



State of Kansas

## Office of Judicial Administration

Kansas Judicial Center  
301 West 10th  
Topeka, Kansas 66612-1507

(913) 296-2256

### JUDICIAL ETHICS ADVISORY PANEL

September 29, 1987

#### Judicial Ethics Opinion JE-21

Question: A newly appointed district judge requests an advisory opinion concerning his position as co-trustee of a revocable trust which he had created for a client and his spouse some 18 years before his appointment as judge. In the meantime, the client's spouse who owned most of the property died. The surviving spouse remarried, and subsequently amended the trust, which he was authorized to do.

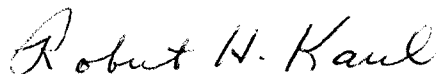
Under the terms of the trust, as amended, the second wife receives the net income, and in addition the co-trustees "can use such portion of the principal for the support, comfort, welfare and medical needs during the lifetime of the second spouse." The remainder of the trust will descend to the children of the deceased grantor upon the death of the second spouse. The judge and a daughter of the grantor were designated as co-trustees and have acted as such since the grantor's death. The judge is not related to any of the parties involved. The judge asks whether "I am required by the Canon [Canon 5(D)] to resign as co-trustee since I justifiably expect adverse consequences to the present income beneficiary."


Answer: Yes, the judge is required to resign as co-trustee. We are sympathetic with the judge's concern; however, the


Continued

Judicial Ethics Opinion JE-21 cont'd  
September 29, 1987  
Page 2

proscription of Canon 5D is absolute, and we are unable to find any grounds for deviation under the facts as stated.

  
Robert H. Kaul, Chairman

  
John W. Brookens

  
Harry G. Miller