# STATE OF NEVADA

# STANDING COMMITTEE ON JUDICIAL ETHICS AND ELECTION PRACTICES

#### DATE ISSUED: December 20, 2010

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 applicant in connection with an 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

## **ADVISORY OPINION: JE10-014**

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





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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 judicial, a administrative, other adjudicatory or 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 completing request. as а reference questionnaire in a Foster Care licensing application was more akin to providing a reference letter than testifying under oath in administrative. civil or criminal an proceeding where a person's legal rights, privileges duties. immunities or are ultimately determined. Cf. Advisory Opinion 04-004.

## 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. This opinion is issued by the Standing Committee on Judicial Ethics and Election Practices. It is advisory only. It is not binding upon the courts, the State Bar of Nevada, the Nevada Commission on Judicial Discipline, any person or tribunal charged with regulatory responsibilities, any member of the Nevada judiciary, or any person or entity which requested the opinion.

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