

*Arizona Supreme Court  
Judicial Ethics Advisory Committee*

ADVISORY OPINION 92-06  
(April 17, 1992)

**Letters of Recommendation for Applicants  
To Government Positions**

**Issues**

1. May a judge serve as a character reference or provide a letter of recommendation for a person who applies for an appointive position on a government agency or board?

**Answer:** Yes.

2. Would it make any difference if the applicant is not a lawyer or former employee, but a personal friend?

**Answer:** No, with qualifications.

3. Does it matter if the agency or board makes decisions that affect prisoners?

**Answer:** No.

4. May a letter of recommendation be prepared on the judge's official stationery?

**Answer:** Yes, with qualifications.

**Discussion**

**Issue 1**

Canon 2B of the Code of Judicial Conduct prescribes that in avoiding the appearance or actuality of impropriety, a judge "should not lend the prestige of his office to advance the private interests of others . . . . He should not testify voluntarily as a character witness."

However, the canons do not require that a judge surrender all political rights. Nor are they intended to penalize those persons who work with a judge by forbidding the judge from commenting on their character or ability to a potential employer.

The propriety of private comment by a judge upon the qualifications of an aspirant to appointive office is settled by our Opinion 87-01. Relying on Canon 7, we advised:

[T]he activity of an incumbent judge, whether in the form of writing a supporting letter to the judicial nominating commission or answering questions from such commission or the governor regarding a nominee, is permitted so long as it remains "private" and does not form a part and parcel of prohibited "public" political activity. It is assumed that the judge conveying such comments has personal knowledge about the person upon whom he is commenting.

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Canon 7 addresses political activity and provides in its introductory paragraph:

A judge is entitled to entertain his personal views on political questions. He is not required to surrender his rights or opinions as a citizen. He should avoid political activity which may give rise to a suspicion of political bias or impropriety. The term "political activity" should not be construed so narrowly as to prevent private comment.

The cornerstone of our Opinion 87-01 that a judge could comment in writing on an aspirant to judicial office was that the comment be private. We did not find it necessary that the office being sought was that of judge. See Canon 4. A private letter to the appointing authority or a screening body for other appointive office is as permissible as a private recommendation for a judicial appointment. See *Tex. Op. 13 (1976)*. Similarly, a judge may allow his name to be provided as a character reference and respond to inquiries from an appointing or nominating authority about an applicant.

As we did in Opinion 87-01, however, this opinion assumes that the judge has personal knowledge of the applicant. Moreover, the judge's communication should be limited to the assessment and recommendation of the applicant based on the judge's knowledge. We do not here approve a mere endorsement of one candidate over another.

### **Issue 2**

A judge may have acquired information about the applicant in the course of a personal friendship as well as through a working relationship. Therefore, the fact that the applicant is not a lawyer or former employee, but is a personal friend, does not render the judge's opinion useless and does not bar the judge from offering his opinion.

Again, however, we assume that the judge has by one means or another acquired personal knowledge about the applicant and is not merely employing the prestige of the judicial office to advance the personal aspirations of an acquaintance.

Whether the judge's recommendation amounts to no more than an endorsement of the applicant's private ambitions depends in part upon whether the judge knows the applicant well. If the job aspirant seeks the judge's recommendation not because the judge is well-qualified to comment on the candidate's qualifications, but to use the prestige of the judicial office for the candidate's personal advancement, then the recommendation might be improper. See *Ga. Op. 9 (January 29, 1977)*.

### **Issue 3**

Our resolution of the other issues is unaffected by the fact that the applicant seeks a position on, or employment with, an agency or board which makes decisions affecting prisoners. Although Canon 4 permits a judge to engage in activities "concerning the law, the legal system, and the administration of justice," our opinion does not depend on the connection between the public office sought and the legal system. See *Ariz. Op. 87-01*. In light of Canon 4, the relationship between the office and the legal system certainly does not detract from the propriety of private comment about an applicant by the judge.

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### Issue 4

The judge may use judicial stationery for a letter of recommendation. When a judge is recommending an applicant who is a lawyer or former employee of the judge, the judge's position will undoubtedly be apparent from the text of the letter in any event. Unless the judge reveals his position, he is likely to be unable to explain the basis for his recommendation. The use of official stationery adds little if anything in this situation.

Whether a judge may use judicial stationery in recommending a personal friend is a closer question. Because the judge is providing only a character reference, and has no professional relationship with the applicant, it can be argued that the only purpose of the stationery is to invoke the judicial office to influence others.

Conversely, part of the value of a character reference is that the person who acts as a reference is himself or herself worthy of some reliance by the decision-maker.

Although we do not broadly condemn the use of judicial stationery, neither do we endorse it. The judge is advised to ensure that his recommendation is both sought and given because his knowledge of the applicant renders the judge well-qualified to comment on the applicant's qualifications, and not merely because the candidate desires the endorsement of a judicial officer. If the judge is not in a position to give a well-informed evaluation, the judge should decline a request for a recommendation. If the judge is able to provide a recommendation, it should be factual and not a bare endorsement. *See* Ga. Op. 9 (January 29, 1977); Pa. Op. 86-5 (1986).

To ensure that the use of official stationery has neither the effect nor appearance of improper influence when recommending a personal friend, the judge should place the caption "PERSONAL AND UNOFFICIAL" on the face of the letter. W. Va. Op. May 3, 1990.

### Applicable Code Sections

Arizona Code of Judicial Conduct, Canons 2B, 4 and 7 (1985).

### Other References

Arizona Judicial Ethics Advisory Committee, Opinion [87-01](#) (April 20, 1988).

Georgia Judicial Qualifications Commission, Opinion 9 (Jan. 29, 1977).

Judicial Ethics Committee of the Pennsylvania Conference of State Trial Judges, Opinion 86-5 (1986).

Texas Committee on Judicial Ethics, Opinion 13 (1976).

West Virginia Judicial Investigation Commission, Opinion (no number) (May 3, 1990).