

State of Kansas



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ETHICS
ADVISORY PANEL

Judicial Ethics Advisory Panel

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JUDICIAL ETHICS OPINION 183

August 26, 2015

A Kansas district court judge asks if the judge may ethically hear cases wherein one of the attorneys is also a county commissioner in the county where the case is being heard.

The judge points out that the county commission sets the operational budget for the district court in the county.


The Kansas Code of Judicial Conduct (KCJC) provides in Canon 1 that "A JUDGE SHALL UPHOLD AND PROMOTE THE *INDEPENDENCE, INTEGRITY, AND IMPARTIALITY* OF THE JUDICIARY . . ."

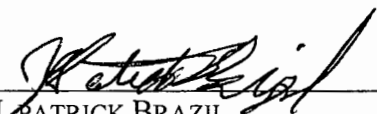
Canon 2 provides "A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE *IMPARTIALLY, COMPETENTLY, AND DILIGENTLY.*"

Specific language in Rule 2.2 requires the judge to "perform all duties of judicial office fairly and *impartially.*" Rule 2.3 requires the judge to perform the duties of judicial office ". . . without bias or prejudice. . . ." Rule 2.4(C) states "A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge." Rule 2.11(A) states "A judge shall disqualify himself or herself in any proceeding in which the judge's *impartiality* might reasonably be questioned . . ."

We are of the opinion that the judge's impartiality might reasonably be questioned if one of the attorneys is one of only three votes possible to determine the budget for the district court of the county and the judge should disqualify himself or herself and hear no cases involving the attorney who is a county commissioner.


FRED S. JACKSON, CHAIR


EDWARD LARSON


J. PATRICK BRAZIL

NOTE: The Commission is not bound by advisory opinions. The Commission on Judicial Qualifications respectfully disagrees with the Panel's conclusion in JE 183. "The standard to be applied to a charge of lack of impartiality is whether such charge is grounded on facts that would create reasonable doubt concerning the judge's impartiality . . . in the mind of a reasonable person with knowledge of all of the circumstances." *State v. Griffen*, 241 Kan. 68, Syl.¶ 5 (1987). It is the Commission's position that a determination of reasonable doubt concerning a judge's impartiality must be made on a case-by-case basis. Solely because an attorney appearing in court is a county commissioner for that county does not create a reasonable doubt concerning the judge's impartiality.

Note Added 10/20/15