



# 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 2

#5-91

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 send a letter to another court making a recommendation of leniency on behalf of a criminal defendant.

## ANALYSIS

An Indiana judge has been asked by a criminal defense attorney to write a letter to a Federal District Court judge requesting leniency for a defendant who was a lawyer in the judge's county, and the judge has asked the Commission whether the letter would be proper under the Code of Judicial Conduct.

The Commission members believe the letter would be improper, and would distinguish this situation from one addressed in an earlier opinion. In Advisory Opinion #3-88, the Commission wrote that a judge may make a recommendation for employment based upon substantial, first-hand knowledge of the qualifications of the individual recommended. In sanctioning letters of recommendation, the Commission rejected a strict application of the language in Canon 2 which provides, "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," and recognized that the practice within a profession of providing letters of recommendation for employment is so customary that, when provided 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. Furthermore, a letter of recommendation for employment is not subject to the dangers presumably targeted by the Canon 2 prohibition. The Commission wrote, "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." Advisory Opinion #3-88, Indiana

Commission on Judicial Qualifications.

In this case, the judge has no knowledge about the merits of the defense or the allegations of the prosecution. The request for leniency, the judge has told the Commission, would be on the basis of the defendant's good character, and, as such, violates the spirit of Canon 2. Unlike a letter of recommendation for employment, there is nothing customary or inherently logical about a judge contacting another judge about a defendant's sentencing, and the Commission can conclude only that the letter would violate Canon 2B in that it would constitute the use of the judge's office to advance the private interests of another.

#### CONCLUSION

A judge may not write a letter to another court requesting leniency for a defendant.