



Indiana Judicial Nominating Commission Indiana Commission on Judicial Qualifications

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ADVISORY OPINION

Code of Judicial Conduct
Canon 2

#3-88

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 write or otherwise make a recommendation of an individual for employment.

ANALYSIS

Canon 2 of the Code of Judicial Conduct provides in part, "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." Canon 2B. The Commission rejects the strictest possible application of this language to the question at hand and has decided that a judge with first-hand, substantial knowledge of an individual's qualifications will not be prevented from making a recommendation for employment on behalf of that person.

The act of making a professional recommendation for employment is unlike the prohibited voluntary testimony as a character witness in Canon 2B in that it is not subject to the abuses presumably targeted by the prohibition. 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.

So customary is the practice of recommendations within a profession that, when made 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. This does not mean that the fact of the judicial position

will not be seen as relevant to the weight of the recommendation; however, the Commission cannot view an ordinary recommendation from a judge, even if drafted on court stationary, as an exploitation which Canon 2 is designed to prevent.

Of course, as with any advice given in response to a general inquiry, this opinion does not grant blanket approval for any recommendation under any circumstance. Myriad situations could arise in which a judge should not make a recommendation. For example, if he cannot sincerely and with personal knowledge give a recommendation, he should not do so. Also, a judge should consider whether a recommendation of employment on behalf of an individual seeking work with a law firm or government office which frequently practices in his court might give his recommendation more meaning than is proper or even create a challenge to the judge's impartiality when the individual is hired and appears before him. These are issues the judge will have to consider case by case.

CONCLUSION

A judge is not necessarily prohibited from making a recommendation for employment so long as it is based on substantial, first-hand knowledge of the qualifications of the individual recommended.