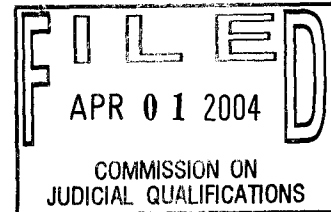




The Supreme Court of Kansas

KANSAS JUDICIAL CENTER
301 S.W. 10th Ave.
Topeka, Kansas 66612-1507



JUDICIAL ETHICS ADVISORY PANEL

Judicial Ethics Opinion JE 121

April 1, 2004

The Kansas Department of Transportation Drunk Driving Prevention Office and the Kansas Highway Patrol have scheduled a conference for district and municipal court judges, entitled "Adjudicating the Drugged and Intoxicated Driver." The agenda includes presentations entitled:

- "View from the Field" by an agent from Alcohol Beverage Control
- "Intoxilyzer 5000 Breath Testing Instrument" by a Kansas Highway Patrol Officer
- "Standardized Field Sobriety Testing Procedures" by the Breath Alcohol Unit of the Kansas Highway Patrol
- "The Kansas Drug Recognition Expert" by the Breath Alcohol Unit of the Kansas Highway Patrol

Apparently the conference is open only to judges.

QUESTION: A judge asks: Is it appropriate for judges to attend a conference with the purposes "to assist you in adjudicating the drugged and intoxicated driver by helping you better understand the challenges faced by law enforcement agents during offender apprehension, the issues related to drugged and intoxicated drivers, and the methods used to enforce the laws that protect us," which conference is sponsored by an executive agency whose agents and employees frequently appear as witnesses in criminal or civil cases before the Courts?

DISCUSSION: Canon 2A (2003 Kan. Ct. R. Annot. 517.) provides in part that:

"A. A judge shall . . . act at all times in a manner that promotes public confidence in the . . . impartiality of the judiciary."

Canon 3B(7) (2003 Kan. Ct. R. Annot. 521) provides that:

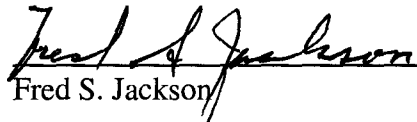
"(7) A judge . . . shall not . . . permit, or consider ex parte communications . . . concerning . . . impending proceedings . . ."

While the purposes of this conference may be laudable, the conference is designed to present law enforcement's perspective of drunk and drugged driver cases to judges. The defense bar and the bar generally are not present or participating. The aim is to present judges with knowledge of the challenges faced by law enforcement agents during offender apprehensions and the methods used to enforce the laws, all of which judges should consider in cases coming before them. As such, it presents ex parte communications to judges which are not permissible.

CONCLUSION: We conclude that judges should not attend this conference. Other judicial ethics advisory committees or commissions have reached the same opinion. See Arizona Supreme Court Judicial Ethics Advisory Committee, Advisory Opinion 03-08 (December 17, 2003) and New York Advisory Opinion 94-31 (March 10, 1994).


Robert H. Miller, Chairman


Adrian J. Allen


Fred S. Jackson