

Nebraska Judicial Ethics Opinion 07-4

Question Presented--

May a judge send a letter of recommendation on behalf of a high school student, at the request of that student, who seeks to attend a particular college?

Conclusion

The judge may send such a letter of recommendation subject to certain guidelines and limitations.

Statement of Facts

The student has requested a letter of recommendation by the judge to a particular college on behalf of that student. The judge has known the student most of the student's life, and the letter would be, in effect, a character reference.

Applicable Code Sections

Neb. Code of Jud. Cond., Canon 2B

References in Addition to Nebraska Code of Judicial Conduct

Nebraska Judicial Ethics Opinions 90-2 and 92-7

Arizona Judicial Ethics Advisory Opinion 92-06

Virginia Judicial Ethics Advisory Opinion 06-1

Discussion

Canon 2 states that "a judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities." Canon 2B provides, in part, "[a] judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness." The applicable commentary then provides some guidance. "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."

This Committee has previously suggested that such a letter under the pre-1992 Code would be permitted. See Discussion to Nebraska Judicial Ethics Opinion 90-2.

Our opinion is that the judge's letter of recommendation here would violate neither the letter nor the spirit of any provision of the current code. However, the Committee should provide some guidance to judges receiving future requests, as there are many variations in the kinds of requests received. In that regard, we have received significant guidance from Virginia Judicial Ethics Opinion 06-1. That opinion states that past opinions "provide specific answers to particular situations, but they do not provide guidance in the much more common context in which judges are asked to write letters of recommendation. The typical examples of situations in which some judges may choose to send letters of recommendation include letters on behalf of people who are applying to college or law school, seeking membership in a state bar, involved in a process such as an adoption that requires the recommendation of friends or neighbors, or other similar situations." Since the judge's request here provides us with the opportunity to provide similar guidance, we quote extensively with approval the following language from the Virginia opinion.

It is worth noting initially that judges may exercise their discretion to decline an invitation to write a letter of recommendation. . . . [W]hile the Canons allow judges to send letters of recommendation under appropriate circumstances, judge[s] are free to adopt a blanket policy declining all such requests.

If a judge is considering writing such a letter of recommendation, he must take reasonable steps to avoid lending the prestige of his office to advance another's private interest. This basic principle should guide every aspect of a judge's consideration.

First, judges should consider the context of the request for a letter of recommendation. For instance, specific rules cover a judge's recommendation of another person for a judicial appointment. . . . There are other situations in which judges should not provide letters of recommendation. Canon 2B indicates that "a judge shall not testify as a character witness." This prohibition extends to writing a letter as a character witness, or a letter that is the substantial equivalent. For instance, judges should not initiate letters supporting someone's efforts to have their civil rights restored, or attempts to renew permits such as those allowing the possession of concealed weapons. For the same reason, judges should not send a letter to someone's former employer recommending that the employer reinstate that person. Similarly, judges should not recommend someone engaged in a business venture, if the primary purpose is to advance that person's business.

Second, the need to avoid lending the prestige of judicial office to advance the private interests of others also must guide the transmission of any letters of recommendation that a judge might choose to send. Judges generally should send such letters directly to the institution or group that is accepting the letters. Judges should address the letter specifically to the institution or group, and should avoid such salutations as "To whom it may concern." The judge may choose to ask explicitly that the recipient of the letter maintain confidentiality and not share the letter with any other institution or person. In any event, the judge should have reasonable assurance that the recommendation will be treated confidentially and will not be distributed by the recipient.

. . . .

Third, judges must assure that the form and appearance of their written recommendations do not risk lending the prestige of their judicial office to advance the private interests of others. If judges use official stationery, they should indicate clearly on the letter that the communication is "personal and unofficial." . . . Judges should take this precaution even when using personal stationery, if the envelope bears any indication that it comes from a court. We digress from the Virginia opinion to note that Arizona also suggests that the caption "personal and unofficial" be placed on the face of the letter. Arizona Judicial Ethics Advisory Opinion 92-06.

Fourth, judges should limit the substance of their recommendations. Those judges who choose to send such letters may do so only for individuals about whom they have firsthand knowledge. The substance of such a letter, therefore, should be limited to what the judge personally has observed about the individual. For instance, judges should

not provide an opinion about the individual's reputation, or convey what others have told the judge about the individual.

The Committee adopts the foregoing guidelines.

Disclaimer

This opinion is advisory only and is based on the specific facts and questions submitted by the person or organization requesting the opinion pursuant to appendix A of the Nebraska Code of Judicial Conduct. Questions concerning ethical matters for judges should be directed to the Judicial Ethics Committee.

APPROVED AND ADOPTED
BY THE COMMITTEE ON DECEMBER 14, 2007

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