

## Maryland Judicial Ethics Committee

**Opinion Request Number:** 2022-14

**Date of Issue:** March 22, 2022

Published Opinion    Unpublished Opinion    Unpublished Letter of Advice

### **Subject to limitations, a judge may write a letter of recommendation for a lawyer seeking employment**

**Issue:** May a judge write a letter of recommendation with respect to a job application for a lawyer who appears before the judge?

**Answer:** Yes, subject to certain limitations.

**Facts:** The Requestor asks whether he/she may write a letter of recommendation on judicial letterhead for a lawyer who practices in front of him/her when the lawyer is applying for a governmental and/or private industry job.

**Discussion:** Judges are permitted to provide recommendations as long as they do not violate the Maryland Code of Judicial Conduct (the “Code”), Title 18, Chapter 100 of the Maryland Rules. The provision of the Code most directly implicated by a judge writing a letter of recommendation is Rule 18-101.3, which provides:

A judge shall not lend 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] provides:

A judge may provide a reference or recommendation for an individual based upon the judge’s personal knowledge. The judge may use an official letterhead if the judge indicates that the reference is personal and if there is no likelihood that the use of the letterhead would reasonably be perceived as an attempt to exert pressure by reason of the judicial office.

This comment and prior opinions by the Committee have made clear that one condition that must be satisfied before a judge may write a letter of recommendation or act as a reference is that the judge must have personal knowledge regarding the person who is the subject of the reference. In Opinion 1982-12, we advised that a judge with special knowledge regarding a person’s qualifications is “free, as a citizen, to pass on such knowledge and recommendation.” A judge should not, however, write a letter of recommendation for an acquaintance when the judge does not have special knowledge of the acquaintance’s qualifications for a particular position. Without such knowledge, the “judge would simply be lending the weight and prestige of his name and his office to benefit the employee.” *Id.*

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Even when a recommendation is based on personal knowledge, however, there may be limitations. We have addressed several concerns in other opinions.

In Opinion 2019-24, the Committee concluded that a judge could not provide a reference for an attorney on the attorney rating website Avvo. We stated that it was clear that “the Code allows a judge to provide a reference for an individual based on personal knowledge,” and a judge “may do so in writing to an interested identified party using judicial stationery in appropriate circumstances.” *Id.* We concluded, however, that permitting a reference that would be displayed on a public online marketing site is not appropriate because it would improperly confer the prestige of office to the attorney’s marketing efforts and “invite neutrality challenges from opposing parties and counsel” when the attorney appeared in the judge’s courtroom. *Id.*

Similarly, we concluded in Opinion 1980-01 that a judge could make “a recommendation regarding a candidate for appointment to a judgeship, regardless whether the judge’s views were requested.”<sup>1</sup> In Opinion 1989-06, however, we stated that judges on a circuit court, acting in concert, should not submit to a judicial nominating commission their recommendations with respect to applicants for a vacancy on that court. We reasoned that such a collective summary evaluation would not contain any assurance that it was based on each judge’s personal knowledge of each applicant. Moreover, there were practical disadvantages, including leading to inappropriate “lobbying” of the judges and the “danger of animosity and disharmony on the Bench should an applicant publicly found unqualified by the judges actually be appointed by the Governor.” *Id.*

Additionally, we note that Rule 18-103.3 provides:

Except when duly subpoenaed, 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.

A letter of recommendation may not be written if it violates this Rule. In Opinion 2020-22, we concluded that writing a letter to the Attorney Grievance Commission attesting to the character of a former employee was “tantamount to giving testimony” and was not permitted when no subpoena had been served on the judge.

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<sup>1</sup> We noted, however, that there can be judicial conduct that does not violate the Code but in which a prudent judge would not engage, such as a judge regularly giving “unsolicited advice to those operating the other branches of government because it “would not entirely comport with the spirit of the separation of powers principle.” Opinion 1980-01.

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Here, the request is for a private letter of recommendation for employment. In this circumstance, as long as there is no appearance of coercion to hire or other impropriety, a recommendation based on the judge’s personal knowledge of the lawyer’s qualifications and his or her practice before the Requestor would be permitted.<sup>2</sup> With respect to whether the Requestor may use an official letterhead, the question is whether the use of letterhead reasonably would be perceived as an attempt to exert pressure by reason of the Requestor’s judicial office. Nothing in the request suggests that would be the case.

One final caveat. Advisory committees in other states have cautioned about authoring a letter on official letterhead addressed “to whom it may concern.” *See e.g.*, Minn. Bd. on Jud. Standards, Advisory Opinion 2013-1; Alaska Comm. Jud. Cond., Advisory Opinion 2020-01. “To avoid embarrassment or unanticipated conflicts,” a “judge should know to whom the letter will be addressed.” Alaska Opinion 2020-01. The Requestor should keep that advice in mind when writing a letter of recommendation.

**Application:** The Maryland Judicial Ethics Committee cautions that this Opinion is applicable only prospectively and only to the conduct of the Requestor described herein, to the extent of the Requestor’s compliance with this opinion. Omission or misstatement of a material fact in the written request for opinion negates reliance on this Opinion. Additionally, this Opinion should not be considered to be binding indefinitely.

The passage of time may result in amendment to the applicable law and/or developments in the area of judicial ethics generally or in changes of facts that could affect the conclusion of the Committee. If the request for advice involves a continuing course of conduct, the Requestor should keep abreast of developments in the area of judicial ethics and, in the event of a change in that area or a change in facts, submit an updated request to the Committee.

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<sup>2</sup> An example of a situation where a letter of recommendation might not be permitted on the ground that it appeared coercive is if the addressee was a party or a lawyer in a matter pending before the judge. *See* Minn. Bd. on Jud. Standards, Advisory Opinion 2013-1 (citing Cynthia Gray, *Recommendations by Judges*, American Judicature Society, 9-10).