



# Indiana Judicial Nominating Commission Indiana Commission on Judicial Qualifications

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## ADVISORY OPINION

Code of Judicial Conduct  
Canon 5

#5-89

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 before the Commission is whether a judge may hold a power of attorney and serve as the executor of the estate of a family friend without violating Canon 5 of the Code of Judicial Conduct.

## ANALYSIS

The judge who made this inquiry has known his elderly friend since the judge was a young child. The families were neighbors and close friends for forty years, and the judge often visited the friend and his wife, who were childless. As an adult, the judge looked after the couple, helped during the wife's illness and death, and has continued caring for and socializing with his friend, who lives nearby. The judge drives his 95-year-old friend to lodge meetings, other social functions, and to doctor appointments. For this man's convenience, a power of attorney was given to the judge, who pays the man's bills, does his banking and otherwise handles his affairs, which are not complex. The elderly friend has named the judge in his Last Will and Testament as executor. Apparently, administration of the estate will not be complicated.

In reviewing the old Canons of Judicial Ethics, the ABA Special Committee on Standards of Judicial Conduct determined that Canon 27, which generally authorized fiduciary activities so long as they did not interfere with judicial duties, was too permissive in light of the appearances of improprieties and conflicts which threaten when judges are fiduciaries. See, Thode, Reporter's Notes to Code of Judicial Conduct, p. 87 (1973). A survey revealed that judges commonly undertook fiduciary responsibilities, often regardless of the relationship with the grantor. Id. Concerns over judges becoming

involved in litigation arising from fiduciary acts and over the potential appearance that the individuals for whom the judges acted as fiduciaries were in superior positions by virtue of the judicial connection led the Committee to recommend the modern Canon which limits the range of individuals for whom a judge may serve in a fiduciary capacity. Id. at 88. The modern Canon provides in part:

A judge should not serve as the executor, administrator, trustee, guardian, or other fiduciary, except for the estate, trust, or person of a member of his family, and then only if such service will not interfere with the proper performance of his judicial duties. "Member of his family" includes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. Canon 5D, Code of Judicial Conduct (emphasis added).

Canon 5D, although much more limited than Canon 27, does not limit the range of individuals for whom a judge may act as fiduciary to legal relatives only, which limitation would exclude, for example, foster children or step-children from the judge's fiduciary services. See, Thode, Reporter's Notes to Code of Judicial Conduct, supra, at 88. Nor is there a restriction allowing only members of the judge's household to engage the judge's fiduciary services. Rather, a judge may act as fiduciary for any person with whom there exists a close "familial" relationship. Webster's Third New International Dictionary defines "familial", in part, as "of, relating to, or having the characteristics of a family". This judge's role in his friend's life has been filial in nature, nurturing, personal, and lasting. These are, ideally, the characteristics of a close family relationship, and the judge may act as a fiduciary for his friend without violating Canon 5.

#### CONCLUSION

A judge who has maintained a close relationship bearing the characteristics of a family relationship such as those described in this opinion is not necessarily prohibited by Canon 5D from acting as a fiduciary for that individual.