



## JUDICIAL STANDARDS COMMISSION STATE OF NORTH CAROLINA

### FORMAL ADVISORY OPINION: 2023-02

October 13, 2023

#### QUESTION:

This opinion addresses frequently asked questions regarding judges' use of their official letterhead and title.

#### ANSWERS & DISCUSSIONS:

##### *Use of Official Letterhead Generally*

The North Carolina Code of Judicial Conduct does not provide any specific rules relating to the use of official letterhead, although Canon 2B does generally warn that a “judge should not lend the prestige of the judge’s office to advance the private interest 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 . . . .” Particular concern over the use of official letterhead arises when a judge uses official letterhead in personal affairs (such as personal business or family matters, campaigns, etc.) or when a judge uses official letterhead to influence a decision-maker on issues that have no relation to the judge’s official or professional activities or the administration of justice. Building on these prohibitions, the advice from the Judicial Standards Commission regarding the use of official letterhead generally falls into a few common scenarios:

- (1) providing recommendations or serving as personal references for *individuals the judge knows* – official letterhead is generally permitted for recommendations based on the judge’s observations of the individual made in the scope of the judge’s official duties and professional judicial activities; personal stationery should be used for recommendations based on knowledge formed and maintained outside the judicial role.
- (2) providing thank you notes or letters of *appreciation/commendation* – official letterhead is generally permitted when it is done as a civic matter, such as a sign of appreciation for outstanding civic conduct in the community, congratulations on a professional achievement relating to the legal profession, thanks for attending events related to the administration of justice, and the like (in these circumstances in particular, since the letter is not to be used in any

decision-making or to confer any benefit, the risk of misuse of the prestige of the office is minimized).

(3) providing recommendations to grant-making organizations to fund *specific programs* – official letterhead is permitted when the recommendation is offered to demonstrate specific benefits of the program to the judge’s court (in the case of the Chief Justice, to the courts generally).

(4) providing *information to government officials*, such as communications with legislators, recommendations to the Governor’s office on judicial appointees, references and letters to the State Bar for admissions or other official business, communications with other state agencies/offices that interact with the courts and so forth – official letterhead is appropriate when providing information to official bodies related to the administration of justice or other legal or governmental functions.

***Use of Official Letterhead for Recommendations of Individuals for Jobs, Awards, School Admission, Etc.***

Canon 2B provides that “A judge may, based on personal knowledge, serve as a personal reference or provide a letter of recommendation.” The use of official letterhead to provide a letter of recommendation generally turns on whether the judge’s personal knowledge of the individual’s skills and capabilities arises from the course of the judge’s judicial activities (official or professional) or whether the personal knowledge stems from the judge’s personal life or professional activities before becoming a judge. Thus, to justify the use of official letterhead, there must be some direct correlation between the judge’s professional duties/activities as a judge and the basis for the recommendation.

Since 2007, however, the Commission staff has clarified in numerous informal opinions that there are many other situations where official letterhead may be used in written recommendations. The *general rule* that has emerged is that ***so long as the recommendation or reference is based upon personal knowledge obtained within the scope of a judge’s official duties, then official stationery may be used.*** The term knowledge gained “within the scope of a judge’s official duties” has typically meant that the judge knows the person through exercising his or her official duties in the courthouse or through other professional activities related directly to the judicial role (such as work with official commissions, task forces or bar associations). As such, official letterhead is appropriate when referencing individuals (1) who have worked under the judge’s supervision and control or with whom the judge has day to day contact through his or her official duties (i.e. courtroom clerks, probation officers, judicial administrative staff, etc.) or (2) who have worked directly with the judge during the exercise of the judge’s quasi-judicial

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<sup>1</sup> In 2007, the ABA amended the Model Code of Judicial Conduct to add new comments to clarify that in the context of providing recommendations, previous strict limits on the use of judicial letterhead should be relaxed and that a judge may use official letterhead for recommendations if the judge indicates that it is a personal recommendation (i.e., not made on behalf of the court) and there is no reasonable likelihood that the use of the letterhead would reasonably be perceived as an attempt to exert pressure on the recipient by reason of the judicial office. Per an article by Cindy Gray of the Center for Judicial Ethics at the National Center for State Courts, as of 2015, 18 states had adopted the new comment to the model rule on the use of official letterhead.

professional activities that are permitted under Canon 4 (activities related to the administration of justice, etc.). If the judge's personal knowledge of the individual arose only from non-judicial extracurricular community or avocational activities (as permitted under Canon 5) or through purely personal or family relationships, then the judge can still make the recommendation, but should use personal stationery. When using personal stationery, the recommendation should only reference the judge's title and position if it is relevant to explain the basis for the recommendation.

The following is a summary of appropriate use of official letterhead when making recommendations on behalf of someone the judge knows:

- Recommendations to the Governor or federal officials regarding judicial appointments.
- Recommendations on behalf of judicial employees with whom the judge works on a regular basis (law clerks, judicial assistants, etc.) – can be recommendations for jobs, school admissions, scholarships, awards, etc.
- Recommendations on behalf of attorneys when the recommendation is based on the judge's observations and knowledge of the attorney's abilities because the attorney has appeared before the judge or where the attorney has worked with the judge in some official capacity (such as serving on commissions or committees together where the judge is serving as in his or her capacity as a judge) (this would not extend to situations where the judge and the attorney serve on committees and boards arising from purely avocational or civic engagement unrelated to the administration of justice).
- Nominations of individuals for professional recognition or awards relating to the administration of justice (so long as the knowledge of that individual's achievements is gained through the judge's role as a judge).
- Other written communications with federal, state or local officials or agencies when offered in your official capacity (such as where the agency requires letters from judges, e.g., State Bar admissions letters, State Bar specialization questionnaires, recommendations for JAG Corps, DA's offices, PD's offices, etc.).

Based on past advice, personal stationery should be used whenever the judge's knowledge of the individual arises from connections and relationships formed outside the judicial role (such as through family, friends, community and religious activities and prior employment). For example purposes, personal stationery should be used in the following situations:

- Recommendations for former colleagues and employees from the judge's time before becoming a judge.
- Letters to the NC Parole Commission or other criminal justice agencies regarding specific inmates where the letter is based on knowledge the judge gained prior to becoming a judge or in a personal capacity.
- Letters written on behalf of attorneys who are close, personal friends who do not appear before or interact with the judge in the judge's official capacity.

Letters written as part of a judge's service on a civic/charitable board.

### **References:**

- North Carolina Code of Judicial Conduct: Canons 2B, 4, 5
- Formal Advisory Opinions 2007-02
- ABA Model Code of Judicial Conduct Rule 1.3 Comment 2