



Indiana Judicial Nominating Commission Indiana Commission on Judicial Qualifications

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ADVISORY OPINION

Code of Judicial Conduct
Canon 7

#1-90

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

At issue here are the guidelines pertaining to partisan political activity which a judge must impose upon those employees subject to the judge's direction and control. Specifically, the questions are:

1. To what extent the judge's employees may participate in partisan political activity while at the work place or during working hours, such as displaying campaign buttons, posters, and bumper stickers, and,
2. To what extent they may participate in partisan politics not during working hours or at the work place, such as managing or participating in committees, campaigning for candidates, or themselves running for partisan elective office.

ANALYSIS

A judge should not permit those employees subject to the judge's direction and control to engage in any campaign conduct while on duty or at the court offices. The display of campaign buttons, posters, bumper stickers, and similar items must be forbidden. The Commission members believe that this prohibition would pass constitutional muster, as it is necessary to implement valid public interests. See, e.g., Connealy v. Walsh (1976), 412 F.Supp. 146.

The display of partisan political paraphernalia by court employees is antithetical to fundamental notions that a court of law should operate independently of partisan interests. "Employees who display political buttons or bumper stickers...may convey the impression that the justice

system is partisan and, therefore, [that] citizens may not be treated fairly if they are not members of the publicized political party. [T]he public may lose confidence in a system that appears to be moved by political affiliation, rather than based on due process of law". Ozar, Kelly, & Begue, Ethical Conduct of Non-judicial Court Employees: a proposed model code, 73 *Judicature*, No. 3, (1989).

Furthermore, the judge's administrative duties and duties to preserve the dignity of and the public confidence in the judicial system pursuant to Canons 1, 2 & 3 of the Code of Judicial Conduct would prohibit a judge from using the courthouse as a campaign site. See, Matter of Conda (1977), N.J., 370 A.2d 16. Canon 3B(2) states that the judge should require his staff to observe the standards of diligence which apply to the judge. Also, Canon 7B(1)(b) states that the judge "should prohibit...employees subject to his direction or control from doing for him what he is prohibited from doing under this Canon".

Despite the current reality that most Indiana judges are, of necessity, subject to political demands, a litigant's experience with the court and its personnel must be free of the air of partisanship. No campaigning may be permitted in connection with court-related duties.

2. Having concluded that a judge must prohibit those employees subject to his direction and control from engaging in partisan campaign activity while on duty, specifically having addressed the use of buttons, posters, and bumper stickers, the next issue is to what extent the judge must regulate the employees' partisan political activity while they are not on duty.

Some judges in Indiana have implemented policies which restrict their employees' partisan political activities to registering to vote and voting, belonging to a political party, and being politically active in non-partisan activities. The policies prohibit employees from soliciting or raising funds, managing committees, endorsing candidates, or working at polls in a partisan capacity.

These restrictions apparently would survive constitutional challenges, see, e.g., Broadrick v. Oklahoma (1973), 413 U.S. 601, 93 S.Ct. 2908, 37 L.Ed.2d 830; see also, In Re Prohibition of Political Activities by Court Appointed Employees (1977), Pa., 375 A.2d 1257, and are attractive in part because they eliminate any danger of improprieties such as that employees will be or will feel pressured into political activity, will engage in these activities while on duty, or will use their court-related titles in connection with these activities. For these reasons, judges may choose to adopt these restrictions.

However, the Commission would not require as the judge's ethical duty this restrictive a policy. So long as those improprieties eliminated by the most restrictive policy -- pressure to participate, use of court time, resources, or titles -- are absolutely avoided, a judge may permit employees to lawfully participate in the partisan political

process, except that a judge's employee may not be a candidate for partisan elective office.

The Commission recognizes that, in offering this assessment that a judge's employee may not be a candidate for partisan elective office, it has chosen a place on a continuum of activity at which to draw a line, and that reasonable arguments can be made for imposing it elsewhere. If a probation officer, for example, may manage a candidate's committee, hold a fund raiser, or place a candidate's sign in the front yard, why then is that employee prohibited from becoming a candidate for partisan elective office without first resigning as probation officer or taking unpaid leave? The Commission considers in support of its position that an employee's political activity on someone else's behalf can, with diligence, be accomplished without linking the activity to the employee's position with the court, without detracting from efficiency on the job, and without injecting into the on-duty hours the air of partisanship which destroys the public's confidence in the impartiality of the judge. On the other hand, when a judge's employee is the candidate, embodying the partisan contest, the dangers lurk too near to be countenanced. Furthermore, the public may reasonably perceive that, because the candidate is employed by the judge, that the judge supports the candidate politically, which perception could involve Canon 2B, "A judge...should not lend the prestige of his office to advance the private interests of others...".

CONCLUSION

The Commission embraces as a guideline for judges in their regulation of their employees' political activities that portion of the Proposed Model Code for Non-judicial Court Employees published in Judicature, supra, which, in pertinent part states as follows:

A) Each employee retains the right to vote as the employee chooses and is free to participate actively in political campaigns during non-working hours. Such activity includes, but is not limited to, membership and holding office in a political party, campaigning for a candidate in a partisan election by making speeches and making contributions of time or money to individual candidates, political parties or other groups engaged in political activity. An employee who

For the purposes of this restriction, the Commission does not consider a public defender as an employee of the judge subject to the judge's direction and control. While the public defender may serve at the pleasure of the judge, the public defender's role as advocate before the court, by definition, means the public defender is not serving at the judge's direction and control. White v. Galvin (1988), Ind.App., 524 N.E.2d 802, citing Polk County v. Dodson (1981), 454 U.S. 312, 102 S.Ct. 445, 70 L.Ed.2d 509.

chooses to participate in political activity during off-duty hours shall not use his or her position or title within the court system in connection with such political activities.

B) With the exception of officers of the court who obtain their position by means of election, no employee shall be a candidate for or hold partisan elective office. With the same exception, an employee who declares an intention to run for partisan elective office shall take an unpaid leave of absence upon the filing of nomination papers. If elected, he or she shall resign. An employee may be a candidate for non-partisan elective office or may be appointed to a non-partisan office without separating from employment, provided that the employee complies with the requirements in this Code concerning performance of duties, conflicts of interest, etc.

C) No employee shall engage in any political activity during scheduled work hours, or when using government vehicles or equipment, or on court property. Political activity includes, but is not limited to:

1) Displaying campaign literature, badges, stickers, signs or other items of political advertising on behalf of any party, committee, agency or candidate for political office;

2) Using official authority or position, directly or indirectly, to influence or attempt to influence any other employee in the court system to become a member of any political organization or to take part in any political activity;

3) Soliciting signatures for political candidacy;

4) Soliciting or receiving funds for political purposes.