

**JUDICIAL ETHICS COMMITTEE OPINION NO. \_\_\_\_\_**

With reference to Committee Opinion No. 97-1, a request has been presented seeking further direction relative to the following judicial act.

When a petition for an order of protection, pursuant to T.C.A. 36-3-605, is scheduled for hearing, the Judge's secretary obtains, through the local sheriff's department, a criminal history of both the petitioner and the respondent. Said criminal histories are compiled from T.B.I. and other local records. The parties are apprised of the Court's possession of this information and are questioned concerning the accuracy of the reports.

Supreme Court Rule 10, Canon 3(B)(7) provides that a Judge shall not "initiate, permit or consider ex parte communications or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding", except in certain specified circumstances. A Judge is not permitted to make a private inquiry off the record and act upon the information so obtained, State v. Suttles, 767 S.W.2d 403 (1989), and he/she may not legally act upon private knowledge obtained through private investigation, Caldwell v. State, 48 S.W.2d 1087 (1932). The drafter's commentary provides in pertinent part as follows:

"A judge must not independently investigate facts in a case and must consider only the evidence presented."

The information available from a local law enforcement agency and supplied pursuant to the sua sponte request of the Court prior to the hearing would "constitute a communication which might ultimately influence the officer in a decision rendered", Committee Opinion No. 97-1. As with T.C.S.E.S. records, inherent problems affecting the validity and admissibility of such criminal history information would include confidentiality, hearsay, inaccuracy or other system error. Further, said information would be available for consideration by the Court to be incorporated in the adjudicatory process notwithstanding the absence of a party.

The Committee is of the opinion that judicial consideration of criminal history records supplied through a local law enforcement agency upon the pre-trial, sua sponte request of the Judge would constitute an impermissible communication concerning a pending or impending proceeding.

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For the Committee: Thomas R. Frierson, II, Chancellor