

# JUDICIAL CONDUCT REPORTER



★★★★★ A PUBLICATION OF THE NATIONAL CENTER FOR STATE COURTS CENTER FOR JUDICIAL ETHICS

VOLUME 44, NO. 2 • SUMMER 2022

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#### JUDICIAL CONDUCT REPORTER Summer 2022

Cynthia Gray  
Director  
Center for Judicial Ethics  
cgray@ncsc.org

National Center for State Courts  
300 Newport Avenue  
Williamsburg, VA 23185

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National Center for State Courts  
ISSN: 0193-7367

An index and past issues are  
available at [www.ncsc.org/cje](http://www.ncsc.org/cje)

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## Recommendations by judges

by Cynthia Gray

In general, judges, like everyone else, may provide recommendations on behalf of people they know, although, unlike everyone else, judges must consider the code of judicial conduct and, therefore, cannot unconditionally, automatically assent to all requests for references in every situation. Relying on the numerous judicial ethics advisory opinions on the topic, this article describes under what circumstances judges may provide recommendations and when they should not. It begins with an analysis of the [relevant provisions in the code of judicial conduct](#), including the requirement that a judge must have [personal knowledge](#) of the individual being recommended. Next, it examines [additional parameters](#) advisory committees have suggested.

The article then discusses judicial [recommendations for attorneys](#). It also summarizes advisory opinions approving references by judges in the [employment context](#) for law clerks, court staff, and others and in common situations such as admission to [educational institutions](#), the [bar admissions process](#), appointments to [governmental positions](#), and [awards](#). It describes the rules on the use of [judicial stationery](#) for letters of recommendation, which vary from jurisdiction to jurisdiction. Finally, the article notes that judges are not allowed to provide references to promote [businesses](#).

This article, like most advisory opinions on the issue, will use the terms “recommendation” and “reference” interchangeably except where otherwise noted. It does not cover references in the context of adjudicative proceedings, judicial selection, or grants for charitable organizations. Note that not all opinions announce clear-cut rules; some instead suggest factors for judges to consider when asked for a recommendation.

### The general rule

[Rule 1.3 of the 2007 American Bar Association Model Code of Judicial Conduct](#) provides: “A judge shall not *abuse* the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.” (Emphasis added.) [Comment 2](#) to that rule states: “A judge may provide a reference or recommendation for an individual based upon the judge’s personal knowledge.”

Canon 2B of the 1990 ABA model code provided: “A judge shall not *lend* the prestige of judicial office to advance the private interests of the judge or others . . .” (Emphasis added.) A comment to Canon 2B expressly stated that, “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.”

The 1990 code’s prohibition on judges “lending” the prestige of office to advance others’ interests was not interpreted as completely prohibiting judges from making a recommendation or acting as a reference in

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customary circumstances such as school admission or employment. For example, the Massachusetts advisory committee acknowledged that the prohibition on “lending” “could be read to forbid judges from ever recommending anybody for anything” but refused to read the rule that “stringently.” *Massachusetts Advisory Opinion 1994-1*. It explained:

Judges should not be precluded from doing things legitimately done by others in society unless there is an identifiable basis in the language of the Code of Judicial Conduct to do so. Letters of recommendation are routinely asked of people who have attained some level of competence in their field or some level of acquaintance with the applicant. Writing such a letter is often an imposition that many believe that they have a professional or social obligation to perform. Indeed, sometimes judges have special knowledge that makes them uniquely qualified to assess the suitability of an applicant for a position.

Similarly, “reject[ing] the strictest possible application” of “lend,” the Indiana judicial ethics committee stated: “So customary is the practice of recommendations within a profession that, when made by a judge, it is less a function of the judicial position than it is of the judge’s position within the legal community at large.” *Indiana Advisory Opinion 3-1988*. The committee distinguished making a recommendation from testifying voluntarily as a character witness, which is expressly prohibited by the code, because there is no public testimonial that might detract from the dignity of the office or “be exploited to deflect attention from the merits of a factual contest and potentially affect the outcome of a legal proceeding.” It did note that it was not granting “blanket approval for any recommendation under any circumstance.”

Interpreting the term “lend,” the advisory committee for federal judges stated that “not every action of a judge is intended, or could reasonably be perceived, as an assertion of the prestige of judicial office” and concluded that allowing judges to provide recommendations recognizes that “judges are members of society, and of the community at large . . . .” *U.S. Advisory Opinion 73* (2017). (The federal judiciary kept the term “lend” even after it amended the *Code of Conduct for U.S. Judges* following the 2007 revisions to the model code.)

Judicial ethics advisory committees have also cited practical considerations to support their interpretation of “lend” as allowing judges to write letters of recommendation. A contrary rule, the New York committee noted, would prevent “a lawyer, or even a housekeeper, who has worked directly for a judge, from obtaining the judge’s recommendation when seeking other employment, or a paralegal who has worked directly for a judge from obtaining the judge’s recommendation when applying to a law school.” *New York Advisory Opinion 1988-10*. Similarly, the Arizona committee stated that the code was not “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.” *Arizona Advisory Committee 1992-6*. See also *Maryland Opinion Request 1977-5* (“a prerequisite to the proper operation of many institutions

The prohibition on judges “lending” the prestige of office to advance others’ interests was not interpreted as completely prohibiting judges from making a recommendation or acting as a reference in customary circumstances such as school admission or employment.

