STATE OF NEVADA

STANDING COMMITTEE ON JUDICIAL ETHICS
AND ELECTION PRACTICES

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PROPRIETY OF A JUDGE PROVIDING
A REFERENCE LETTER FOR AN
APPLICANT IN A FOSTER CARE
LICENSING PROGRAM.

ISSUE

May a judge provide a reference letter for an applicant in a foster care licensing program where the reference seeks information on the applicant’s character, behavior and experience with children?

ANSWER

Yes. The Code permits judges to provide recommendations or references for an individual based upon the judge’s personal knowledge.

FACTS

A judge asks whether it would be a violation of the Code if the judge completed a questionnaire received from the Clark County Department of Family Services where the judge was listed as a reference by an applicant in connection with an application for Foster Care licensing. The judge states that the reference form asks for opinions concerning the applicant’s character, behavior, and experience with children. The judge states that he has personal knowledge of the applicant and has known the applicant for many years, but is concerned that because the foster care program is a paid service a recommendation from the judge may implicate issues under Canon 1 as advancing the economic interests of others.

DISCUSSION

Canon 1 states that “A judge shall uphold and promote the independence, integrity and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety.” Specific to this issue, Rule 1.3 provides that a “judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.” Comment 2 to Rule 1.3 recognizes that the limitations in Rule 1.3 do not apply to reference letters, stating a “judge may provide a reference or recommendation for an individual based upon the judge’s personal knowledge.”

Thus, the Commentary specifically allows letters of recommendation based upon the judge’s personal knowledge and observation of the candidate. The Committee believes completing a reference questionnaire for a Foster Care candidate is the type of reference or recommendation permitted by the Commentary to Rule 1.3. That being said, the Committee advises that a judge should be cautious to avoid providing references or recommendations when a judge possesses no unique knowledge of the candidate, as such circumstances present greater danger that the judge is lending the prestige of judicial
office to “advance the personal or economic interests of others.” Judges should also be
cognizant of the limitations imposed by Rule 3.2, and avoid reference activities that
involve voluntary appearances before executive or legislative bodies, except as
otherwise permitted by that Rule.

The Committee notes that Rule 3.3 imposes limitations on acting as a character
witness, stating “a judge shall not testify as a character witness in a judicial,
administrative, or other adjudicatory proceeding or otherwise vouch for the
character of a person in a legal proceeding, except when duly summoned.” However,
the Committee did not believe the limitations in Rule 3.3 applied to the facts
and circumstances presented in this opinion request, as completing a reference
questionnaire in a Foster Care licensing application was more akin to providing a
reference letter than testifying under oath in an administrative, civil or criminal
proceeding where a person’s legal rights, duties, privileges or immunities are

CONCLUSION

It is the opinion of the Committee that a judge may complete a reference
questionnaire for a Foster Care licensing candidate where the judge has personal
knowledge of the candidate.

REFERENCES

Revised Nevada Code of Judicial Conduct, Canon 1; Rule 1.3; Rule 3.2; Rule
3.3; Commentary to Rule 1.3.