

JUDICIAL STANDARDS COMMISSION
STATE OF NORTH CAROLINA

FORMAL ADVISORY OPINION: 2007-02

August 10, 2007

QUESTION:

Under what circumstances may a judge send letters of recommendations?

Initially this inquiry addressed a very specific circumstance regarding a judge's request to review a proposed letter of recommendation for a member of the bar nominated for a prestigious North Carolina Bar Association Award.

COMMISSION CONCLUSION:

The proposed letter of recommendation was reviewed by the Judicial Standards Commission and the Commission concluded that the letter could be submitted as written. The Commission advised that personal stationary rather than official letterhead should be used as the recommendation was not done in the course of official duties as a judge. The Commission further advised that should the attorney appear in a proceeding before the judge, it should be disclosed on the record that a letter of recommendation was written by said judge on behalf of the attorney.

DISCUSSION:

Canon 2B of the North Carolina Code of Judicial Conduct provides in part that "a judge should not lend the prestige of the judge's office to advance the private interests of others; nor should the judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge may, based on personal knowledge, serve as a personal reference or provide a letter of recommendation. A judge should not testify voluntarily as a character witness."

The purpose of this formal advisory opinion is to provide some guidance in the much more common context in which judges are asked to write letters of recommendation. Typical examples of situations in which some judges may choose to send letters of recommendation include letters on behalf of people who are applying to college, or law school, seeking membership in a state bar, seeking employment opportunities or involved in a process such as qualifying to volunteer in a school or an adoption whereas in each situation the applicant requires the recommendation of friends and neighbors, or other similar situations.

The language included in the relevant portion of Canon 2B includes "... a judge may, based on personal knowledge serve as a personal reference or provide a letter of recommendation." This language allows for judges to decline any request for letters of recommendation. However, if a judge is considering writing such a letter or providing a personal reference, he or she must take reasonable steps to avoid lending the prestige of his or her office to advance another's private interest.

This basic principle should guide every aspect of a judge's consideration. Some common-sense guidelines follow, but are in no way exhaustive:

- Use personal stationary rather than official letterhead. Since a recommendation will

usually be personal rather than official in nature, a judge should use personal stationery, not official court stationery or any facsimile thereof. Canon 2B of the Code provides that a judge "should not lend the prestige of the judge's office to advance the private interest of others." However, a judge may reference the judge's judicial office in the letter when it is necessary to explain the context of the judge's observations of the individual. Should a State of North Carolina Agency or official request a judge's input in an official capacity, then the judge may use official stationery as the request would come in the normal course of the judge's official duties.

- Be as specific as possible to whom you are sending the letter of recommendation, try to avoid addressing the letter to "whom it may concern".
- Consider requesting that the letter be treated confidential to the group or individual receiving a letter of recommendation.
- Consider the context of the request for a letter of recommendation. Is the purpose for which the letter is requested something with which the judge should associate?
- Avoid initiating telephone calls in order to make recommendations. The risk that the call may be perceived as lending the prestige of office is reduced if the judge makes a recommendation over the telephone only in response to an inquiry by the decision maker. Be clear that the recommendation is personal and not an official act.
- Limit letters of recommendation or referrals to only those individuals of whom the judge has personal firsthand knowledge. Limit the substance of the letters of recommendation to information about the individual that the judge has personally observed or experienced.

When choosing to send letters of recommendation, judges should be mindful of the situation, manner of transmission, appearance and the substance of the letter of recommendation so as to avoid the appearance of lending the prestige of their judicial office to advance the private interests of others.

Reference:
North Carolina Code of Judicial Conduct
Canon 2B