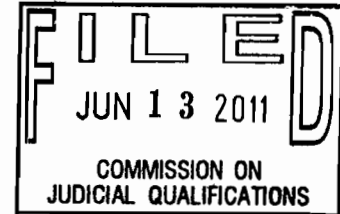




The Supreme Court of Kansas

KANSAS JUDICIAL CENTER
301 S.W. 10th Ave.
Topeka, Kansas 66612-1507



JUDICIAL ETHICS ADVISORY PANEL

Judicial Ethics Opinion JE 171 June 13, 2011

Prior to becoming a judge, the judge and the judge's spouse had owned a small downtown office building in one of the State's largest metropolitan areas for more than 15 years through a limited liability company. They continue to own this building. The judge conducted a law practice in this building until becoming a judge.

The judge is posing four questions to this Panel concerning leasing space in the building to attorneys or law firms who practice and appear in the judge's district. The specific questions are as follows:

1. Can I lease space to an attorney or law firm that practices in this judicial district as long as the attorneys appear before other judges in this district and do not appear before me? Is there anything about a landlord/tenant relationship that a disclosure and waiver pursuant to Canon 2, Rule 2.11(C), would not cover if the attorneys and their respective clients desire or are willing to appear before me? In other words, would a proper disclosure and waiver allow the parties to appear before me?
2. Is it proper for an attorney or member of a law firm to appear before me, who subleases space from a non-attorney tenant of the LLC? In other words, if the LLC leases space to an individual or management company, who in turn, subleases space to an attorney, would a disclosure and waiver be necessary for that attorney to appear before me?
3. Once a lease is terminated, can the attorney or members of the law firm (former tenants) appear before me without a disclosure and waiver?
4. If the LLC were to sell the building to an attorney or law firm, can the purchasing attorney(s) appear before me without a disclosure and waiver as soon as the transaction is completed? If disclosure and waiver are necessary, would it be for an indefinite period?

Rule 1.2 of the Kansas Code of Judicial Conduct provides: "A judge shall act at all times in a manner that promotes public confidence in the *independence, integrity,* and *impartiality* of the judiciary, and shall avoid *impropriety* and the appearance of impropriety."

It is noted in the Commentary of Rule 1.2 that public confidence in the judiciary is eroded by conduct that creates the appearance of impropriety and that this principal applies to both the professional and personal conduct of the judge.

Rule 2.1 Commentary provides that to ensure that judges are available to fulfill their judicial duties, judges must conduct their personal and extrajudicial activities to minimize the risk of conflicts that would result in frequent disqualification.

Rule 3.11(A) provides that a judge may hold and manage investments of the judge and members of the judge's family, but section (C) provides that a judge shall not engage in financial activities permitted under Section (A) if they will (1) interfere with proper performance of judicial duties or (2) lead to frequent disqualification of the judge or (3) involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves; or (4) result in violation of other provisions of this Code.

The Comment to Rule 3.11 further states in [2] that "As soon as practicable without serious financial detriment, the judge must divest himself or herself of investments and other financial interests that might require frequent disqualification or otherwise violate this Rule."

In answer to the first part of Question 1, we see no violation in leasing space to an attorney or law firm in this multi-judge judicial district as long as the attorneys appear before other judges in the district and the conflicts appear only periodically.

We would not answer this question in the same manner if ownership in the limited liability company would "lead to frequent disqualification of the judge," as set forth in Rule 3.11(C)(2). In this event, or if the continued ownership of an interest in the limited liability company would result in violation of the provisions of Rule 3.11(C)(1), (3), or (4), Comment [2] to Rule 3.11 would become applicable.

In answer to the second part of Question 1, the disqualification provisions of Rule 2.11 apply to a landlord/tenant relationship. The provisions of Rule 2.11(C) which states as follows would apply:

"(C) A judge subject to disqualification under this Rule, other than for bias or prejudice under paragraph (A)(1), may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification. If, following the disclosure, the parties and lawyers agree, without participation by the judge or court personnel, that the judge should not be disqualified, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding."

We recognize that despite this allowance of disclosure and waiver that instances may exist where its utilization would not be appropriate because of the nature of the proceedings.

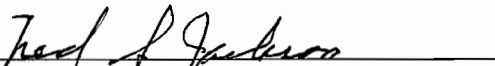
The answers to Question 2 are the same as our answers to Question 1.

Our answer to Question 3 is "Yes."

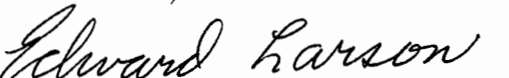
In answer to Question 4, if a sale by the limited liability company to an attorney or law firm is completed, the attorney or law firm may appear before the judge without disclosure or waiver.



Adrian J. Allen



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