

STATE OF NEVADA

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STANDING COMMITTEE ON
JUDICIAL ETHICS AND ELECTION PRACTICES

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THE PROPRIETY OF VARIOUS
EXTRA-JUDICIAL CONDUCT

Canon 2B provides:

ISSUE

"A judge shall not lend the
prestige of judicial office to
advance the private interests of
the judge or others."

1. May a judge write a letter of recommendation on behalf of a candidate for admission to law school?
2. May a judge write a letter of support on behalf of a doctor in a medical licensing hearing?
3. May a judge write a letter to a county commission in support of a candidate for district attorney?
4. May a judge serve as president of his neighborhood association, including appearing publicly on behalf of the association to advocate for or against rezoning matters?

The Commentary to Canon 2B states in part: "Although a judge should be sensitive to possible abuse of the prestige of office, a judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation."

Thus the Commentary specifically allows the judge to write a letter of recommendation on behalf of a candidate for admission to a professional school. While the Commentary allows such letters, at the same time, it cautions judges to "be sensitive to possible abuse of the prestige of office." By this the Committee believes that a judge should write only factual letters of recommendation based upon his or her personal observation of the candidate. A judge should be cautious to avoid writing letters of recommendation when a judge possesses no unique knowledge of the candidate and others could provide the same information. Under such circumstances, there is a greater danger that the judge is lending the prestige of judicial office "to advance the private interests of the judge or others."

Answer: See the discussion as to each issue below.

DISCUSSION

1. May a judge write a letter of recommendation on behalf of a candidate for admission to law school?

The Nevada Code of Judicial Conduct sets forth the applicable standards from which our judges are provided guidance for ethical conduct.

The Committee also notes that allowing judges to write letters of recommendation to law school candidates

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is consistent with Canon 4 and its Commentary which encourages judges to participate in extra-judicial activities concerning the law as judges are “in a unique position to contribute to the improvement of the law, the legal system and the administration of justice.” Canon 4B.

2. May a judge write a letter of support on behalf of a doctor in a medical licensing hearing?

The judge has been asked to write a letter of support for a personal physician who has treated the judge for a number of years. This letter would be considered at a hearing by state medical licensing authorities considering whether the doctor may continue to practice.

The Committee believes that such a letter violates Canon 2B in two respects: The judge is lending the prestige of his judicial office to advance the private interests of others and, second, the judge is testifying voluntarily as a character witness. Canon 2B.

While the Commentary to Canon 2B allows judges to write letters of reference, under the facts presented this letter would be used by the doctor to aid his defense in an adjudicative hearing and thus the judge would be serving voluntarily as a character witness which is prohibited. While the rule states that a judge shall not “testify” and the letter presumably would not be under oath, the Committee believes that under the relaxed rules of evidence in an administrative hearing the judge’s letter of support would be offered as evidence on behalf of the physician and therefore be virtually synonymous with testimony.

This conclusion is consistent with the holdings of other judicial ethics committees around the United States which uniformly prohibit judges from writing letters to any investigatory or adjudicative proceeding, whether of an administrative, civil or criminal nature, where a person’s legal rights, duties, privileges or immunities are ultimately determined. Florida Advisory Opinion 75-6; Missouri Advisory Opinion 137 (1988); monograph “Recommendations by Judges,” Cynthia Gray, America Judicature Society, 1996 at p. 10.

3. May a judge write a letter to a county commission in support of a candidate for district attorney?

Canon 5 states:

(1) Except as authorized in Sections 5B(2) and 5C(1), a judge or a candidate for election or appointment to judicial office shall not:

- (b) Publicly endorse or publicly oppose another candidate for public office. Canon 5A(1)(b).

The Commentary to Canon 5A(1) states:

“A judge or candidate for judicial office retains the right to participate in the political process as a voter and privately contribute to a candidate or political organization Section 5A(1)(b) does not prohibit a judge or judicial candidate from privately expressing his or her views on judicial candidates or other

candidates for public office.”

A majority of the Committee interprets the Canons as prohibiting a judge from writing a letter to a county commission in support of a candidate seeking appointment as district attorney as it appears to this Committee that such a letter would of necessity be a public endorsement of another candidate for public office in violation of Canon 5A(1).

