

ADVISORY OPINION

**Code of Judicial Conduct
Canon 5**

#1-93

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 purpose of this Advisory Opinion is to address the rules in Canon 5 of the 1993 Code of Judicial Conduct pertaining to political activities by judges and their employees and to offer the Commission's interpretation where pertinent.

ANALYSIS

Pursuant to Canon 5C of the Code of Judicial Conduct, effective March 1, 1993, judges whose offices are filled by public election may purchase tickets for and attend gatherings of political organizations, identify themselves as members of political parties, voluntarily contribute to political organizations, speak to gatherings on their own behalf, appear in advertisements and distribute promotional literature supporting their candidacies, and, when running for election, attend fund raisers for and publicly endorse other candidates. Canon 5C, Indiana Code of Judicial Conduct (1993).

Canon 5C(1)(g) constitutes a substantial change in the rules. It gives judicial candidates the freedom to endorse other political candidates and to attend fund raisers for individual candidates "running in the same public election". Apparently, this allows support of other candidates on any ticket, so long as they and the judicial candidate are running at the same time. The ability to attend individuals' fund raisers while running for judicial office is an exception to the general **prohibition against contributions** to individuals, see, Canon 5A(1)(e); now, a judicial candidate may pay the standard, expect admission or ticket price for the candidate and a guest to attend another individual's fund-raising event.

Judges whose offices are not filled by public elections, that is, judges whose offices are filled by appointment, or by appointment and retention, may never act as leaders or hold offices in political organizations, publicly endorse or oppose other candidates, attend political gatherings or speak on behalf of political organizations, or make any

contributions to parties or candidates or purchase tickets for party functions. Canon 5A(1) Code of Judicial Conduct (1993). Retention judges may campaign only if their retention is actively opposed. Canon 5D.

Appointed judges must hold their employees to the same restrictions applicable to the judges. Canon 5D. Therefore, their employees are prohibited from all the activities listed in Canon 5A, described in the paragraph above.

Employees of elected judges are not similarly limited in their political activities, but Indiana's 1993 Code of Judicial Conduct contains a new provision to Canon 5A(1)(f), which states that no judge may permit the judge's employees and officials subject to the judge's direction and control to be candidates for or hold positions as officers of a political party's central committee or to be candidates for or hold non-judicial partisan elective office.

In Advisory Opinions #1-90 and #5-90, prior to the Court's adoption of Canon 5A(1)(f), the Commission advised judges that employees should not run for partisan elective office or hold office in a party's central committee. The Commission discussed the need for these limitations on political activities of court employees to protect the judiciary from appearances of partisanship. The Commission maintains its position from Advisory Opinion #5-90 that a judge may allow an employee to serve as a precinct committee person; the prohibition extends only to holding office in the party's central -committee. And, the prohibition against running for partisan elective office would not preclude an employee from serving as a precinct committee person, because "partisan elective office" does not refer to elections within a political party.

CONCLUSION

Pursuant to Canon 5 of the 1993 Indiana Code of Judicial Conduct, a judicial candidate for an office filled by public election may publicly endorse other candidates and attend and pay the standard, expected admission at their fund raisers so long as the judge and the candidate are running at the same time.

Judges whose offices are not filled by public elections may not act as leaders in political organizations, publicly endorse or oppose other candidates, attend political gatherings, speak on behalf of political organizations, or make contributions to parties or candidates. They must hold their employees to the same restrictions applicable to the judges.

Elected judges may not allow their employees to run for or hold partisan elective office. The employees may run for elective office within their political parties, such as the office of precinct committee person, with the exception that they may not run for or hold office in a party's central committee.