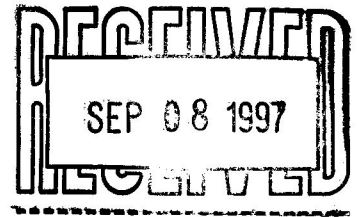


JUDICIAL ETHICS COMMITTEE
Advisory Opinion No. 97-2
Issued September 4, 1997



Issue: A judge who has received a survey from the Committee to Study the Role of the Courts in Protecting Children asks whether there is any impropriety in responding to those questions in the survey that ask the judge to evaluate and express opinions on the performance of the Department of Human Services, which frequently appears as a petitioner or litigant before the courts. The survey in question was undertaken by the Muskie Institute on behalf of the Committee to Study the Role of the Courts in Protecting Children, a committee appointed by the Chief Justice of the Supreme Judicial Court.

Discussion: The Committee believes that a judge's response to this survey would not violate the Code of Judicial Conduct.

The most relevant provision of the Code is Section 3(B)(9), which provides that "a judge shall refrain from public comment about a pending or impending proceeding in any court . . . This subsection does not prohibit judges from making public statements in the course of their official duties . . ."

At the outset, a review of the survey in question demonstrates that it seeks, among other things, an evaluation of the adoption practices, policies, and procedures of the Department of Human Services and information relating to the judge's experience with proceedings involving abused or neglected children. Depending on whether any relevant case was then pending before the judge, the response to this survey might or might not contain comment "about a pending . . . proceeding" within the meaning of Canon 3(B)(9).

In any event, we have been advised that the individual survey responses have been kept strictly confidential by the Muskie Institute and have not even been provided to the Committee. As a result, these survey responses cannot be found to constitute "public" comment even if those responses refer to pending cases. Thus there is no violation of Canon 3(B)(9).

In this connection, we believe that it is important for the judicial system to be able to offer and receive feedback on matters affecting the administration of justice so long as all concerned recognize the need to avoid any prejudice to specific cases that are currently pending before the courts.

In concluding that responding to the survey in question does not violate the Code of Judicial Conduct, we have also taken into account Canon 3(B)(5), which provides in pertinent part that "a judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice . . ." *See also* Canon 2A. It is conceivably possible that a judge might, in answering a survey, manifest some bias or prejudice in contravention of this Canon. While judges should be attentive to this issue, it should not preclude them from providing candid and fair minded assessments of the performance of a state agency as part of a project designed to improve the administration of justice.

Thus, we see no problem with the survey in question, although we note that other surveys on topics where a judge's responses might not be kept confidential and might be construed as relating to pending cases or as manifesting bias or prejudice could pose potential problems under the Code.