



The Supreme Court of Kansas

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Judicial Ethics Opinion JE-69

September 16, 1996

A court is in the process of interviewing applicants for the position of Administrative Hearing Officer (AHO). The AHO will handle child support, paternity, and visitation issues. The following questions are presented:

QUESTION 1: Does Canon 3 E, 1995 Kan. Ct. R. Annot. 407, apply to an Administrative Hearing Officer?

ANSWER: Yes. Those provisions of the Code of Judicial Conduct entitled APPLICATION OF THE CODE OF JUDICIAL CONDUCT, Paragraph A, 1995 Kan. Ct. R. Annot. 421, provide:

"Anyone, whether or not a lawyer, who is an officer of the judicial system, is a judge within the meaning of this Code. Judge is defined as: 'Any judicial office who performs the function of a judge in the courts of this state . . .' All judges shall comply with this Code except as provided below."

There are no exceptions provided for AHO's.

QUESTION 2: If the attorney appointed as AHO has worked in the SRS child support enforcement office or in the District Court Trustee office, is he or she disqualified?

A. From cases he or she has actually handled?

B. From all cases that the office handled?

cont'd

ANSWER: As to question A, he or she would be disqualified as to all cases he or she has actually handled.

As to question B, he or she would not be disqualified unless he or she had participated in or had personal knowledge of the case, or has bias against a party, or for any reason feels he or she could not be impartial in the matter.

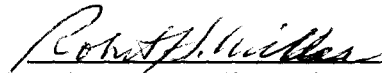
Please refer to Canon 3 E, 1995 Kan. Ct. R. Annot. 407, and the Commentary following Canon 3 E (1) (b) as set forth on the same page.

QUESTION 3: Does the wording "matter in controversy" (as used in Canon 3 E (1) (b), 1995 Kan. Ct. R. Annot. 407) refer to the whole divorce or paternity case, or does it just reference the issue in controversy -- paternity, child support enforcement, or visitation?

ANSWER: If the AHO is disqualified to hear any part of a case, he or she is disqualified from all of it. "Matter in controversy," in our opinion, refers to the whole case.

QUESTION 4 Canon 3 F, 1995 Kan. Ct. R. Annot. 408, provides for the waiver, by the parties, of disqualification under certain circumstances. Could this be utilized?

ANSWER: Yes, under the circumstances described in the Canon.


Robert H. Miller, Chairman


Adrian J. Allen


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