

# STATE OF KANSAS



FILED

Feb 12, 2024

ETHICS  
ADVISORY PANEL

## JUDICIAL ETHICS ADVISORY PANEL

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### JUDICIAL ETHICS OPINION 189

**FEBRUARY 12, 2024**

A Kansas district judge asks whether the judge may advocate for change in the law(s) regarding the restoration of a convicted felon's right to vote once the felon's sentencing requirements have been completed. The judge's concern is to clarify when and how their right to vote is or may be restored, so they may register to vote without fear of further prosecution. The judge posed four specific questions within the broader question:

1. Can I write an editorial for the newspaper and give talks about the issue to civic clubs?
2. Can I request my local legislator (to) initiate changes in the law and make specific suggestions for possible solutions?
3. Can I speak with probation officers and encourage them to educate their clients?
4. Can I address the issue in court when a conviction occurs informing the person of his/her loss of rights and how to regain the right to vote?

The judge's request for an opinion cited specific constitutional and statutory references to the loss of the right to vote and the eligibility for restoration of that right. See Kansas Constitution, Article 5, Section 2; K.S.A. 21-6613(b); and K.S.A. 22-3722.

The judge also referenced the Kansas Secretary of State's website regarding online voter registration. The judge notes there is a specific question for felons on that website about whether the right to vote has been restored, as well as a warning that providing false information in the voter registration application may lead to further felony conviction and sentence. The judge's overall interest in advocacy is to make it clear when and how a convicted felon's right to vote is restored – or not. The judge hopes to be able to engage in advocacy to clarify Kansas law.

The judge's Memorandum cited part of the Preamble to the Kansas Code of Judicial Conduct, as well as all of Rule 3.1; Rule 3.7(A)(5), and Canon 4.

The Panel has reviewed the judge's request and the Kansas Code of Judicial Conduct. It is our opinion that the judge's proposed conduct is governed by Rules 2.1, 3.1, and 3.7.

#### MEMBERS

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

Rule 2.1, Comment 2 provides that, while not the duty of judicial office unless prescribed by law, judges are encouraged to participate in activities that promote public understanding of and confidence in the justice system.

Rule 3.1 permits judges to engage in extrajudicial activities unless prohibited by law or this Code. However, judges shall not participate in activities that will interfere with the performance of their judicial duties; lead to frequent recusal or disqualification, undermine their judicial independence, integrity, or impartiality in the eyes of a reasonable person; demean their judicial office; or would appear to a reasonable person to be coercive.

Rule 3.1, Comment 1 provides that, to the extent time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities. The Comment also notes that judges are “uniquely qualified” to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice by speaking, writing, teaching, or participating in scholarly research projects.

Rule 3.1, Comment 2 provides that participation in law-related and 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 4 cautions judges that while engaged in such activities, judges must not coerce others or take action that would reasonably be perceived as coercive.

Rule 3.2 prohibits a judge from appearing voluntarily at a public hearing before, or otherwise consult with an executive or legislative body or official **except**: (A) in connection with matters concerning the law, the legal system, or the administration of justice. Comment 1 to Rule 3.2 notes that judges possess special expertise in matters of law, the legal system, and the administration of justice, and may properly share that expertise with governmental bodies, and executive or legislative branch officials. Comment 2 to Rule 3.2 directs judges appearing before or consulting with such entities to “be mindful” that they are subject to other specific provisions of the Code, which should also be considered. (See Rules 1.3, 2.10, and 3.1(C).)

Rule 3.7(A) permits judges, subject to Rule 3.1, to participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit. Six areas of participation in those organizations are identified that involve fund-raising, solicitation of funds, solicitation of membership, appearances and speaking, making recommendations, and serving as an officer. The list is not an exclusive list. Comments 1-4 to Rule 3.7 provide further illustration of involvement and participation.

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Canon 4. A judge or candidate for judicial office shall not engage in political or campaign activity that is inconsistent with the *independence, integrity, or impartiality* of the judiciary.

**Question 1:** Can I write an editorial for the newspaper and give talks about the issue to civic clubs?

**Answer:** As to writing an editorial for the newspaper: the Panel cautions the judge about such extrajudicial activity.

As for giving talks about the issue to civic clubs: Yes, but only so long as the judge is acting as an educator on the issue and the problems that exist in connection therewith, and not as an advocate recommending specific fixes or changes to existing law.

**Question 2:** Can I request my local legislator (to) initiate changes and make suggestions for possible solutions?

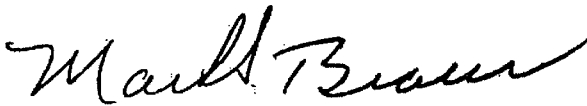
**Answer:** Yes. Rule 3.2(A) and Comment [1].

**Question 3:** Can I speak with probation officers and encourage them to educate their clients?

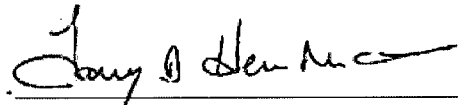
**Answer:** Yes.

**Question 4:** Can I address the issue in court when a conviction occurs informing the person of his/her rights and how to regain the right to vote?

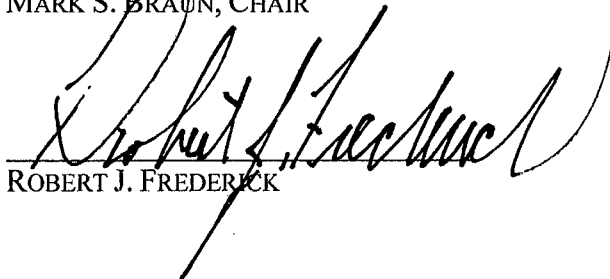
**Answer:** Yes.



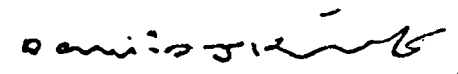
MARK S. BRAUN, CHAIR



LARRY D. HENDRICKS



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