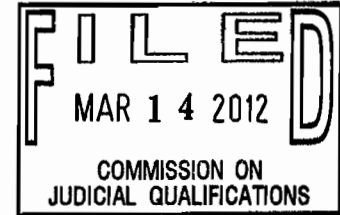




The Supreme Court of Kansas

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



JUDICIAL ETHICS ADVISORY PANEL

Judicial Ethics Opinion JE 174 March 14, 2012

A district judge and the judge's spouse in a large multi-judge judicial district are licensed foster care parents with the State of Kansas.

The district judge routinely handles a portion of the Child in Need of Care (CINC) cases in the judicial district where the judge serves.

The judge and the judge's spouse recently received placement of a foster care child who resided within the judicial district. The parents' attorney objected to the placement of the child within the judge's home because of the judge's CINC docket which was felt to present a conflict.

The judge and the judge's spouse acquiesced in the removal of the child from their home out of an abundance of caution.

The judge now requests our opinion, pursuant to Rule 650, if it is appropriate for the judge and the judge's spouse to continue to take foster care placements. The judge specifically asks us the following questions:

1. In a multi-judge judicial district, is it appropriate for a district judge who is a licensed foster parent to foster a child from the judge's home county, provided the case is pending in another judge's division?
2. Does it make a difference if the judge who is also a licensed foster parent handles a portion of the CINC docket, provided the case is pending in another judge's division?
3. Should the judge handling the case automatically recuse without a request so the case is handled by an out-of-county judge?

In answering the judge's questions, we first point to the language of Rule 1.2, Promoting Confidence in the Judiciary, which states:

"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 the appearance of impropriety."

We further consider the language and restrictions of Rule 3.1, Extrajudicial Activities in General, which states:

“A judge may engage in extrajudicial activities, except as prohibited by *law* or this Code. However, when engaging in extrajudicial activities, a judge shall not:

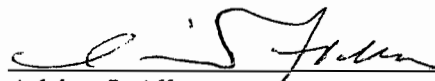
- (A) participate in activities that will interfere with the proper performance of the judge’s judicial duties;
- (B) participate in activities that will lead to frequent disqualification of the judge;
- (C) participate in activities that would appear to a reasonable person to undermine the judge’s *independence, integrity, or impartiality*; or demean the judicial office; or
- (D) engage in conduct that would appear to a reasonable person to be coercive.”

We see nothing inappropriate or unethical for a district judge and the judge’s spouse in a multi-judge district to provide licensed foster parent services to a child, providing the case is pending in another judge’s division.

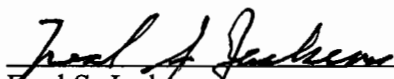
Our opinion is not changed even if the judge handles a portion of the CINC docket, providing the case is pending in another judge’s division.

The judge handling the case does not have to automatically recuse without a valid request from an interested party if the CINC case involves a child who has been placed with a judge and the judge’s spouse.

Our opinions are, in part, based on the great service that foster care parents render to the judicial system. We recognize, however, that under certain factual situations it might be inappropriate for a foster child placement with a judge and the judge’s spouse where a proper objection is raised by an interested party.



Adrian J. Allen



Fred S. Jackson



Edward Larson