

ADVISORY OPINION

Code of Judicial Conduct
Canon 5
Application Section

#3-01

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 purpose of this Advisory Opinion is to clarify the Commission's interpretation of the Code of Judicial Conduct as it pertains to political activities of judicial officers who themselves are not candidates for judicial office but who serve for, or are employed as judicial officers by, judges who do hold elective office. This opinion applies to full-time judicial officers, including magistrates, and applies to continuing part-time judges, such as referees, commissioners and hearing officers. It does not apply to Senior Judges or to judges pro tempore.

Pursuant to Canon 5C of the Code of Judicial Conduct, a judge in office which is filled by public election may, at any time, attend gatherings of political organizations and make voluntary contributions to political parties and organizations. Under Canon 5C(1)(g), a judge or other candidate for elective judicial office may publicly endorse other candidates, attend gatherings for other candidates and, in that context, make financial contributions to other candidates, only when the judicial candidate himself or herself is running for election in the same election cycle as the other political candidate or candidates, irrespective of the office for which the other candidates are running, or where. Thus, during the pendency of a judge's candidacy for re-election, he or she is free to endorse candidates and to attend their fundraisers whereas, while not a candidate, the judge may not do so.

Next, pursuant to the Commentary to Application Section A of the Code of Judicial Conduct, full-time judicial officers, such as magistrates, are "treated as elected judges" for purposes of compliance with Canon 5. Application Section C provides that continuing part-time judges, such as part-time commissioners, hearing officers, and referees, "shall comply with the provisions of Canon 5 with which the appointing judge must comply." The issue is whether those judicial officers, unless they are candidates for judicial office,

may expand their political activities by attending political candidates' fundraisers and otherwise endorsing them during the time the judges for which they serve may do so, by virtue only of the sitting judges' own candidacies. The question is especially problematic where judicial officers work for more than one judge, some of whom may be candidates when the others are not.

The purpose of the rule liberalizing the political activities of judicial candidates, and allowing them to endorse candidates and attend fundraisers when they are candidates, is to provide them the necessary access and exposure to political functions during their own candidacies, and is a function of the realities of a system wherein judges must run for election. The same concerns and objectives do not apply to judicial officers who themselves are not candidates but who serve as judicial officers for judges who are. This fact points to a conclusion that judicial officers who themselves are not candidates may not publicly endorse candidates and attend their fundraisers, even when the judges for whom they work may do so.

On the other hand, a rule prohibiting judicial officers who are not candidates from ever endorsing other candidates or attending their fundraisers and contributing in that context to a candidate's campaign has the unfortunate result of prohibiting judicial officers from supporting the very judge/candidate by whom they are employed or for whom they serve.

In light of this dilemma, the Commission's conclusion is that the appropriate standard for judicial officers is that, unless they become judicial candidates themselves, they are prohibited, as are all judges not currently candidates, from publicly endorsing political candidates, judicial or otherwise, or attending their fundraisers, except that, if the judicial officer serves for one or more judge who currently is a candidate, the judicial officer may publicly endorse the judge/candidate for whom he or she serves, may attend fundraisers for that candidate, and may financially contribute to the candidate in that context.

CONCLUSION

A judicial officer who is not a candidate for judicial office may not endorse political candidates or attend their fundraisers and contribute to them simply on the basis that one or more judge for whom the judicial officer serves is a candidate who, therefore, may endorse other political candidates. However, a judicial officer who serves for or is employed by a judge who is a candidate for judicial office may publicly endorse that judicial candidate and may purchase tickets for and attend fundraisers for the judicial candidate or candidates by whom the judicial officer is employed.