



FILED

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ETHICS
ADVISORY PANEL

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 181

August 6, 2014

A district judge has requested a judicial ethics advisory opinion as to whether the judge may accept a nomination as the chairperson of a medical malpractice screening panel under the provisions of K.S.A. 65-4901 *et seq.*, K.S.A. 60-3501 *et seq.*, and Kansas Supreme Court Rule 142.

The judge states the appointment would be from an adjoining judicial district on a case where the judge is not familiar with the facts and has no connection with either party to the litigation.

The statutory provisions concerning membership of a screening panel are found in K.S.A. 65-4901(b) and K.S.A. 60-3502(b). The screening panel is to be composed of three persons licensed in the same profession as person against whom the claim is filed as provided by K.S.A. 65-4901(b)(1), (2) and (3) and K.S.A. 60-3502(b)(1), (2) and (3).

The fourth member of the screening panel is:

“ . . . (4) an attorney selected by the judge of the district court from a list of attorneys maintained by the judge of the district court for such purpose. Such attorney shall be a nonvoting member of the screening panel but shall act as chairperson of the screening panel.”

The statutory provisions further provides in K.S.A. 65-4907 and K.S.A. 60-3508 that:

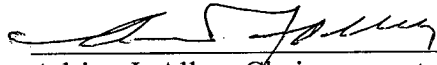
“The chairperson of the panel shall be paid a total of \$750 for all work performed as a member of the panel exclusive of time involved if called as a witness to testify in court, and in addition thereto reasonable travel expenses. The chairperson shall keep an accurate record of the time and expenses of all the members of the panel, and the record shall be submitted to the parties for payment with the panel’s report. . . .”

It is our opinion that the judge should not accept an appointment as the chairperson of a screening panel for the following reasons:

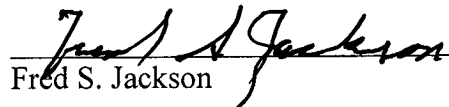
(1) While the judge is an attorney, if the Legislature had intended for a judge to serve in this position it would have so designated.

(2) Serving in such a position would take valuable and necessary time away from the judge's service to the required court business of his or her judicial district.

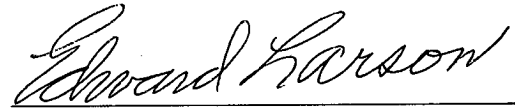
(3) Participation of a judge as chairperson of a screening panel where the judge might be subpoenaed as a witness [See *Walher v. Regehr*, 41 Kan. App. 2d 352, 366, 202P.3d 712 (2009)] might well appear to a reasonable person to undermine the judge's independence, integrity, or impartiality; or demean the judicial office; or engage in conduct that would appear to a reasonable person to be in violation of Rule 3.1(C) and (D) of the Kansas Code of Judicial Conduct.



Adrian J. Allen, Chair



Fred S. Jackson



Edward Larson