



Indiana Judicial Nominating Commission Indiana Commission on Judicial Qualifications

323 State House
Indianapolis, Indiana 46204
(317) 232-4706

ADVISORY OPINION

Code of Judicial Conduct
Canon 2

#2-89

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 appear in a television commercial for a cable television company in which the viewing public is informed of the offense of cable theft and the penalties for that crime.

ANALYSIS

Canon 2 provides in part, "B. A judge...should not lend the prestige of his office to advance the private interests of others...." The television commercial in which the judge has been asked to appear has been characterized by the judge as a public service spot intended to inform the public of the offense of cable theft and to reduce its occurrence; however, a private cable company is named in the spot and is sponsoring the commercial. The courtroom would be used as the set for filming, and the judge would appear on the bench, unidentified, simulating the sentencing of a defendant in a cable theft prosecution. The viewer would not see the courtroom seal or other identifiers of the location of the set.

The Commission has reached the conclusion that the judge's appearance in this commercial spot would bring him in violation of the provisions of Canon 2 quoted above. Unquestionably, this use of the judicial office would advance the cable company's private interests. While the message in the commercial spot may have a broader social value than some, it constitutes, nonetheless, advertisement for the company. The judge, in effect, would be endorsing a product. Although he would not be identified, perhaps scores of viewers would recognize him as the "real" judge before whom they or their family members had appeared. Furthermore, the cable company would be spared the expense of creating

a courtroom set by virtue of the judge's participation. The judge's appearance in this commercial would constitute an improper use of office.

CONCLUSION

A judge may not allow the use of his courtroom and judicial office for the creation of a television commercial.



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ISSUE

The issue is whether a judge may send a letter to another court making a recommendation of leniency on behalf of a criminal defendant.

ANALYSIS

An Indiana judge has been asked by a criminal defense attorney to write a letter to a Federal District Court judge requesting leniency for a defendant who was a lawyer in the judge's county, and the judge has asked the Commission whether the letter would be proper under the Code of Judicial Conduct.

The Commission members believe the letter would be improper, and would distinguish this situation from one addressed in an earlier opinion. In Advisory Opinion #3-88, the Commission wrote that a judge may make a recommendation for employment based upon substantial, first-hand knowledge of the qualifications of the individual recommended. In sanctioning letters of recommendation, the Commission rejected a strict application of the language in Canon 2 which provides, "A judge...should not lend the prestige of his office to advance the private interests of others....He should not testify voluntarily as a character witness," and recognized that the practice within a profession of providing letters of recommendation for employment is so customary that, when provided by a judge, it is less a function of the judicial position than it is of the judge's position within the legal community at large. Furthermore, a letter of recommendation for employment is not subject to the dangers presumably targeted by the Canon 2 prohibition. The Commission wrote, "A typical recommendation will not involve public testimonials, thus potentially detracting from the dignity of the office, and cannot be exploited to deflect attention from the merits of a factual contest and potentially affect the outcome of a legal proceeding." Advisory Opinion #3-88, Indiana

Commission on Judicial Qualifications.

In this case, the judge has no knowledge about the merits of the defense or the allegations of the prosecution. The request for leniency, the judge has told the Commission, would be on the basis of the defendant's good character, and, as such, violates the spirit of Canon 2. Unlike a letter of recommendation for employment, there is nothing customary or inherently logical about a judge contacting another judge about a defendant's sentencing, and the Commission can conclude only that the letter would violate Canon 2B in that it would constitute the use of the judge's office to advance the private interests of another.

CONCLUSION

A judge may not write a letter to another court requesting leniency for a defendant.