



# Ohio Board of Professional Conduct

## OPINION 2021-12

Issued December 10, 2021

Withdraws Adv. Op. 1995-05, 1998-04

### Letter of Recommendation Provided by Judge

**SYLLABUS:** A judge may provide a letter of recommendation for an individual, provided the letter is based on the judge's personal knowledge of the individual for whom the recommendation is written.

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# Ohio Board of Professional Conduct

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**SYLLABUS:** A judge may provide a letter of recommendation for an individual, provided the letter is based on the judge's personal knowledge of the individual for whom the recommendation is written.

#### QUESTIONS PRESENTED:

1. May a judge provide a recommendation on behalf of an individual seeking employment;
2. May a judge provide a recommendation on behalf of a law school applicant;
3. May a judge provide a letter of recommendation on behalf of an individual seeking a nomination for appointment to the federal judiciary;
4. Is it proper for a judge to provide a written recommendation for an applicant for certification as an attorney specialist when requested to do so by a certifying agency?

**APPLICABLE RULES:** Jud.Cond.R. 1.2, 1.3, 4.1

**OPINION:** Given their positions as elected and appointed public officials, judges are often approached to write letters of recommendation or asked to serve as a reference by court employees, judges, and others. When considering providing a letter of recommendation, a judge must avoid abusing the prestige of office to advance the

personal or economic interests of others. Jud.Cond.R. 1.3. A key requirement in avoiding the potential for abuse of the prestige of office is the condition that any letter of recommendation must be made based upon the judge's "personal knowledge" of the requesting individual. Jud.Cond.R. 1.3, cmt.[2]. A judge should carefully consider whether a recommendation letter is being sought due to the judge's personal knowledge of the individual or if the request is an effort to take advantage of the prestige of the judge's office. In addition to a potential abuse of the prestige of office, writing a letter without the requisite personal knowledge may give rise to an appearance of impropriety because it undermines the integrity and impartiality of the judiciary. Jud.Cond.R. 1.2.

"Personal knowledge" is defined as "knowledge gained through firsthand observation or experience, as distinguished from a belief based on what someone else has said." Black's Law Dictionary 11<sup>th</sup> Ed. (2019). In the context of a recommendation letter, a judge's personal knowledge of an individual should be based on more than a just a mere acquaintance or occasional social interaction. Even when a judge possesses the requisite personal knowledge, he or she may choose to decline to provide a letter of recommendation.

*Letter of Recommendation for Individuals Seeking Employment.*

A judge's personal knowledge of the skills and qualifications of an individual, opinions about his or her job performance, and observations of his or her work product can greatly assist those persons considering the employment of the individual. A judge's firsthand knowledge of an individual under these circumstances outweighs concerns about a potential abuse of the prestige of office. A judge is especially qualified as a past or current employer of a law clerk or other court employees to gauge the professional and intellectual capabilities when those individuals seek different employment. A judge may also provide letters of recommendation for individuals for whom the judge has gained the requisite personal knowledge through participation in religious, civic, educational, or fraternal organizations or because of long-term personal relationships. Additionally, a judge is well suited to provide a letter of recommendation for a lawyer who practices on a regular basis in his or her courtroom and the judge has had an opportunity to acquire personal knowledge of the lawyer's legal acumen and trial skills.

When writing a letter of recommendation for a current court employee who is seeking employment with a law firm or party to a pending case, a judge should screen the employee from participating in cases involving the prospective employer.

#### *Law School Applicants*

Similarly, a judge's recommendation on behalf of a law school applicant must be based on firsthand and personal knowledge of the applicant. A judge's interaction with an applicant may be limited to interactions outside of a traditional employment setting, and the opportunities to adequately assess the applicant's skills and qualifications may be less frequent. Thus, a judge must avoid writing a letter for a law school applicant when the judge's personal knowledge of the applicant is inadequate or nonexistent. To do otherwise risks an abuse of the prestige of office.

#### *Recommendation Letter for Judge Seeking Appointment to the Federal Judiciary*

Judges are in a unique position to comment on the qualifications of a nominee for federal judicial office because they have either served with the nominee on the same court or have observed the nominee in other professional settings. Because a lawyer is seeking a lifetime appointment to the federal judiciary and is not subject to a contested election process, a judge's letter of recommendation to a screening committee or other body responsible for vetting potential nominees does not constitute an endorsement of a candidate for public office as contemplated and prohibited by Jud.Cond.R. 4.1(A)(3). Consequently, a judge may prepare a letter of recommendation based on a request from the potential nominee or from a screening committee or other entity. Jud.Cond.R. 1.3, cmt. [3]. A judge may also permit his or her name to be included in the candidate's application as a reference to be contacted at the screening committee's discretion. The judge's letter should be based on the judge's personal knowledge of the candidate, pertain only to those factors that are relevant to performance of judicial office, and avoid any comparison of the lawyer to others seeking the nomination.

#### *Recommendation for Lawyer Seeking Certification as a Specialist*

The certification of lawyers as specialists is permitted in Ohio. Gov.Bar R. XIV. In order to be certified as a specialist, a lawyer must receive certification from an organization that meets standards adopted by the Supreme Court of Ohio Commission

on the Certification of Attorneys as Specialists. A certifying organization must determine whether a lawyer possesses competence in an area of law as demonstrated by “recommendation from attorneys or judges who are familiar with the competence of the attorney.” Gov.Bar R. XIV, Sec. 3(A)(2). In the context of a certification of a specialist, the judge may be asked to consider his or her personal knowledge of a lawyer’s advocacy skills, ethical conduct, knowledge of the area of specialization, and oral and written communication skills. A judge may respond to the certifying organization’s inquiry based on his or her personal knowledge of the lawyer seeking certification. Jud.Cond.R. 1.3.

*Use of Court Letterhead for Letters of Recommendation*

In all cases where a judge possesses the requisite degree of personal knowledge a an individual, a letter of recommendation may be written on official court letterhead. Jud.Cond.R. 1.3, cmt.[2].