



Indiana Judicial Nominating Commission Indiana Commission on Judicial Qualifications

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ADVISORY OPINION

Code of Judicial Conduct
Canon 5

#1-88

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 is whether a judge may hold, in the county in which he is a judge, a partnership interest in an abstracts and title business. The judge making this inquiry owns the business with his former law partner and with another local attorney. Their involvement in the business is passive and they have little, if any, daily involvement. The business is run by the judge's wife and two clerical employees.

ANALYSIS

A judge in Indiana may "hold and manage investments...and engage in other remunerative activity including the operation of a business", with the restrictions that he must "refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, exploit his judicial position, or involve him in frequent transactions with lawyers or persons likely to come before the court on which he serves".
Canon 5C(1)(2).

This particular business, abstracts and title, does not concern itself with issues frequently litigated, nor does its nature lend it to controversy. See generally, Babineaux v. Judiciary Commission (1976) La., 341 So.2d 396. Thus, there is nothing to indicate that this judge's impartiality would be compromised by his ownership. Because his involvement in this business is passive and distant, no danger is present that the judge cannot devote himself to his judicial duties while owning the business.

A judge may not exploit or allow to be exploited his judicial position. Litigants and lawyers must not be led to believe that their patronage of the judge's business would work to their advantages in the courtroom. See, Thode, Reporter's Notes to the Code of Judicial Conduct, p. 81, (1973). The presumed fact that the judge will not purposefully use his judicial office to attract business, and the fact that the business does not produce an appreciable amount of litigation, will eliminate the danger of exploitation. Finally, the passive role played in the business insures that the judge will not be involved in frequent transactions with lawyers or litigants by virtue of his ownership.

CONCLUSION

A judge in Indiana does not violate Canon 5C(1)(2) solely by virtue of his passive ownership of an abstracts and title business in the county of his jurisdiction.