

Judicial Inquiry Commission

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May 9, 1997

The Judicial Inquiry Commission has considered your request for an advisory opinion regarding the propriety of a judge's filing an amicus brief with a federal court in an action pending in that court when the subject matter of that action has had or will have a direct and substantial effect on the judge's ability to carry out his official duties.

It is the opinion of the Commission that the judge may not file such an amicus brief in this or in any other action.

Canons 1 and 2 require the judge to uphold the integrity and independence of the judiciary and to avoid the appearance of impropriety. The proposed amicus brief would concern conditions in the local county jail where some of the defendants sentenced by the judge would serve their sentences. To the extent that the sentence imposed by the judge determines the place of incarceration, a reasonable person might, however incorrectly, read something into the sentence if the judge sent a defendant to a facility that the judge may have characterized as more or less desirable.

Moreover, the proposed amicus brief may run afoul of Canons 3A(6) and 5F. Insofar as the brief would become part of the public record when filed, it could be considered to be a public comment about a pending proceeding prohibited by Canon 3A(6). Likewise, insofar as the brief would constitute advocacy, however muted, through an attempt to persuade the federal court to act in a particular way, it would constitute the practice of law which is prohibited by Canon 5F.