

STATE OF KANSAS



FILED

Dec 21, 2023

ETHICS
ADVISORY PANEL

JUDICIAL ETHICS ADVISORY PANEL

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JUDICIAL ETHICS OPINION 187

DECEMBER 21, 2023

A Kansas judge asks if the judge may “actively seek funding” for a behavioral health court (“BHC”) in the judge’s judicial district through grant applications and other allocations from public and private entities. The judge seeks guidance about whether such efforts would violate the Code of Judicial Conduct (“Code”). The opinion request provides background regarding the need for, and creation of, a BHC within the judge’s judicial district, as well as the need for significant funding to operate the BHC on an annual basis.

The judge acknowledges that previous advisory opinions have disapproved of direct solicitations, but distinguishes the current request from the prior opinions due to: the age of those prior opinions; the fact those prior opinions were issued under a prior version of the Code; and the belief that the prior opinions do not capture the realities of inadequate judicial funding.

As a part of “actively seeking funding,” as stated above, the judge anticipates “making direct requests” of various public and private entities to support the BHC program. In asserting that some direct solicitations for judicial activities must be permitted for the judicial branch to function, the judge notes that the Chief Justice and other members of the judiciary directly seek funding for the judicial branch.

The Advisory Panel is aware the current Code does not include a blanket specific prohibition from soliciting funds as was included in the prior Code. (See 2007 Ct. R. Annot. 633, Canon 4C(4)(b).) The Advisory Panel has reviewed the current Code.

With this in mind, Rule 1.2 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 shall avoid *impropriety* and the appearance of impropriety.”

Comment [3] to Rule 1.2 states:

“Conduct that comprises or appears to compromise the independence, integrity and impartiality of a judge undermines public confidence in the judiciary. Because it is not practicable to list all such conduct, the Rule is necessarily cast in general terms.”

MEMBERS

Hon. Mark S. Braun, Chair; Hon. Richard D. Anderson; Hon. Robert J. Frederick; Hon. Larry D. Hendricks; and Hon. David J. King

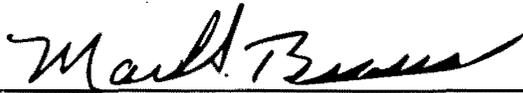
Rule 2.2 provides:

"A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially."

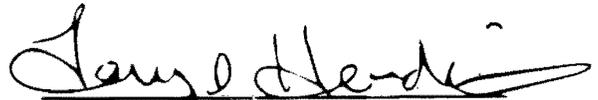
No explanation was provided as to how the BHC would be structured or operated. Further, other than to "actively seek funding" from "public and private entities," there are no specifics as to whom the judge would "actively" solicit funds.

Some members of the Advisory Panel are generally familiar with how various drug, mental health and veterans' courts are funded and operated. While the judge is the presiding official at these individualized courts, there is often a committee with a court official, other than the judge, who handles the administrative and funding issues, although that may not always be the case. In the grant application and consulting process, the various court personnel, lawyers, treatment staff and the judge might serve as part of a presentation team, when called upon, to explain the various roles of personnel and entities. The judge, again, when called upon may "consult with" an entity or official as contemplated by Rule 3.2(A).

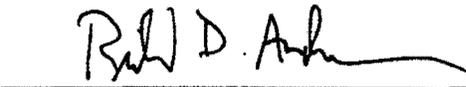
The Advisory Panel unanimously believes the judge may be a part of team grant application and consulting processes when required or requested. Further, without more specific information about what is meant by "actively solicit funding" solicit and what "public and private entities" would be solicited, however, the judge is cautioned to fully consider the specifics of Rules 1.2 and 2.2, as well as the remainder of Code before engaging in "active" solicitation of funds. See for example, Rule 3.7(A)(2) which permits soliciting contributions for certain types of organizations, but only from the judge's family, or from judges over whom the judge does not exercise supervisory or appellate authority.



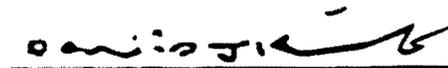
MARK S. BRAUN, CHAIR



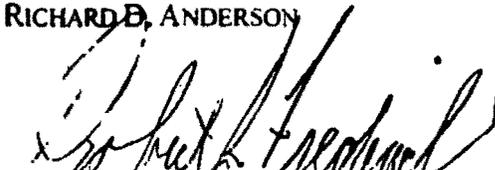
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