



**Indiana Judicial Nominating Commission
Indiana Commission on Judicial Qualifications**

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ADVISORY OPINION

Code of Judicial Conduct
Canon 5

#1-91

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 sell to members of the bar the judge's written or taped materials teaching effective advocacy or other aspects of the law and the legal profession.

ANALYSIS

Judges, of course, may speak, write, and lecture about the law, the legal system, and the administration of justice, Canon 4(A). In fact, judges are encouraged to contribute to the profession in this manner. Furthermore, it is perfectly proper for a judge to profit financially from this activity. See, Canon 5(C)(2) which provides, "[a] judge may engage in remunerative activity including the operation of a business."

The Code of Judicial Conduct also provides, "A judge should refrain from financial and business dealings that tend to reflect adversely on his impartiality, judicial position, or involve him in frequent transactions with lawyers or persons likely to come before the court on which he serves." Canon 5(C)(1). In light of Canon 5(C)(1), the Commission would offer the following suggestions to any judge who intends to sell materials to members of the bar. Obviously, the judge's expressed views on effective appellate advocacy or any topic may not offer a specific advantage to a lawyer practicing in the author's court for having purchased and read the judge's materials, nor may the materials reflect views on pending or impending cases. The judge must avoid creating future conflicts by expressing views which might be expected to later reflect on the judge's impartiality in a given case, and the judge's efforts towards this project must not interfere with judicial responsibilities. The manner in which the materials are marketed to the bar is crucial to

maintaining compliance with Canon 5(C)(1). There should be no personal and direct solicitations of attorneys to purchase the judge's materials, and the judge should not personally market the product. In fact, the marketing must be run by methods which insulate the judge from the knowledge of who the purchasers and subscribers are and are not.

These are just some examples of the types of considerations necessary when a judge undertakes a for-profit enterprise. Every aspect of the project must be contemplated in light of Canon 5(C)(1).

CONCLUSION

A judge may write and sell materials for lawyers concerning effective advocacy so long as the judge refrains from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of judicial duties, exploit the judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the judge's court. Canon 5C(1), Code of Judicial Conduct.