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[is] that recommendations be received from a cross section of the population and there is no reason to exclude judges”).

When the 1990 model code was being revised, however, several judges told the ABA Joint Commission to Evaluate the Model Code of Judicial Conduct that, based on the language, they had declined requests to provide recommendations for their law clerks, despite the universal interpretation that they could, and the commission agreed that the term “lend” was confusing. *Reporter’s Explanation of Changes ABA Model Code of Judicial Conduct* (2007). Thus, as noted, in 2007, the rule was revised to prohibit “abuse” of the prestige of office instead of “lend.”

Most of the advisory opinions cited below interpret the term “lend” as that was the term in effect in that state at the time; it is still the term in approximately 15 jurisdictions. It is not clear whether the change to “abuse” will broaden the general rule giving permission to act as a reference and narrow the circumstances in which recommendations have been disapproved.

### Personal knowledge

To ensure that a judge’s recommendation has not been requested only to take advantage of the judge’s status, both versions of the code condition a judge’s ability to make a recommendation on the judge’s “personal knowledge” of the person being recommended. The Maryland advisory committee explained:

If the judge senses that the decision maker would be genuinely assisted by the judge’s contribution of special knowledge and would be so assisted even if the source of that knowledge were not a judge, the “tilt” is in one direction; if the judge senses that the decision maker would be primarily impressed by the judge’s name and office, the “tilt” is decidedly in the other direction.

*Maryland Opinion Request 1982-12*. The committee concluded that, if in doubt, a judge is “well advised” to err on the side of declining to provide a recommendation. In a subsequent opinion, the Maryland committee stated that a judge should not 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. *Maryland Opinion Request 2022-14*. Without such knowledge, the committee explained, the “judge would simply be lending the weight and prestige of his name and his office to benefit” the acquaintance. Other committees have also suggested that a judge should be cautious about providing a reference if the judge “possesses no unique knowledge of the candidate and others could provide the same information” (*Nevada Advisory Opinion JE2004-004*) and if the judge “is in no better position than many others would be to evaluate that person” (*U.S. Advisory Opinion 73* (2017)).

The requisite personal knowledge may be based on:

- The judge’s experience as a past or current employer or supervisor of the person being recommended;

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- The judge’s observation of the performance of the person as an attorney or other professional in the courtroom and courthouse;
- The judge’s participation with the subject of the reference in religious, civic, educational, or fraternal organizations; or
- A long-term personal relationship between the judge and the subject.

See [Minnesota Advisory Opinion 2013-1](#); [Ohio Advisory Opinion 2021-12](#).

Judicial ethics committees have advised that a judge should only provide a recommendation if their personal knowledge of the person being recommended:

- Is “substantial” ([Indiana Advisory Opinion 3-1988](#); [New Jersey Memorandum re Letters of Recommendation](#) (1982));
- Was “gathered over a substantial period of time” ([New Jersey Memorandum re Letters of Recommendation](#) (1982); [U.S. Advisory Opinion 73](#) (2017));
- Is “based on more than just a mere acquaintance or occasional social interaction” ([Ohio Advisory Opinion 2021-12](#));
- Is “first hand” and not based only on what someone else said ([Indiana Advisory Opinion 3-1988](#); [Ohio Advisory Opinion 2021-12](#)); [Nebraska Advisory Opinion 2007-4](#)); and
- Is “longstanding and intimate” or “special knowledge derived from some relationship” ([U.S. Advisory Opinion 73](#) (2017)).

Committees have emphasized that a judge should not provide a reference for someone the judge does not personally know ([Pennsylvania Formal Advisory Opinion 2021-1](#); [Oklahoma Advisory Opinion 2002-7](#)) or solely as a favor for friends or relatives ([New Jersey Memorandum re Letters of Recommendation](#) (1982)). For example, the Massachusetts committee advised a judge not to write a letter of recommendation for a neighbor’s nephew, whom the judge had never met, noting that the recommendation depended on the judge’s status because they had “no relevant knowledge or information relating to the applicant.” [Massachusetts Advisory Opinion 1994-1](#). The Ohio committee advised a judge not to write a recommendation if they had interacted with a law school applicant only outside of “a traditional employment setting,” giving them few opportunities to “adequately assess the applicant’s skills and qualifications” and making their personal knowledge of the applicant “inadequate or nonexistent.” [Ohio Advisory Opinion 2021-12](#).

The California committee stated that a judge should not write a recommendation for someone who had appeared before the judge as a juvenile and was now applying for employment with a state agency. [California Judges Association Advisory Opinion 40](#) (1988). Although the judge had seen the person mature and believed that they were now responsible, it was not clear to the committee that the judge was familiar with the person’s job skills, suggesting that the letter had been requested to “inject” the prestige of judicial office into the job application process.

