



State of Kansas

Office of Judicial Administration

Kansas Judicial Center
301 West 10th
Topeka, Kansas 66612-1507

(913) 296-2256



JUDICIAL ETHICS ADVISORY PANEL

March 17, 1987

Judicial Ethics Opinion JE-19

Question: A recently appointed judge was formerly an active lawyer, employed by and a stockholder of an incorporated law firm. The law firm has been and is involved in a substantial number of cases pending in the court on which the judge now sits.

Upon taking judicial office, the judge terminated his association with the law firm.

Upon termination from the law firm, the judge is entitled to receive compensation from the law firm for his stock in the legal corporation.

The judge is further entitled to receive his percentage compensation from the law firm for accounts receivable and for work in progress as of the date of his termination when these are paid to the firm by clients.

Upon taking office, the judge entered into a "blind trust" whereby the trustee became solely responsible for collection of all money on behalf of the judge from the law firm. The trustee is solely responsible for settlement of any question or disagreement that may arise in respect to money due the judge from the law firm.

The judge asks the following question: Does the "blind trust" sufficiently divest the judge from his association with the law firm so that the judge need not, on a financial basis, disqualify himself from cases filed by the law firm after the date of the judge's taking office?

Answer: Canon 3C(1)(b), in substance, provides that a judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where he served as a lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter.

Canon 3C(1)(c) provides, in substance, that a judge should disqualify himself when he knows that he has a financial interest in the subject matter in controversy, or any other interest that could be substantially affected by the outcome of the proceeding.

"Financial interest" is defined in Canon 3C(3)(c) as ownership of a legal or equitable interest, however small.

Canon 3C(2) requires the judge to inform himself about his personal financial interests.

Canon 2, in substance, provides that the judge not only must avoid impropriety, but also the appearance of impropriety. The judge must expect to be the subject of constant public scrutiny and must therefore accept restrictions on his conduct that might be viewed as burdensome by ordinary citizens, and the judge should do so freely and willingly.

In view of the above, it is our opinion that the "blind trust" entered into by the judge does not and cannot avoid the restrictions placed on the judge.

The judge should disqualify himself from hearing any case or matter that was under consideration by the law firm during the time the judge was a member of the firm, whether filed in court or not, and whether filed in court prior to or after the time the judge took office.

Further, until the judge is paid in full for his stock in the firm, and paid in full for accounts receivable and work in progress at the time he became judge, it is our opinion that the judge has a financial interest in the law firm, within the meaning and intent of the canons; this being so, the judge should disqualify in any case filed by the law firm until after the judge receives full compensation for money due him or contingently due him from the law firm. However, in this connection, we call the judge's attention to the provisions of Canon 3D pertaining to remittal of disqualification.

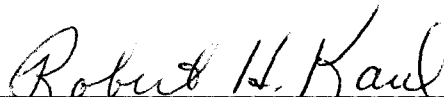
A law partnership involves many personal emotions, personal feelings which only dissipate with time. A judge may have difficulty dealing with a former law partner in an objective and arm's-length manner. Lawyers, not of the former law firm, may feel uncomfortable dealing with the judge, when the adversary is a recent former law partner of the judge. There will come a time when the judge, the former law partners, and third parties "know" the former law partnership is not a concern. Until this time comes, the judge should exercise caution in not giving the appearance of impropriety.

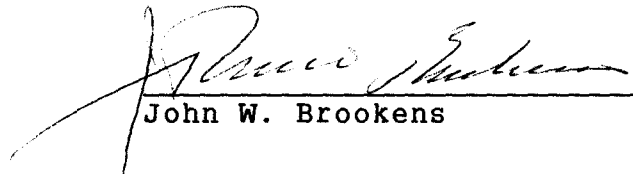
The judge also seeks an advisory opinion concerning his interest in an abstract and title company of which he is a stockholder and director.

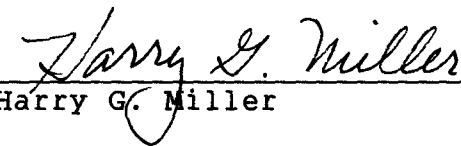
An abstract company is affected with a public interest, particularly with the legal profession; therefore, the judge's interest in such a company must be strictly limited to his financial investment therein. The judge should resign his directorship in the company, but subject to the limitations imposed by the provisions of Canon 5C(1), (2) and (3) he may retain his stockholder's investment therein. See our Advisory Opinion JE-15.

The judge also asks whether it is advisable for him to divest himself of his interest in 36 acres of strip-pit land in which the judge has an interest as a tenant in common. The land is used only for recreational and not income-producing purposes.

Canon 5C(2) authorizes a judge to hold and manage investments including real estate. The ownership of an interest in this piece of land is not grounds for disqualification unless, of course, such interest becomes involved in litigation. The judge need not divest himself of this interest unless he desires to do so for other reasons.


Robert H. Kaul, Chairman


John W. Brookens


Harry G. Miller