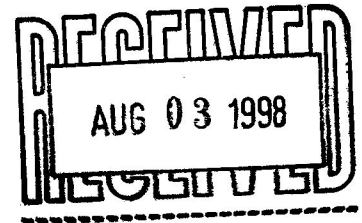


**JUDICIAL ETHICS COMMITTEE**  
Advisory Opinion No. 98-3  
Issued: July 28, 1998



**Question:** Do the provisions of the Maine Code of Judicial Conduct prohibit a judge from writing a letter of recommendation? If the judge is permitted to do so, may the judge use judicial letterhead?

**Discussion:** The Code does not prohibit a judge from writing a letter of recommendation if the judge has personal knowledge about the person who is the subject of the referral. Canon 2B forbids a judge from “lend[ing] the prestige of judicial office to advance the private interests of the judge or others. . . .” The Advisory Committee’s Note to Canon 2 adopts the analysis of the ABA Model Code, under which a judge can properly “serv[e] as a reference or writ[e] a letter of recommendation based on personal knowledge. . . .” This conclusion is typical of that reached in other jurisdictions. *See, e.g.,* Illinois Judicial Ethics Committee Opinion No. 96-2 (March 6, 1996); Maryland Judicial Ethics Committee Opinion 83 (January 4, 1980); New York Advisory Committee on Judicial Ethics Opinion 93-129 (December 9, 1993).

Despite this general notion, there may be limited circumstances where submission of a letter of recommendation may be improper. For example, if the prospective employer is a party to litigation pending before the referring judge, or if the letter is directed to a law firm or prosecutor’s office which appears before that judge, the judge must closely evaluate the apparent effect of the reference. A letter of recommendation may create an appearance of pressure brought to bear on the prospective employer to act in accordance with the judge’s recommendations. It might also create an appearance that the hiring decision, in some other way, will have ramifications on the pending case. *See* Illinois Judicial Ethics Committee Opinion No. 95-4 (March 7, 1995); New York Advisory Committee on Judicial Ethics Opinion 88-53 (May 9, 1988) (judge’s letter of recommendation to a District Attorney’s office “might appear to compromise the judge’s independence or impartiality and may seem coercive. . .”). Thus, in these types of circumstances, the judge must consider the relationship between the judiciary and the addressee in order to ensure that a recommendation will not compromise the judge’s

apparent impartiality or public confidence in the integrity of the judiciary.

While the Advisory Committee Note to the Maine Code of Judicial Conduct expressly excepts letters of recommendations from the Code's prohibitions, the Note does not discuss the use of judicial letterhead. The Committee has concluded that the Code does not preclude use of letterhead if the basis for the judge's recommendation flows from the judge's position with the court system.<sup>1</sup> If the judge knows the applicant through the Judicial Department (for example, as an employee of the clerk's office, as a law clerk, or even as a practicing attorney), then the judge's letter would foreseeably mention that fact. A letter of recommendation is permissible only if based on the judge's personal knowledge, and the judge's letter could be expected to set out the manner in which he or she came to know the applicant. Thus, because the judge's position would be revealed in any event through a letter of recommendation permitted under Canon 2B, the mere use of official stationary would not further enhance the danger that the hiring decision would be affected by "the prestige of judicial office. . . ." *See* Illinois Judicial Ethics Committee Opinion No. 96-2 (March 6, 1996); New York Advisory Committee on Judicial Ethics Opinion 93-129 (December 9, 1993) (recommending that a letter on judicial letterhead include a disclaimer that it is "personal and unofficial"). On the other hand, if the basis for the reference is unrelated to the judge's office, then use of letterhead is inappropriate because the judge's position is irrelevant to the recommendation.

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<sup>1</sup>This opinion, of course, does not address the administrative question of when, as a matter of policy, judicial letterhead may be used in this context. Rather, this opinion extends only to the ethical implications generated by letters of recommendation.