

STATE OF KANSAS



FILED

Feb 20, 2024

ETHICS
ADVISORY PANEL

JUDICIAL ETHICS ADVISORY PANEL

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JUDICIAL ETHICS OPINION 190 FEBRUARY 20, 2024

A Kansas district judge asks whether the judge may serve as a coach of a high school softball team.

After consideration of the specific circumstances of the proposed activity, including appropriate safeguards the judge describes, we conclude the judge may serve as a coach of a high school softball team.

The softball coaching position is part time and for the Spring 2024 school semester. The judge indicates the position may be to serve as either the head coach, or an assistant coach. The judge would serve as a "Rule 10 coach" (Rule 10 allows someone who is not a teacher to coach high school and middle school athletics). The judge would be compensated for serving as either the head coach or an assistant coach.

The judge serves in a multi-county judicial district. The judge resides in the county of the school for which the judge would serve as a coach. The judge's primary docket assignments are in a different county of the judicial district. The judge is not assigned to any caseload that would involve litigation of the school district.

If allowed to serve as the head coach, the judge indicates all non-game team activities will take place other than during normal judicial work hours. Otherwise, the judge states "if I'm not allowed to do that, I won't take the job". No indication is given whether any of the team's games will require the judge to be away from the judge's office during normal judicial work hours. If that is the case, the judge must insure that such absence does not interfere with his judicial responsibilities.

The coaching position under consideration is an extrajudicial activity. A judge may engage in extrajudicial activities so long as (1) the activity does not "interfere with the proper performance of the judge's official duties", (2) the activity will not "lead to frequent disqualification", (3) the activity would not "appear to a reasonable person to undermine the judge's independence, integrity, or impartiality; or demean the judicial office", and (4) the activity would not involve "conduct that would appear to a reasonable person to be coercive." (Rule 3.1)

MEMBERS

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

The comments to Rule 3.1 state:

“To the extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities.” Rule 3.1, Comment 1.

“Participation in both law-related and other extrajudicial activities helps integrate judges into their communities, and furthers public understanding of and respect for courts and the judicial system.” Rule 3.1, Comment 2.

This panel has had multiple occasions in the past to review proposed extrajudicial activities:

- In JE 177 we approved of a judge serving as a “color commentator for a state university basketball games radio broadcast.”
- In JE 107 we approved a district magistrate judge’s serving as a part time municipal judge hearing municipal court cases on weekdays between the hours of 8:00 am and 5:00 pm.
- In JE 44 we approved of a judge participating in a series of multi-day programs to expose the participants “to Kansas issues and information.”
- In JE 32 we approved of a district judge engaging in a business of writing and selling computer programs to Kansas Clerks of the District Courts.
- In JE 14 we approved of a judge serving as a member of the board of directors of a country club.

Each of these opinions relies on the specific facts attendant to the proposed activity. In each instance where the judge’s proposed extrajudicial activity was approved, appropriate safeguards were observed to satisfy the Code of Judicial Conduct.

In engaging in extrajudicial activities, it is essential that the judge give precedence to the duties of the judicial office. Rule 2.1. The judge should not allow this activity to interfere with the judge’s regular judicial duties, nor appear to do so. The judge must maintain public trust in the fairness, impartiality and diligence of the judge’s office at all times. We are satisfied that the precautions the judge describes as conditions under which the judge would accept this extrajudicial position will do this.

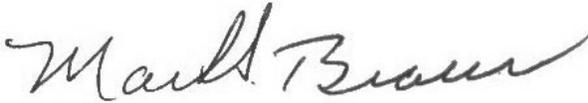
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The fact that the judge will be compensated for serving as a judge does not disqualify the judge from engaging in this extrajudicial activity. Rule 3.12 provides:

“A judge may accept reasonable compensation for extrajudicial activities permitted by this Code or other *law* unless such acceptance would appear to a reasonable person to undermine the judge’s *independence, integrity, or impartiality.*”

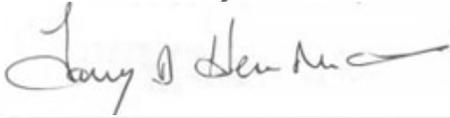
The judge has disclosed to us the compensation that the judge would receive for either the head coaching, or assistant coaching, position. The compensation the judge describes is modest and reasonable and would not call into question the judge’s “independence, integrity, or impartiality”.



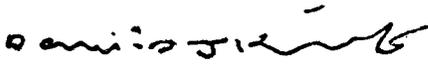
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