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To ensure that a judge’s recommendation has not been requested only to take advantage of the judge’s status, both versions of the code condition a judge’s ability to make a recommendation on the judge’s “personal knowledge” of the person being recommended.

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## Other caveats

Although the code allows judges to write letters of recommendation under appropriate circumstances, as the Virginia advisory committee noted, judges “may exercise their discretion to decline an invitation to write a letter of recommendation” and “are free to adopt a blanket policy declining all such requests.” *Virginia Advisory Opinion 2006-1*. Accord *Nebraska Advisory Opinion 2007-4*; *Ohio Advisory Opinion 2021-12*. Other committees caution judges only to write a recommendation if they can do so “sincerely” (*Indiana Advisory Opinion 3-1988*) and are “comfortable” doing so (*Alaska Advisory Opinion 2020-1*).

Advisory opinions have suggested some limits for the content of a judge’s recommendations.

- A judge should limit what they say to what they actually know and “avoid grandiose endorsements” that they cannot support. *Kentucky Advisory Opinion JE-087* (1996).
- A judge should not endorse one candidate for employment over another, and their assessment and recommendation should be limited to what they know about the applicant. *Arizona Advisory Opinion 1992-6*.
- A judge should not recommend that the recipient hire, accept, or appoint the applicant and should limit their comments to their “personal knowledge of the applicant’s professional performance,” their “observations of the applicant’s qualities and abilities that are relevant to the position the applicant seeks,” their “opinion of a person’s character” based on their observations, or “the applicant’s work history if the judge has worked with the person or otherwise has reliable personal knowledge of the person’s expertise.” *New York Advisory Opinion 2010-7*.
- A judge should limit their recommendation to what they personally have observed about the subject and not include the judge’s opinion about the individual’s reputation or convey what others have told them. *Nebraska Advisory Opinion 2007-4*; *Virginia Advisory Opinion 2006-1*.
- A judge should only write a factual recommendation based on their personal observations of the candidate. *Nevada Advisory Opinion JE2004-004*.
- A judge should consider limiting the scope of a letter so that it narrowly addresses the purpose of the request. *North Dakota Advisory Opinion 1992-1*.

**Comment 2 to Rule 1.3 of the Massachusetts code** emphasizes that a judge’s “recommendation may not be accompanied by conduct that reasonably would be perceived as an attempt to exert pressure on the recipient to hire or admit the applicant.”

To avoid “indiscriminate circulation beyond the judge’s knowledge or control,” some committees have discouraged “blank check” letters addressed “To Whom It May Concern” and advised judges to address recommendations directly and specifically “to the person or entity for whose information it is being written,” for example, “‘Managing Partner’, ‘Director of Operations’, etc.” *Pennsylvania Formal Advisory Opinion 2021-1*. Accord *Minnesota*

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[Advisory Opinion 2013-1](#); [Nebraska Advisory Opinion 2007-4](#); [North Carolina Formal Advisory Opinion 2007-2](#); [Virginia Advisory Opinion 2006-1](#). Cf., [Alaska Advisory Opinion 2020-1](#) (to avoid embarrassment or unanticipated conflicts, a judge should not author a letter on official letterhead to “to whom it may concern”); [Oklahoma Advisory Opinion 2002-7](#) (a judge should usually address and mail a letter directly to the party or organization for whom the information is being written and avoid a “to whom it may concern” letter except “on behalf of a personal employee of the judge who is seeking other employment”); [Maryland Opinion Request 2022-14](#) (a judge should keep in mind the advice of other judicial ethics committees not to address a letter on official letterhead to “to whom it may concern”). But see [Nevada Advisory Opinion JE2012-010](#) (a judge may provide a “to whom it may concern” letter of recommendation for a former project manager on a court construction project); [New York Advisory Opinion 2010-7](#) (a judge may provide an attorney who regularly appears in their court with a letter addressed to “to whom it may concern” for a potential employer who also regularly appears in their court and the potential employer may contact the judge directly for a reference).

Opinions have also suggested that a judge consider requesting that the recipient keep a letter of recommendation confidential and not share it with any person or institution or at least to get “reasonable assurance that the recommendation will be treated confidentially and will not be distributed by the recipient.” [Virginia Advisory Opinion 2006-1](#). Accord [Nebraska Advisory Opinion 2007-4](#); [North Carolina Formal Advisory Opinion 2007-2](#); [North Dakota Advisory Opinion 1992-1](#).

To reduce the risk that a recommendation “may be perceived as coercive or as an improper use of judicial prestige,” judges have been advised not to make recommendations by telephone or at least not to initiate a call to a potential employer. [Virginia Advisory Opinion 2006-1](#). A memo to New Jersey judges explains that a letter “is probably the best discipline to assure that [judges] stay within the confines of what is permitted,” advising that “recommendations should not be given by phone unless that is clearly the appropriate form of response.” [New Jersey Memorandum re Letters of Recommendation](#) (1982). See also [North Carolina Formal Advisory Opinion 2007-2](#) (“the risk that the call may be perceived as lending the prestige of office is reduced if the judge makes a recommendation over the telephone only in response to an inquiry by the decision maker”).

