

## ADVISORY OPINION

### Code of Judicial Conduct Canon 4

#2-01

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 remind Indiana's judges of a provision in the Code of Judicial Conduct which requires full-time judges to seek approval from the Indiana Supreme Court before accepting appointments or re-appointments to governmental committees or commissions which are concerned with issues of fact or policy other than the law, the legal system, or the administration of justice. Canon 4C(2), Code of Judicial Conduct (1993)

This provision in Indiana's Canon 4C(2) deviates from the American Bar Association's 1990 Model Code of Judicial Conduct, which, where adopted, imposes a blanket prohibition against such service. The Model Rule provides, "A judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice." Canon 4C(2), Model Code of Judicial Conduct (1990).

In 1993, the Indiana Supreme Court promulgated its revised Code of Judicial Conduct and, in large part, adopted the Model Code. However, the Court chose to adopt a more liberal rule relating to work on governmental commissions, and concluded that in some circumstances the benefits of judicial participation outweigh the potential detriments. Therefore, Indiana's rule, and its commentary, provide as follows:

#### **C. Governmental, Civic or Charitable Activities.**

(2) A judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy or matters other than the improvement of the law\*,

the legal system or the administration of justice except with prior approval of the Indiana Supreme Court. A judge may, however, represent a country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities.

### **Commentary**

Section 4C(2) prohibits a judge from accepting any governmental position except one relating to the law, legal system or administration of justice as authorized by Section 4C(3) except with prior approval of the court. The appropriateness of accepting extra-judicial assignments must be assessed in light of the demands on judicial resources created by crowded dockets and the need to protect the courts from involvement in extra-judicial matters that may prove to be controversial. Judges should not accept governmental appointments that are likely to interfere with the effectiveness and independence of the judiciary.

As the commentary indicates, the purpose of this regulation is to prevent extra-judicial participation in governmental fact-finding or policy-setting groups where the participation would interfere with the proper administration of justice, such as by burdening judicial caseloads or embroiling judges in matters of controversy.

In the Commission's view, a "governmental" commission or committee is one to which some or all of the appointees are selected by non-judicial elected officials or their designees. A governmental committee concerned with the improvement of the law, the legal system, or the administration of justice, in which participation need not be approved by the Court, is one whose concern with the legal system is direct and exclusive, such as a community corrections board or a committee assigned to consider changes in existing law. Even then, as with all extra-judicial activities, judges must always consider whether their participation might cast doubt on the judge's impartiality, demean the judicial office, or interfere with the proper performance of judicial duties. Canon 4A(1), (2), (3). A governmental commission with a tangential or partial nexus to the legal system, such as a board concerned with protection and advocacy for particular groups of citizens, or a commission established to study the social status of minorities, for example, likely does not have a sufficiently direct and exclusive concern with the legal system, and participation in those groups requires authorization by the Supreme Court.

### **CONCLUSION**

A judge seeking the Court's approval of an appointment or reappointment to a governmental committee or commission not directly and exclusively related to the law, the legal system, or the administration of justice should request the leave in writing, setting out fully the purpose and function of the commission, the judge's proposed role on

the commission, by whom the judge would be appointed, the term of the appointment, the estimated time which the judge would be expected to devote to the commission's work, as well as any other information from which the Justices may assess whether the appointment is appropriate, such as whether the committee is or may be involved in litigation, or may involve controversial or contentious issues or conclusions.

These requests should be sent directly to the office of the Chief Justice at 304 State House, Indianapolis, Indiana 46204, or to the Supreme Court Administrator at 315 State House, Indianapolis, Indiana 46204.