The Committee agrees that a judge is in a unique position to provide valuable information to the county commission as to the qualifications of a potential district attorney. The Committee also notes, for example, that the Commentary to Canon 2B specifically allows judges to participate in the process of judicial selection by “cooperating with appointing authorities and screening committees seeking names for consideration, and by responding to official inquiries concerning a person being considered for a judgeship.” Accordingly, the Committee believes that the judge may respond to inquiries from the county commission so as to provide it with further background as to this candidate’s qualifications for the position. The judge must first insure that any such communication in this regard will be treated as private by the county commission in order to comply with the requirements of these canons. This interpretation is again consistent with the statements of Canon 4 that a judge “should not become isolated from the community in which the judge lives” and “a judge is in the unique position to contribute to the improvement of the law, the legal system and the administration of justice.” Canon 4B.

A significant minority of the Committee believes that the rule prohibiting endorsement would not apply to an “applicant” for district attorney, as such a person would not be a “candidate” seeking election to the position of district attorney. The term “candidate” is defined as a “judicial candidate” by the Canons. See Terminology. However, this minority agrees that any endorsement must nevertheless be made in a private manner for the reasons described above.

4. May a judge serve as president of his neighborhood association, including appearing publicly on behalf of the association to advocate for or against rezoning matters.

As stated above, a judge cannot become isolated from the community in which the judge lives. Further the canons provide that with regard to a judge’s extra-judicial activities, a judge may appear at public hearings as long as he is doing so on his own behalf:

The judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law, the legal system or the administration of justice or except when acting *pro se* in a matter involving the judge or the judges’ interests. Canon 4C(1).

Thus, the judge would only be able to appear at a public hearing to resist various zoning changes in his private, unofficial capacity and on his own behalf. It would be inappropriate for the judge to use his official title in addressing any zoning body or in correspondence. It would be

inappropriate for the judge to use his official stationery in communications with any zoning body. Also, the judge may not appear before any government body acting as the lawyer for the association and may not provide legal advice to the association. Canon 4G.

The Committee was not unanimous in this regard; one Committee member believed that by acting as president, the judge of necessity is lending the prestige of judicial office to advance the interests of his association and violating Canon 4C(1) as the judge is not just acting on his own behalf. Members of any zoning committee cannot help but be influenced by a long-time district judge standing in front of them advancing the position of numerous homeowners, even if that position includes his own interests.

As the judge has been a member and officer of the neighborhood association for many years, it is also appropriate to point out the Commentary to Canon 4C(4) which states:

“The changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to reexamine the activities of each organization with which the judge is affiliated to determine if it is proper for the judge to continue the affiliation.”
Commentary, Canon 4C(4)(a).

It would be also inappropriate for the judge to continue to serve as an officer of this organization if it now is engaged frequently in adversary proceedings in the judicial court of which the judge is a member. Canon 4C(4)(a)(ii).

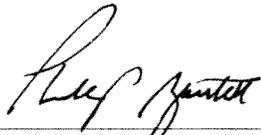
Finally, the judge has asked the Committee whether judicial stationery may be used for the letters of support approved above. This Committee has previously rendered an opinion that the use of judicial stationery while not expressly prohibited, is disfavored when used as a letter of congratulation to successful candidates for election to judicial or non-judicial office. See JE03-002. Judicial ethics committees around the country are divided on whether judges may use official stationery to write letters of recommendation. See generally, Recommendations by Judges, *supra*, p. 6. This Committee believes that as long as the letters of recommendation are written upon personal knowledge and otherwise comply with the cautions set out above to prevent the prestige of judicial office being used for the private gain of others, that the use of judicial stationery is allowable.

REFERENCES

Canon 2B; Canon 4; Canon 4B; Florida Advisory Opinion 75-6; Missouri Advisory Opinion 137 (1988); Recommendations by Judges, Cynthia Gray, America Judicature Society, 1966 at p.10; Canon 5; Sections 5B(2) and 5C(1); Canon 5A(1); Canon 5A(1)(b); Canon 4C(1); Canon 4G; Canon 4C(4)(a); Canon 4C(4)(a)(ii); and JE03-002.

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