When writing a letter of recommendation for a public sector employer, a judge “must avoid being perceived as a supporter of or active in any political party or activity or any branch or faction of a party.” [New Jersey Memorandum re Letters of Recommendation](#) (1982). See also [North Dakota Advisory Opinion 1992-1](#) (a judge may not write a reference letter that will be used to promote a person’s political career).

Some judicial ethics committees have advised that, at least in some circumstances, rather than writing a letter initially, it may be more appropriate for a judge to permit themselves to be listed as a reference and respond to any inquiries from an educational institution or potential employer. For example, the Kentucky committee stated that, although a judge’s ability

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to write letters of recommendation “is somewhat limited,” a judge could allow their name to be listed “as a personal reference for someone on an application for employment, school, etc.” and respond to any resulting inquiries. [\*Kentucky Advisory Opinion JE-87\*](#) (1996). See also [\*New Jersey Memorandum re Letters of Recommendation\*](#) (1982) (a judge may not write an unsolicited letter to a potential employer, but may allow an individual to list the judge as a reference and respond to a request, preferably in writing, from the employer); [\*U.S. Advisory Opinion 73\*](#) (2017) (noting that instead of writing letters of recommendation, “some judges have adopted a policy of inviting the applicant to list the judge as a reference . . . with the understanding that, if requested to do so, the judge would respond with information known to the judge concerning the applicant”). The difference, the Kentucky committee explained, is that allowing their name to be listed as a reference on a resumé is not a commitment by the judge “to say only good things about that person,” but “only a statement that the judge knows the person well-enough to respond to a prospective employer’s questions.” However, being listed as a reference and responding directly to inquiries seems to raise the same concerns articulated by some committees about giving recommendations by telephone or writing a letter addressed to “to whom it may concern.”

### Recommendations for attorneys

With some caveats and assuming that the judge has sufficient personal knowledge, judges generally may act as a reference or write a recommendation for attorneys looking for [employment](#), applying for [specialty certification](#), or asking to be added to a [court appointments list](#). Advisory opinions differ on the issue whether judges may evaluate attorneys for [legal rating publications](#).

#### *Attorney employment*

Most opinions on the issue allow judges to provide recommendations for attorneys seeking a new position, and some of those opinions note that the subject appears before the inquiring judge.

- A judge may write a letter of recommendation to an educational institution on behalf of an attorney who has appeared before the judge and who is leaving the practice of law to teach. [\*California Judges Association Advisory Opinion 40\*](#) (1988).
- A judge may provide a letter of recommendation to the chief public defender for an attorney who is applying for a supervisory public defender position. [\*Connecticut Informal Advisory Opinion 2012-27\*](#).
- A judge may write a letter about the character and qualifications of an attorney applying to the U.S. Army Judge Advocate General Corps. [\*Florida Advisory Opinion 1977-10\*](#).
- A judge may write a letter of recommendation on behalf of a lawyer who appears before the judge and is applying for a governmental or private industry job. [\*Maryland Opinion Request 2022-14\*](#).

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- A judge may write a letter of recommendation on behalf of a lawyer who appears before the judge and has applied to the office of public defender to serve as a contract lawyer. [New Mexico Advisory Opinion 2012-6](#).
- A judge may, at the request of an assistant district attorney who regularly appears before the judge, write a letter of recommendation in support of an application for employment as a federal prosecutor. [New York Advisory Opinion 2021-177](#).
- A judge may provide a reference to support the employment application of an attorney who is a former colleague. [New York Advisory Opinion 2017-134](#).
- A judge may permit an attorney the judge has known since law school to include the judge's name as a general reference in the resumé they are submitting for a position at a local college. [New York Advisory Opinion 2007-182](#).
- A judge may provide a recommendation on behalf of their court attorney who is seeking a change in employment. [New York Advisory Opinion 1995-153](#).
- A judge may provide a letter of reference on behalf of an associate law professor, who also appears before the judge as an attorney, for promotion to a full professorship. [New York Advisory Opinion 1993-26](#).
- A judge may provide a letter of recommendation for a prosecutor who is applying for a position with a law firm. [Texas Advisory Opinion 222](#) (1998).

But see [Connecticut Informal Advisory Opinion 2015-11](#) (judges should provide letters of recommendations for attorneys applying to law firms only if the applicant has not appeared before the judge for a reasonable period before the recommendation is provided and is not expected to appear for a reasonable period after).

The New York committee stated that when an attorney who regularly appears in the judge's court asks for a recommendation for a potential employer who also regularly appears in the judge's court, the judge's letter "could result in an appearance of impropriety and might permit one to reasonably question the judge's ability to be impartial." [New York Advisory Opinion 2010-7](#). The committee recommended that "the judge either authorize the job candidate to provide the judge's name to the potential employer who then may contact the judge directly for a reference or to provide the job applicant with a letter addressed to 'To Whom It May Concern.'"

