



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 3

#4-89

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

Several judges have asked the Commission about their duties when a court reporter, bailiff, law clerk, or other employee under the judge's direction and control has a spouse or near relative who is an attorney, litigant, or material witness in a pending case.

ANALYSIS

It is presumed for the purposes of this opinion, of course, that the judge faced with this issue does not personally have any disqualifying relationships, interests, or biases, but that one of the judge's employees whose work brings the employee in contact with the record, the jury, or any other aspect of the proceedings, is married to or is a near relative of a lawyer, litigant, or material witness in the proceedings. The specific situations brought to the Commission's attention involve a bailiff whose father-in-law is an attorney in the county and often practices in the inquiring judge's court, a court reporter whose husband is an attorney in a pending proceeding, a court reporter whose brother is an attorney in a pending proceeding, and a court reporter whose husband is the Sheriff and is often a material witness for the State.

Canon 1 of the Code of Judicial Conduct requires a judge to enforce high standards of conduct in order to preserve the integrity and independence of the judiciary. Canon 2 requires the judge to avoid the appearance of impropriety and to promote public confidence in the impartiality of the judiciary, and Canon 3B(2) states that a judge should require his staff and court officials subject to his direction and control to observe the standards of fidelity and diligence which apply to him. When an employee's relative enters an appearance or

otherwise participates in a pending proceeding, the judge must preserve the independence of the judicial system from conflicts and the appearance thereof by directing the employee against participating in the case in question. The Commission's advice to these judges has been to substitute the employee with another when the spouse or relative is participating in the proceedings. The Commission found it effective that one judge, upon appointing as bailiff the daughter-in-law of a local practitioner, issued an Order stating that the intent of the court was to eliminate appearances of impropriety, that the bailiff was not to act in any capacity on cases involving her relative, and that neither was to discuss pending court cases with the other.

CONCLUSION

If a spouse or near relative of one of a judge's employees under his direction and control is a lawyer, litigant, or material witness in a pending case, the judge should instruct the employee not to participate at all in the proceedings.