

ADVISORY OPINION

Code of Judicial Conduct Canon 1

#1 -13

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

At issue are salary payments to judges and judicial officers which may be made contingent on the number of cases filed with the court – i.e., being paid a token sum per traffic ticket filed with the court or per case disposed by the court. This opinion states the Commission’s position on the practical effect of these types of pay arrangements with regard to public perception of the judiciary.

ANALYSIS

Neutrality and impartiality are two of the most essential qualities to an independent judiciary. Inherent in each of the rules governing judicial conduct is the concept that judges (both individually and collectively) must strive to maintain and enhance confidence in the legal system. It is for this reason that the scope of the Code of Judicial Conduct is not merely limited to instances of actual bias and impropriety; even the appearance of impropriety harms the public perception of the judiciary. Ind. Code of Jud. Cond., R. 1.2, cmt. 5.

Full-time judges are paid an annual salary, set by the Indiana General Assembly. However, city and town court judges, as well as some small claims court judges, may be paid pursuant to local ordinance or by vote of the city or county council. This pay may vary on an annual basis depending on the number of cases filed, tax revenue collected, and other measures.

Judges who are paid by some measure other than an annual fixed salary must carefully analyze both the source of the funding and the entity’s function within the court to avoid any appearance of conflict.¹ Judges who are paid per case filed in their court, or who are paid by an organization that holds a frequent role in court proceedings (such as a police department or debt collection

¹ In Ward v. Monroeville, 409 U.S. 57 (1972), the United States Supreme Court concluded that a litigant was denied his right to a fair and impartial trial because the judicial officer overseeing his traffic case derived a large portion of his income from fees and costs imposed in traffic court. The Court held that “possible temptation may exist when the [judge’s] executive responsibilities for village finances may make him partisan to maintain the high level of contribution from his court.” Id. at 59. Although no actual bias was alleged, the appearance of impropriety was sufficient for the Court to determine that the judge would be unable to conduct a fair trial.

agency), are especially susceptible to allegations of conflict or bias.² Such payments need not be based on the type or frequency of case dispositions in order to be problematic.

In 2011, the Conference of State Court Administrators (COSCA) published a policy paper titled, Courts Are Not Revenue Centers.³ This paper set forth seven principles regarding the permissibility of certain court costs and fees. Principle 7 asserted that the proceeds from fees, costs, and fines should not be earmarked for the direct benefit of any judge or other court official who may have direct or indirect control over cases filed or disposed in the judicial system.⁴ When a judicial officer holds a pecuniary interest in fees payable by litigants, a litigant's due process right to a trial before a disinterested and impartial judicial officer may be implicated, as the public perception inevitably will be that the judge is partial to the agency or state, county, or local entities that generate cases. *See Ward v. Monroeville*, 409 U.S. 57, 59 (1972).

The Commission echoes this concern and believes that these types of variable judicial pay arrangements are of particular concern in jurisdictions where litigants may choose which court they wish to file cases. The standard for appearance of impropriety is whether a reasonable person could perceive that the judge engaged in conduct reflecting adversely on the judge's impartiality. One can make a reasonable inference that a judge is more likely to rule in favor of a litigant who brings extra "business" to the court. Even if the judge's rulings are entirely free from outside influence, the mere existence of such a system can cast a cloud upon the integrity of the judiciary.

CONCLUSION

The Commission advises that judges subject to variable pay arrangements must be very cautious as to the source of these funds and to the source's function (if any) within the court system. Judges and judicial officers should avoid compensation arrangements which have any basis in the number of cases filed or disposed by the court.

² In a judicial disciplinary case in another jurisdiction, it was determined that pay supplements provided to a judge by the local police department violated the Code of Judicial Conduct. In In re McKinney, 714 S.E.2d 284 (S.C. 2011), while investigating allegations that the judge's sister had embezzled funds as the town clerk, the South Carolina Law Enforcement Division (SLED) discovered that the local police department had been issuing checks to the judge, ostensibly to "supplement her salary for extra work she performed after hours." The judge was unaware that these checks were coming directly from the police department. Instead she believed that the checks were being provided to the town and the town was supplementing her salary. Although the South Carolina Supreme Court found no evidence that the judge's acceptance of payments from the police department influenced her rulings, she was suspended for thirty (30) days. The court found that the fact that her salary was supplemented by the police department – whether or not these payments were funneled through the town treasurer – created an inference of bias that tarnished the integrity and impartiality of the judicial system.

³ Carl Reynolds and Jeff Hall, 2011 – 2012 Policy Paper, Courts Are Not Revenue Centers, Conference of State Court Administrators (2011), <http://cosca.ncsc.dni.us/WhitePapers/CourtsAreNotRevenueCenters-Final.pdf>.

⁴ Id. at 11.