

## ADVISORY OPINION

### Code of Judicial Conduct Canon 1

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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

May judges receive compensation for officiating wedding ceremonies during the court's regular hours? Is this analysis affected by whether the ceremony is performed at the courthouse or at an alternate location?

The Commission's view is that a judge who performs wedding ceremonies during the court's regular hours should remit any funds received for these services to the court. By receiving personal compensation for judicial duties performed at the courthouse while the court is open and conducting business, judges and judicial officers may be perceived as using their judicial position for pecuniary gain, in violation of Rule 1.3 of the Code of Judicial Conduct.

Judges and judicial officers who solemnize marriages outside of normal court hours, even at the court, may personally accept a reasonable fee for these services. However, as always, judges should conduct themselves in a manner to minimize any potential conflicts or the appearance of impropriety by the performance of these extrajudicial duties.

### ANALYSIS

In Indiana, judges are one of a select group of individuals authorized to solemnize marriages. I.C. 31-11-6-1; *Ctr. for Inquiry, Inc. v. Marion Circuit Court Clerk*, 758 F.3d 869 (7<sup>th</sup> Cir. 2014). However, unlike clergy members, mayors, clerks, secular officials, and other individuals empowered to perform wedding ceremonies, judges are subject to a strict code of ethics regarding their ability to accept payment for the performance of these duties.

A judge's personal receipt of funds for performing judicial duties may implicate Rule 1.3 of the Code of Judicial Conduct, which prohibits judges from using the prestige of judicial office to advance private interests, as well as Rule 3.13(A), which prevents the acceptance of any requests that may reasonably appear to undermine the judge's independence, integrity, or impartiality.

Among other states, several schools of thought exist. One interpretation permits judges to accept fees for solemnizing marriages outside normal court hours, even for ceremonies taking place in the courthouse. However, the judge may never seek or accept fees for officiating a wedding during court hours. *See, e.g.* New Mexico Code of Judicial Conduct §21-600, Comment B (“No judge may ask for any remuneration for performing a marriage ceremony, but may receive an unsolicited gratuity for performing a marriage outside business hours”); Utah Informal Advisory Opinion 98-8 (compensation for wedding ceremonies performed during non-court hours is acceptable as “judges are no longer on ‘company time’”).

On the other end of the spectrum is a blanket prohibition against charging or retaining any fee for presiding over a wedding ceremony. Several judicial conduct commissions have advised their judges that the acceptance of any fees or gifts for the solemnization of a marriage (regardless of time, date, or location of the event) is forbidden. One motivation behind this ban on wedding fees is the potential appearance of impropriety when money is provided to a judge in exchange for his or her performance of an official judicial act. *See, e.g. In the Matter of an Anonymous Former Probate Judge*, 594 S.E.2d 473 (S.C. 2004); Illinois Advisory Opinion 95-14.

The Commission believes that an intermediate approach is the most appropriate. This permits judges to accept payment only for wedding ceremonies that are officiated during non-court hours. If payment is offered for ceremonies performed in the courthouse during court hours, these funds must be remitted to the city, county, or township, not kept by the judge. This ensures that judges feel free to solemnize marriages whenever requested to do so, but are not viewed as using their judicial office or court resources to achieve private financial gain.

Notably, at least one state that had previously applied a broader interpretation of the acceptance of wedding fees recently adopted this modified approach. In the 2011 revision to Washington’s Code of Judicial Conduct, Canon 5(C)(8) (which permitted judges to accept compensation and reimbursement of expenses for the solemnization of marriages performed outside court hours) was eliminated. Washington’s Code now includes a provision permitting judges to accept compensation for extrajudicial activities only if such compensation will not undermine the judge’s integrity, independence, or impartiality. This is nearly identical to Rule 3.12 of Indiana’s Code of Judicial Conduct.

## **CONCLUSION**

To some members of the public, a judge’s receipt of a fee for performing a marriage ceremony during court hours may seem analogous to the receipt of a fee for signing an order or ruling upon a motion. Judges must therefore decline the personal acceptance of any fees or gratuities for solemnizing marriages during regular court hours while on court premises. If a judge is offered payment for performing an after-hours marriage ceremony, the source and amount of funds must still be evaluated to determine whether acceptance may lead to an appearance of impropriety.