

## **ADVISORY OPINION**

**Code of Judicial Conduct  
Application Section  
Part-time Judges**

**#1-00**

The Indiana Commission on Judicial Qualifications issues the following advisory opinion concerning the Code of Judicial Conduct. The views of the Commission are not necessarily those of a majority of the Indiana Supreme Court, the ultimate arbiter of judicial disciplinary issues. Compliance with an opinion of the Commission will be considered by it to be a good faith effort to comply with the Code of Judicial Conduct. The Commission may withdraw any opinion.

### **ISSUE**

The issue involves the limitations on the law practices of part-time judges in courts in which they serve as judicial officers. This opinion applies to continuing part-time judges, such as commissioners and referees, city and town court judges, and Marion County Small Claims Court Judges, and to periodic part-time judges, such as Senior Judges. It does not apply to pro tem judges or others appointed as judicial officers sporadically and under separate appointments for each period of service or case.

This opinion restates the current limitations in the Application Section of the Code of Judicial Conduct on the law practices of part-time judges, and states the Commission's position on the effect of those limitations on judicial officers who work in unified courts. It also addresses the effect of the rule on partners and associates of part-time judges.

### **ANALYSIS**

The use in Indiana's courts of part-time judicial officers who also practice law is both a benefit to the judiciary and a potential degradation of the integrity of the system. On the one

hand, many of Indiana's judges need help with their caseloads, and they rely on attracting experienced lawyers to help perform judicial functions on a part-time basis. On the other hand, the role of a lawyer as both an advocate for his or her clients, as a potential adversary of other lawyers, then as a judicial officer before whom the other lawyers may appear, raises concerns about the integrity and impartiality of the judicial process. As stated about the general prohibition against practicing in one's own court in the American Judicature Society's Ethics Guide for Part-time Lawyer Judges, "If a part-time lawyer judge practices in the court on which he or she serves, the part-time lawyer's status as a

judge may have a 'chilling effect,' causing attorneys who regularly appear before the judge to treat the part-time judge differently when they are adversaries...Conversely, the part-time judge may feel pressure to make rulings favorable to attorneys who are his or her opposing counsel in cases in the hope of receiving less aggressive treatment or certain advantages in negotiations when they are adversaries." Gray and Biro, *An Ethics Guide for Part-Time Lawyer Judges*, American Judicature Society, 1999, pages 54, 55.

The Application Section of the Code of Judicial Conduct governs the limitations on the practices of part-time judges. Under the current rule, a part-time judge may not practice law in the court in which the judge serves. Application Section C(2) and D(2), Code of Judicial Conduct. In the Commission's view, therefore, a part-time judge may not enter an appearance or file any pleadings in these courts for any purpose, including even to take a change of judge or to file a notice of appeal. The practice limitation also applies to any courts subject to the appellate jurisdiction of the court on which the part-time judge serves. *Id.* Therefore, a part-time judge in a court which hears de novo cases from city and town courts or small claims courts, may not practice law in those courts either, and, for example, a Senior Judge for the court of appeals may not practice law in any court in the state.

Another purpose of this Advisory Opinion is to inform the bench and bar of the Commission's interpretation of the rule as it applies to unified courts. The Commission's position is that the prohibition against practicing in one's own court means that a part-time judge in a unified court may not practice law in any courtroom or division of the unified court. A unified court is any court whose establishing statute creates a single court comprised of a number of judges, divisions, or courtrooms. Part-time judicial officers employed by any judge or judges within a unified court may not practice law anywhere in that court. Judges or judicial officers who are affected by this rule, and who have been operating in a manner inconsistent with it, must contact the Commission staff within 30 days of their receipt of this opinion, which will be mailed to all courts on November 22, 2000, to seek a reasonable extension of the application of the rule to any part-time judges who have been practicing in the unified court, although presumably not in their own courtrooms, and whose practices or employment with the court might be affected by the release of this opinion. Judges or judicial officers who do not affirmatively seek an extension are bound by the opinion as of the date of its distribution.

The Commission is asked from time to time what effect the rule against practicing in one's own court has on the practices of partners and associates of the part-time judge. Although this is a question under the Rules of Professional Conduct rather than the Code, the Commission members believe that the status of a part-time judge as such is not a "conflict" which would be imputed to the judge's partners or associates. Of course, the part-time judge, and his or her partners and associates, are obliged to not allow the part-time judge's position with the court to be exploited in any way in their practices. And, when those partners and associates do enter appearances in the courts from which the part-time judge is prohibited from practicing, the regular judges of those courts may need to consider their own obligations to disclose or disqualify.

## **CONCLUSION**

The Application Section of the Code of Judicial Conduct prohibits part-time judges, such as commissioners, referees, city and town court judges, Marion County Small Claims Court judges, and Senior Judges, from practicing law in the courts in which they serve and in any courts subject to the appellate jurisdiction of the courts in which the part-time judges serve. Furthermore, the Commission's position is that this prohibition applies to any courtroom or division of a statutorily unified court. The prohibition does not apply to partners and associates of a part-time judge.