D(1), all cited above.

  
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