

ADVISORY OPINION

**Code of Judicial Conduct
Canon 3C(4)**

#2-98

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 is the appropriate interpretation of Canon 3C(4) of the Code of Judicial Conduct, which provides that "a judge shall avoid nepotism and favoritism." Nepotism and favoritism are overlapping concepts, the former involving favoritism towards relatives of the judge. In either instance, the prohibition is against allowing judges' relationships to direct the judges' decisions about employment and appointments.

ANALYSIS

The rule does not mean that a judge may never employ or appoint either a legal relative, friend, or political ally. However, the prospective employee's merit and concerns for the proper administration of justice must be paramount in the decision. Otherwise, the judge violates not only Canon 3C(4), but Canon 2B, which precludes judges from using the office to advance the private interests of others. Additionally, a judiciary free of nepotism and favoritism is critical to the public's trust in the fairness and integrity of the legal system; a judge who practices nepotism and favoritism also violates Canons 1 and 2 which obligate judges to uphold the integrity and independence of the judiciary and to at all times promote the public's confidence in it.

Judges who are considering hiring a relative or friend, or anyone referred to the judge or recommended by a relative or friend, must consider the following factors. The first question is the degree, extent, or depth of the relationship of the prospective employee to the judge. For example, the employment or appointment of a spouse likely will never be appropriate. On the other hand, the Commission has, from time to time, approved the hiring of a more distant relative, after consideration of the other factors discussed below. With this, and all considerations suggested in this opinion, the predominant issue is merit.

Also pertinent to the decision is whether or not the position for the prospective employee is relatively lucrative, whether it is permanent or temporary, full-time or part-time. Employing a relative as a temporary filing clerk during another employee's leave of absence, a circumstance the Commission has approved, is unlikely to threaten the public's trust, whereas a judge who confers upon a sibling, child, parent, or member of the judge's household a key post in the judiciary likely will be scrutinized by the Commission.

Another relevant factor is the degree of day-to-day supervision and contact the judge would have with the prospective employee. A judge who hires, for example, a niece or nephew as bailiff without the Commission's approval invites public criticism and a Commission inquiry, whereas the Commission may be inclined to approve the employment of the same relative as, for example, a secretary in the probation department.

Finally, the position for which the judge is considering hiring a friend or relative must be announced or advertised to the public in the same manner other vacancies within the court are announced or advertised, and other qualified applicants must be considered. Only if the friend or relative is objectively qualified for the position, and only after the judge has weighed every relevant factor, may the judge hire or appoint a friend or relative. The Commission urges judges to seek the Commission's approval before hiring or appointing a relative or close friend to any position.

CONCLUSION

The rule against nepotism and favoritism requires a judge to consider the degree of the judge's relationship to a prospective employee or appointee, as well as whether the position is relatively lucrative, whether it is full-time or part-time, permanent or temporary, and the degree to which the judge would supervise the employee. A judge inclined to hire a relative or friend must base the decision primarily on merit, and must give others the opportunity to apply.