



Indiana Judicial Nominating Commission Indiana Commission on Judicial Qualifications

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ADVISORY OPINION

Code of Judicial Conduct
Canon 3

#3-90

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 must disqualify in a case in which the judge's cousin or cousin's son-in-law enters an appearance.

ANALYSIS

An Indiana judge has made this inquiry, and adds that he has no subjective basis for disqualification in cases in which his cousin's daughter's husband is an attorney of record.

A judge must disqualify in cases wherein close relatives enter appearances. Canon 3 of the Code of Judicial Conduct provides in part:

C. Disqualification.

(1) A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where:

(d) he or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(ii) is acting as a lawyer in the proceeding..

Canon 3 further provides:

(3) For the purposes of this section;

(a) the degree of relationship is calculated according to the civil law system".

According to the Commentary to the American Bar Association's Model Rules of Professional Conduct and Code of Judicial Conduct, a judge is disqualified in any proceeding involving the judge's parent, child, grandparent, aunt, uncle, brother, or sister, or any of these relatives' spouses, because these relatives are related within the third degree. Id. at 139 (1983). In Scott v. Scott (1965), 140 Ind.App. 320, 209 N.E.2d 518, a chart is reproduced which depicts relationships to the 14th degree of consanguinity, and this chart supports the statement in the Commentary. Thus, the inquiring judge need not disqualify himself in cases involving his cousin's daughter's husband, so long as no potentially disqualifying issue other than relationship is present.

CONCLUSION

Canon 3 C (1)(d) does not impose a per se rule of disqualification in a case involving a judge's cousin, the cousin's children, or their spouses.