Some sources identify the involvement of the recipient of the recommendation in court proceedings as a relevant factor in determining whether a judge should provide a recommendation. Commentary to [Canon 2 of the Alabama Canons of Judicial Ethics](#) states that a letter of recommendation "should not be written if the recipient is engaged in litigation before the judge or it is likely that the recipient will be engaged in proceedings that would ordinarily come before the court." Discussing that provision, an advisory opinion explained that, under those circumstances, the recipient "might feel coerced by the judge's letter" or "feel that by acting favorably

With some caveats and assuming that the judge has sufficient personal knowledge, judges generally may act as reference or write a recommendation for attorneys looking for employment, applying for specialty certification, or asking to be added to a court appointments list.

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on the judge's recommendation he could influence the judge" in pending litigation. [\*Alabama Advisory Opinion 1986-269\*](#).

The Connecticut committee advised that a judge should not provide a letter of recommendation for an attorney applying to a law firm if the firm:

- Had appeared before the judge within a reasonable period before the recommendation would be provided,
- Has an appearance before the judge scheduled at the time the recommendation would be provided, or
- Is expected to have an appearance before the judge within a reasonable period after the recommendation would be provided.

[\*Connecticut Informal Advisory Opinion 2015-11\*](#). It stated that the restriction did not apply to large public employers, such as the district attorney, the public defender, and the attorney general's office.

The Minnesota advisory committee stated that a reference might appear coercive if the addressee was a party or a lawyer for a party in a matter before the judge. [\*Minnesota Advisory Opinion 2013-1\*](#). See also [\*Maryland Opinion Request 2022-14\*](#) (listing when the addressee is a party or a lawyer in a matter before the judge as "an example of a situation where a letter of recommendation might not be permitted on the ground that it appeared coercive"). The Indiana committee advised that a judge should consider on a case-by-case basis whether a recommendation for "an individual seeking work with a law firm or government office which frequently practices in his court might give his recommendation more meaning than is proper or even create a challenge to the judge's impartiality when the individual is hired and appears before him." [\*Indiana Advisory Opinion 3-1988\*](#). The Illinois committee noted that a judge who provides "a recommendation to a prospective employer knowing that that prospective employer is a named party in litigation pending before the judge could be interpreted" as violating the code. [\*Illinois Advisory Opinion 1995-4\*](#).

New Jersey judges have been cautioned to avoid making employment recommendations to law firms actively practicing in their jurisdiction. [\*New Jersey Memorandum re Letters of Recommendation\*](#) (1982). The guidelines note that "there may be circumstances that require it," for example, when the applicant served as the judge's law clerk, but advise judges to try to avoid "the impression that might otherwise be given that pressure is being exerted on the firm."

### *Certification*

- A judge may act as a confidential reference in an attorney's certification process by the National Board of Trial Advocacy. [\*Nebraska Advisory Opinion 1994-2\*](#).
- A judge may be listed as a reference by an attorney seeking state trial certification or National Board of Trial Advocacy certification and respond on the form provided. [\*New Jersey Letters of Recommendation Memo\*](#) (1982).

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- A judge may complete a confidential statement of reference for the re-certification of an attorney by the National Board of Trial Advocacy. [\*Connecticut Informal Advisory Opinion 2015-10\*](#).
- At the request of an attorney's counsel, a judge may submit a written opinion of the attorney's professionalism for a specialization certification proceeding, even if the attorney has a case pending before the judge. [\*Arizona Advisory Opinion 2002-4\*](#).
- A judge may provide a confidential reference for an attorney seeking certification by the National Association of Counsel for Children. [\*Connecticut Emergency Staff Opinion 2015-12\*](#).
- A judge may sign a confidential certificate of reference for members of the bar applying for certification under the Florida Bar Designation Plan. [\*Florida Advisory Opinion 1978-24\*](#).
- A judge may write a letter nominating an attorney whom the judge has known for several years through bar association activities for the commercial panel of the American Arbitration Association. [\*New York Advisory Opinion 1993-129\*](#).
- A judge may make a written recommendation for an attorney seeking certification as a specialist when requested to do so by a certifying agency even if the applicant appears before the judge. [\*Ohio Advisory Opinion 2021-12\*](#).

But see [\*South Carolina Advisory Opinion 26-2006\*](#) (a judge may not submit a form reference for an attorney who tried a case before the judge earlier in the year to the American Board of Professional Liability Lawyers).

