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Over-ruled
8-24-88
Case #
62,443

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

May 20, 1988

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 88- 72

The Honorable Joe Knopp
State Representative, Sixty-Seventh District
1201 Houston
Manhattan, Kansas 66502

Re: Courts -- Supreme Court -- Supreme Court Nominating
Commission; Appointment of Non-Lawyer Members

Synopsis: An appointed non-lawyer member may not continue
membership on the judicial nominating committee
once that member has been granted a temporary
permit to practice law. Cited herein: K.S.A.
20-119; 20-120, 20-123; 20-124; 20-125; 20-127;
Supreme Court Rule 705.

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Dear Representative Knopp:

As Representative for the Sixty-Seventh District you ask our
opinion on a matter concerning the Kansas supreme court
nominating commission. You wish to know the definition of
"non-lawyer" for purposes of serving on that commission.

K.S.A. 20-124 provides for the appointment of non-lawyer
members to the supreme court nominating commission.
Conversely, K.S.A. 20-120 through 20-123 provide for the
election of lawyer members to the Commission. Based on the
information you have provided, the issue at hand concerns an
appointed non-lawyer member who, subsequent to appointment,
graduated from law school and obtained a temporary license
pending the bar examination and receipt of the results of that
exam.

Supreme Court Rule 705, 1987 Supp., Article 20, Chapter 30, allows the issuance of a temporary permit to practice law. If the Supreme Court issues such a permit, the permittee may legally engage in all activities normally connected with the practice of law: i.e. preparing legal documents, appearing on behalf of clients in court giving legal advice, etc.

The practice of law has been generally defined as "the rendition of services requiring the knowledge and the application of legal principles and technique to serve the interest of another with his consent." Blacks Law Dictionary 1054 (5th ed. 1979). Kansas case law discusses what activities represent the practice of law:

"As the term is generally understood, the practice of law is the doing or performing of services in a court of justice, in any matter depending therein, throughout its various stages, and in conformity to the adopted rules of procedure. But in a larger sense it includes legal advice and counsel, and the preparation of legal instruments and contracts by which legal rights are secured, although such matter may or may not be depending in a court." State v. Schumacher, 214 Kan. 1 (1974). See also Depew v. Wichita Association of Credit Men, 142 Kan. 403, 412 (1935); State v. Hill, 223 Kan. 425, 436 (1978).

"One who confers with clients, advises them as to their legal rights, and then takes the business to an attorney and arranges with him to look after it in court is engaged in the practice of law." State ex rel. v. Perkins, 138 Kan. 899, 907 (1934). See also State v. Schmidt, 174 Kan. 581, 588 (1953).

A person holding a temporary permit issued by the Kansas Supreme Court authorizing the practice of law until the next bar examination is not irregularly admitted to practice law, but rather is "a regularly qualified practicing attorney." Moore v. Wesley, 125 Kan. 22 (1928). See also 7 C.J.S. Attorney & Client, § 25 (1980). A person who performs legal services without a temporary permit or a

license could be found guilty of practicing law without a license.

Thus, it is our opinion that a person is a regularly qualified attorney when they have been granted a temporary permit to practice law pursuant to Supreme Court Rule 705. Because such a person is a regularly qualified attorney that person can be considered a lawyer, albeit for a temporary period of time. Thus they would not qualify for appointment as a non-lawyer member of the supreme court nominating commission.

This conclusion, however, does not necessarily resolve the question of whether K.S.A. 20-119 et seq. thereby requires such a person to resign his or her appointment to the nominating committee. In order to qualify for appointment, pursuant to K.S.A. 20-124, an individual must be a non-lawyer. A person practicing law does not qualify for such appointment. However, qualification requirements are not necessarily continuous in nature.

All statutes must be interpreted and applied according to plain meaning of language used and intent of the legislature. Earth Scientists Ltd. v. U.S. Fidelity & Guar. Co., 619 F. Supp. 1465 (Kan. 1985). It is not clear from the plain language contained in the act what results when there is a change in status from non-lawyer to lawyer. In the absence of plain language, statutory construction rules dictate that when intent can be ascertained from the statute the purpose and intent of the legislature governs. Harris Enterprises, Inc. v. Moore, 241 Kan. 59 (1987).

K.S.A. 20-119 et seq. clearly contemplates a nominating committee made up of a proportionate distribution of lawyers and non-lawyers. K.S.A. 20-125 sets forth the term held by all members of the nominating committee:

"Except for those appointed to fill vacancies all terms of office for members of the commission subsequently elected or appointed shall be for as many years as there are, at the time of their election or appointment, congressional districts in the state."

K.S.A. 20-127 allows this term to be cut short and addresses the effect of a change of a member's status after the appointment or selection. The statute discusses three status changes which divest committee membership: (1) when a lawyer

member ceases to be a member of the bar; (2) when any member changes residence to a district other than the one he was elected or appointed to represent; or (3) if the chairman moves out of the state. The act does not specifically address the status change from non-lawyer to lawyer. However, logic dictates that if a lawyer who ceases to be a lawyer cannot be a member, the opposite is also true. A hypothetical situation could arise where all appointed non-lawyer members subsequently change their status to lawyers. If this status change would not affect membership on the committee it could result in a committee made up of all lawyers. The act obviously does not intend such a situation.

Therefore, it is our opinion that the legislative intent evidenced in K.S.A. 20-119 et seq. does not permit an appointed non-lawyer member to continue membership on the judicial nominating committee once that member becomes a lawyer. As Kansas case law recognizes that the holder of a temporary permit is a regularly admitted attorney, such a permittee no longer qualifies for non-lawyer membership on the judicial nominating committee.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Theresa Marcel Nuckolls
Assistant Attorney General