



# Indiana Judicial Nominating Commission Indiana Commission on Judicial Qualifications

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## ADVISORY OPINION

Code of Judicial Conduct #7-90  
Compliance  
Part-Time Judge

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 part-time judge who also practices law may represent criminal defendants in other courts. The advice in this opinion represents a modification of earlier Commission advice. This opinion does not apply to judges pro tempore.

### ANALYSIS

In the past, part-time judges who inquired about the propriety of representing defendants charged with crimes or infractions were advised that they should not. The majority of Commission members then were concerned with the public's perception of a judge who was also in the business of contesting prosecutions brought by the State. A smattering of complaints, letters, and telephone calls over the years had indicated to the Commission that some defendants chose lawyers who were part-time judges because of a perceived advantage in being defended by a judge. There was also the unfair perception that a judge, who in a law practice defended prosecutions, would be biased in favor of the defense when presiding over a prosecution. It was thought that these perceptions impugned the integrity and impartiality of the judiciary and that, perhaps, the lawyer who was retained because of the part-time judicial position unwittingly violated the rules of ethics against allowing the impression of being in a position of special influence.

It has become increasingly clear that this prohibition against a part-time judge practicing criminal defense law is far too restrictive as a remedy for the nebulous dangers presented by the alternative. Furthermore, a practical problem with the rule has been that many

talented practitioners who otherwise would be candidates for part-time judicial positions have declined to pursue the positions because to forfeit their criminal defense practices demanded too great a sacrifice.

The Commission believes that a more reasonable approach is to advise part-time judges that they may represent criminal defendants except as to any type of charge which could be brought in the judge's court. Thus, for example, a part-time judge with jurisdiction over traffic infractions may not defend any such charge in any jurisdiction. The Commission is hopeful that this rule will address some of the potential conflicts inherent in a part-time judge's dual professional life without undue restrictions.

#### CONCLUSION

A part-time judge who also practices criminal defense law may not defend any charge which is of the same type of charge which could be filed in the judge's court.