#### *Court appointments and representation*

- A judge may write a recommendation for an attorney for membership on the panel of attorneys appointed to provide counsel to indigent criminal defendants. [\*New York Advisory Opinion 1996-32\*](#).
- A judge may write a recommendation letter for a lawyer seeking to be placed on a federal court appointments list. [\*Pennsylvania Informal Advisory Opinion 6/23/2003\*](#).
- A judge may provide a recommendation for attorneys to serve as contract counsel representing indigent criminal defendants. [\*Alabama Advisory Opinion 1997-672\*](#).
- A judge may write a reference letter for an attorney seeking admission to a law guardian panel without first being solicited by the appointing authority. [\*New York Advisory Opinion 2005-29\*](#).
- A judge may provide a letter of recommendation for a personal friend who has applied to become a volunteer Court Appointed Special Advocate. [\*Nevada Advisory Opinion JE2011-010\*](#).
- A judge may complete a confidential evaluation form for private attorneys that will be used to determine whether the city renews the

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attorneys' contracts to provide public defender services. [\*Arizona Advisory Opinion 2000-4\*](#).

- A judge may write a letter about the performance and professional conduct of attorneys affiliated with an organization that is seeking a contract with a municipality to provide legal representation for indigent criminal defendants, but should not express an opinion on whether the organization's bid should be accepted or a particular contract entered into and should not sign a form letter provided by the organization. [\*New York Joint Advisory Opinion 2001-100 and 2001-101\*](#).

But see [\*Connecticut Advisory Opinion 2009-15\*](#) (a juvenile judge may not provide references in response to form questionnaires for attorneys seeking contracts to provide representation to children and indigent respondents in neglect and termination of parental rights proceedings).

### *Evaluating attorneys for publications*

Most opinions on the issue have advised that a judge may evaluate an attorney for a legal rating periodical even if the attorney may appear before the judge, provided the evaluation will remain confidential and will not be used to create the impression that the judge endorses a particular lawyer. For example, noting that the *Martindale-Hubbell* directory emphasizes that its ratings are based on confidential recommendations from local lawyers and judges, the Maryland advisory committee concluded that a judge may respond to a request to rate an attorney for the publication as "one of many unnamed judges from unnamed courts playing a role in rating lawyers, which role will never be fully disclosed." [\*Maryland Opinion Request 1977-5\*](#). Accord [\*Alabama Advisory Opinion 1992-448\*](#); [\*Alabama Advisory Opinion 1983-180\*](#); [\*Florida Advisory Opinion 1973-15\*](#); [\*Kansas Advisory Opinion JE-148\*](#) (2006); [\*Nebraska Advisory Opinion 1991-1\*](#); [\*New York Advisory Opinion 1989-119\*](#); [\*New York Advisory Opinion 2011-40\*](#); [\*Pennsylvania Informal Advisory Opinion 2/22/2010\*](#).

However, some states prohibit a judge from rating attorneys for *Martindale-Hubbell*. The South Carolina committee explained:

While a judge may have no intention of favoring one lawyer over another, allowing a judge to rate the lawyers who may appear before him could create the appearance of partiality. Publicized ratings which indicate that a judge believes one lawyer to be superior, in one way or another, to another lawyer, could certainly create the appearance of partiality.

[\*South Carolina Advisory Opinion 4-2004\*](#). See also [\*New Jersey Memorandum re Letters of Recommendation\*](#) (1982).

Moreover, based on a change in *Martindale-Hubbell's* process in 2009, the Connecticut advisory committee stated that a judge may not submit a peer review rating for a lawyer who has appeared before the judge in the past even if the lawyer is not likely to appear before them in the near future. [\*Connecticut Informal Advisory Opinion 2011-17\*](#). Under the new system, reviewers' basic demographics, including general position and general geographic location, will be aggregated and displayed. *Martindale-Hubbell* stated that

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“[all] Peer Review Ratings materials are treated as anonymous” and it “takes steps to protect anonymity,” but it acknowledged that reviewers’ responses “may contain sufficient information to allow the rated lawyer to ascertain [the identity of the reviewers].” Distinguishing a *Martindale-Hubbell* review from a letter of recommendation, the committee explained that “unlike the general ratings at issue, which single out certain lawyers for general endorsements as to proficiency and integrity relative to other lawyers, letters of recommendation or reference comment on individuals’ suitability for particular positions or purposes.” Cf., *Connecticut Informal Advisory Opinion 2013-40* (a judge may serve as a reference for a law firm, which had represented him prior to his appointment to the bench, for a publication that ranks law firms and lawyers when the publisher states that all interviews are confidential).

Further, the Maryland committee advised that a judge may not provide a reference on the rating website Avvo for a former law clerk or any attorney, noting that “the ethics of judicial references intersect[ed] with the digital age” in the inquiry. *Maryland Opinion Request 2019-24*. Concluding that the “site is formatted such that any recommendation of an attorney by a judge would unduly lend the prestige of judicial office to the attorney’s online profile,” the committee emphasized that “endorsements are all solicited and attributed. Thus, the judge’s name would have to appear with the endorsement, and his or her title as well.” The opinion added that “posting without identifying as a judge would not be an option: the judge’s name would likely be recognized by some, leaving the judge open to unwelcome charges of lack of candor.”

