

## ADVISORY OPINION

**Code of Judicial Conduct  
Canon 3B**

**#1-97**

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 a judge's duties under the Code of Judicial Conduct with regard to pro se litigants in non-adversarial cases.

### ANALYSIS

Neutrality and impartiality are virtues which are essential to the integrity of the judiciary. Perhaps because those virtues so often are extolled, it appears to the Commission that, from time to time, judges who have before them pro se litigants whose pleadings or presentations are deficient in some minor way, sometimes take an unnecessarily strict approach to those deficiencies, turn the litigants away on those grounds, and, in the name of strict neutrality, violate other sections of the Code of Judicial Conduct.

Fairness, courtesy, and efficiency also are hallmarks of an honorable judicial system. Canon 3B(4); Canon 3B(9), Code of Judicial Conduct (1993). The Commission members believe that in presiding in a case with a pro se litigant in a non-adversarial setting, where the litigant has failed in some minor or technical way, or on an uncontroverted or easily established issue, to submit every point technically required or which would be required from an attorney, the judge violates the Code by refusing to make any effort to help that litigant along, instead choosing to deny the litigant's request or relief.

For example, if a pro se litigant seeking a name change pays the required fees, submits proof of publication, establishes the basis for the request, but inadvertently or for lack of experience does not state an element which the judge requires, such as that the name change is not sought for a fraudulent purpose, the judge should make that simple inquiry during the litigant's presentation to the court rather than simply deny the petition on that basis alone. Neither the interests of the court nor of the litigant are served by rejecting the

petition on the basis of this type of deficiency. Similarly, for example, a married couple seeking a divorce, each acting pro se, with no contest or issues in dispute, might unknowingly omit from their pleadings their county of residence. A judge should make inquiry of the parties to establish this element of their petition, and proceed appropriately, rather than deny the petition and excuse the parties from the courtroom on the basis of their omission.

The Commission stresses the obvious here that a judge in no way has an obligation to cater to a disrespectful or unprepared pro se litigant, or to make any effort on behalf of any citizen which might put another at a disadvantage. Of course, normally a judge should not "try a case" for a litigant who is wholly failing to accomplish the task. However, on the occasion where a citizen has the simplest kind of matter to bring before the court, with no adversarial context, and no indication of any untoward motive or disrespect for the court, the judge has a duty and a responsibility to not simply turn that citizen away on the basis of a minor failure to establish every pertinent detail.

### **CONCLUSION**

A judge's ethical obligation to treat all litigants fairly obligates the judge to ensure that a pro se litigant in a non-adversarial setting is not denied the relief sought only on the basis of a minor or easily established deficiency in the litigant's presentation or pleadings.