

*Arizona Supreme Court  
Judicial Ethics Advisory Committee*

ADVISORY OPINION 10-05  
(December 20, 2010)

## **Sending Letter to a Sentencing Judge**

### **Issue**

May a judge send a letter to a sentencing judge on behalf of a family member?

**Answer:** No, except under very limited circumstances.

### **Facts**

A judge's brother was arrested and convicted in another state for misuse of prescription drugs. The judge knows his brother's history and believes he can provide information that will be helpful to the sentencing judge.

### **Discussion**

Canon 2B of the 1993 Code of Judicial Conduct prohibited judges from lending the prestige of judicial office to others. Commentary to the canon expressly prohibited a judge from initiating contact with a sentencing judge. In contrast, Rule 1.3 of the 2009 code prohibits a judge from "abusing" the prestige of judicial office to advance the personal or economic interests of the judge or others, or allowing others to do so.

Although the prohibition on "abuse" of the prestige of office suggests a less-restrictive standard than the former prohibition against "lending" that prestige to others, the change in language alone does not necessarily authorize the type of communication at issue. Instead, Rule 1.3 must be considered in conjunction with Rule 3.3, which prohibits a judge from testifying as a character witness in a legal proceeding, unless summoned to do so. Although a "private" letter to a sentencing judge is not "testimony" in the same sense as an appearance in a public court proceeding contemplated by Rule 3.3, such communication is subject to disclosure to the parties and perhaps wider public dissemination. *See Inquiry Concerning Fogan*, 646 So.2d 191 (Fla.1994) (rejecting distinction between letter and testimony).

Other jurisdictions that have considered this issue, albeit under prior versions of the code, have concluded that a judge may not send a letter such as that contemplated, even if the sentencing judge serves in another jurisdiction. *See, e.g., Ala. Op. 00-744*. Under the current code such communication is prohibited when it may be perceived as an attempt to use one's judicial office to exert undue influence upon the sentencing judge to treat the family member favorably. Accordingly, a letter of the type in question must not be on court letterhead, nor should there be any reference to the judge's occupation. Even with such safeguards, however, there remains the risk that the letter could be perceived as an effort to exert undue influence, at least if the sentencing judge is in Arizona. Judges throughout the state are often in contact with one another, be it at conferences, while serving on committees or at other professional or social functions.

Even judges who are not personally acquainted with one another may well have colleagues in common or be aware that the writer holds judicial office. Moreover, even if the sentencing judge is unaware of the writer's status, others with an interest in the case may know that the writer is a judge and interpret the letter as an effort to seek favorable treatment based upon judicial collegiality, thereby eroding public faith in the integrity of the judicial system. *See* Rule 1.2. Thus, even a letter written on plain paper without the judge's title and addressed "To Whom it May Concern," but intended for a sentencing judge, has been found to be improper. *See* Wash. Op. 92-17.

For the foregoing reasons, a judge may not send a letter to a sentencing judge within Arizona on behalf of a family member. However, the likelihood of improper influence is ameliorated when the sentencing judge is in another state. An out-of-state judge is far less likely to be aware of the writer's judicial status or to be perceived as harboring any feelings of judicial collegiality. Accordingly, the judge may send a letter to an out-of-state judge on behalf of a family member, provided that the letter makes no reference to the writer's status as a judicial officer.

### **References**

Arizona Code of Judicial Conduct, Rules 1.2, 1.3 and 3.3 (2009)

*Inquiry Concerning Fogan*, 646 So.2d 191 (Fla. 1994)

Alabama Judicial Inquiry Commission, Opinion 00-744

Washington Ethics Advisory Committee, Opinion 92-17