Similarly, the New York advisory committee stated that a judge may not publish on [www.avvo.com](http://www.avvo.com) a testimonial about professional services the judge received from their matrimonial attorney. *New York Advisory Opinion 2015-103*. The committee explained that the review would not be confidential because it would be posted publicly online and would not be anonymous because, given the individualized nature of legal services, the attorney and others involved in the particular litigation or transaction may be able to discern the reviewer’s identity. “Merely omitting the judge’s name and title” would not remedy the problem, the opinion stated, because “the testimonial would be readily available for all to view and for the attorney him/herself to use to promote his/her law practice . . . .”

## Other recommendations

[Employment](#)

[Education](#)

[Bar admission](#)

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[Awards](#)

The article summarizes advisory opinions approving references by judges in the employment context for law clerks, court staff, and others and in common situations such as admission to educational institutions, the bar admissions process, appointments to governmental positions, and awards.

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## Employment

In general, assuming relevant personal knowledge of the applicant, judges may provide recommendations in support of applications for employment or promotion on behalf of current and former law clerks, chambers staff, other court staff, staff from agencies that appear before or work with the courts, and individuals the judge knows in their personal lives such as friends and neighbors. See, e.g., [\*Illinois Advisory Opinion 1995-4\*](#); [\*South Carolina Advisory Opinion 5-1992\*](#).

### Former or current law clerks and other court staff

- A judge may write an employment recommendation on behalf of a law clerk, intern, deputy sheriff, legal secretary, or court reporter who is responsible to the judge for the performance of their duties and on behalf of other court employees (such as probation officers, detention staff, or clerical staff) if the judge has knowledge of their job performance. [\*Georgia Advisory Opinion 9\*](#) (1977).
- A judge may write a letter of recommendation for their clerk, an attorney who is leaving public employment after working with the judge for several years. [\*California Judges Association Advisory Opinion 40\*](#) (1988).
- A judge may complete a letter of reference form for a former law clerk who is applying for a position with the attorney general's office. [\*Connecticut Informal Advisory Opinion 2008-3\*](#).
- A judge may write a letter of recommendation on behalf of their law clerk who is seeking employment with law firms. [\*West Virginia Advisory Opinion 2012-9\*](#).
- A judge may act as a reference or provide a letter of recommendation for a court clerk who is applying for a job within the court system or in the private sector. [\*Nebraska Advisory Opinion 2016-3\*](#).
- As part of the application process for a position in the attorney general's office, which regularly appears before the judge, a judge may on behalf of an attorney who has worked as their temporary assistant clerk complete and return a form that "requests candid comments regarding specific areas, such as communications skills, analytic ability, etc." [\*Connecticut Informal Advisory Opinion 2015-11\*](#).
- A judge may provide a reference letter for a court staff member from a different department even if the judge has no direct knowledge of the staff member's job performance or abilities, as long as they have personal knowledge of the staff member and do not offer opinions on issues on which they have no personal knowledge. [\*Nevada Advisory Opinion JE2011-2\*](#).
- A judge may write a letter supporting a court employee's request for a promotion but should not recommend that the employee be promoted. [\*New York Advisory Opinion 2021-160\*](#).

- A judge may write a letter in support of a court clerk's request for promotion within the court system. [\*New York Advisory Opinion 2021-130\*](#).
- A surrogate court judge may write a letter of recommendation to a city court judge on behalf of a surrogate court employee who is applying for a position as a clerk in the city court. [\*New York Advisory Opinion 1990-46\*](#).
- A judge may provide a letter of recommendation for an employee of a county-operated, pre-trial release and supervision program who has appeared in the judge's court and has applied for a position with the federal probation system. [\*Utah Informal Advisory Opinion 1991-2\*](#).
- A judge may write a letter of recommendation for employment for court personnel based on their personal observations of the employee's job performance. [\*Washington Advisory Opinion 1986-12\*](#).

#### *Other employment contexts*

- A judge may not provide a letter of recommendation to the state's two U.S. Senators about a person applying for a position with the federal court system but may offer to have their name listed as a reference and provide a letter of recommendation if asked by federal officials. [\*Connecticut Advisory Opinion 2009-13\*](#).
- A judge may authorize an executive branch employee who regularly appears before them to include their name on a resumé/letter of application for a position at another executive branch agency that regularly appears before the judge. [\*Connecticut Emergency Staff Opinion 2013-32\*](#).
- A judge may be listed as a reference or provide a letter or reference for the promotion of a support enforcement officer who regularly testifies before them. [\*Connecticut Informal Advisory Opinion 2018-17\*](#).
- A judge may write a character reference letter for a county supervisor of the division of youth services with whom the judge has had contact in their official capacity who is applying for district supervisor. [\*Florida Advisory Opinion 1975-30\*](#).
- A judge may write a letter supporting a court officer's request to be assigned to the judge's courthouse. [\*New York Advisory Opinion 2015-173\*](#).
- A judge may write an employment reference letter for a relative. [\*New York Advisory Opinion 2019-116\*](#).
- A judge may write a letter of reference for a sheriff's deputy supervisor who is seeking to be promoted and who supervises court security and is unlikely to appear before the judge. [\*New York Advisory Opinion 2021-68\*](#).
- A judge may send a reference letter for a friend to a prospective employer. [\*New York Advisory Opinion 2019-118\*](#).
- A judge may provide a letter of recommendation on behalf of a friend who wants to enter the ministry. [\*South Carolina Advisory Opinion 31-1996\*](#).
- A judge may write an employment recommendation for a personal friend. [\*Washington Advisory Opinion 1986-12\*](#).

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- A judge may recommend a neighbor for a state fellowship or internship. [\*Illinois Advisory Opinion 1996-2\*](#).

But see [\*Connecticut Informal Advisory Opinion 2015-11\*](#) (a judge may not act as a reference for a relative); [\*New York Advisory Opinion 1988-53\*](#) (a judge assigned to a felony criminal court may not send a letter of recommendation regarding a law student's application for a summer position in the district attorney's office that "constantly" appears before the judge but may authorize the applicant to use the judge as a reference and respond to a request by the district attorney for information or provide the applicant with a "to whom it may concern" recommendation).

Letters of recommendation on behalf of law enforcement officers who may appear before a judge may be an exception to the rule. See [\*New York Advisory Opinion 2001-37\*](#) (a judge should not write a letter of recommendation for a police officer seeking promotion when the officer is likely to be a witness or otherwise involved in cases before the judge).

### Education

- A judge may write a letter of recommendation for a person who is applying for entrance to law school. [\*Florida Advisory Opinion 1979-3\*](#); [\*Kentucky Advisory Opinion JE-74\*](#); [\*Nevada Advisory Opinion JE2004-4\*](#).
- A judge may write a recommendation for school admission for a law clerk, intern, deputy sheriff, legal secretary, or court reporter who was responsible to the judge for the performance of their duties and for other court employees (such as a probation officer, detention staff, or clerical staff) whose performance is known to the judge. [\*Georgia Advisory Opinion 9\*](#) (1977).
- A judge may write a letter of recommendation for a law school candidate who volunteered in their office as an intern. [\*South Carolina Advisory Opinion 8-2009\*](#).
- A judge may provide a reference for a domestic violence advocate who is regularly involved in proceedings in their court and is applying for law school. [\*West Virginia Advisory Opinion 2004-22\*](#).
- A judge may provide a letter of recommendation to the director of a law school admissions office on behalf of a former business client's employee with whom the judge worked on cases as an attorney. [\*Connecticut Informal Advisory Opinion 2009-22\*](#).
- A judge may complete a recommendation form for a student seeking admission to a preparatory school. [\*Connecticut Informal Advisory Opinion 2009-37\*](#).
- A judge may write a letter of recommendation for a student or prospective student for law school or college admission and/or a scholarship. [\*New Jersey Memorandum re Letters of Recommendation\*](#) (1982).
- A judge may send a letter of recommendation to a law school on behalf of a friend's child. [\*Oklahoma Advisory Opinion 2002-7\*](#).

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- A judge may provide a letter of recommendation for their former private practice secretary to attend a college graduate program. [\*Connecticut Informal Advisory Opinion 2010-7.\*](#)
- A judge may allow their former secretary to include them as a reference on applications for college admission and a scholarship. [\*Illinois Advisory Opinion 1995-4.\*](#)
- A judge may give a recommendation for appointment to a military academy for a relative or neighbor with whom they are very familiar. [\*Maryland Opinion Request 1977-5.\*](#)
- A judge may provide a reference for a person seeking admission to an educational institution. [\*Minnesota Advisory Opinion 2013-1.\*](#)
- A judge may send a letter of recommendation to a college on behalf of a high school student the judge has known most of the student's life. [\*Nebraska Advisory Opinion 2007-4.\*](#)
- A judge may write a letter of recommendation for a student seeking admission to a college or professional school. [\*South Carolina Advisory Opinion 5-1992.\*](#)
- A judge may write a letter of nomination for a college scholarship on behalf of a high school senior with whom they are acquainted. [\*New York Advisory Opinion 2013-5.\*](#)

#### *Bar admission*

- A judge may provide an affidavit of character for a law student who is applying for admission to the bar. [\*Alabama Advisory Opinion 1989-357.\*](#)
- A judge may write a letter regarding the background and character of someone who is applying for admission to the bar. [\*Florida Advisory Opinion 1975-18.\*](#)
- A judge may sign applications for bar examinations for a law intern who has worked with the judge in the court. [\*Georgia Advisory Opinion 9 \(1977\).\*](#)
- A judge may provide a reference for a person seeking admission to the bar. [\*Minnesota Advisory Opinion 2013-1.\*](#)
- A judge may submit an affidavit of good character to the New York bar for a student who has worked for the judge as a summer intern. [\*New York Advisory Opinion 1988-166.\*](#)
- A judge may complete the board of law examiner's certificate of moral character for an applicant seeking admission to practice law in the state. [\*North Carolina Advisory Opinion 2007-3.\*](#)
- A judge may write a letter of recommendation to the Board of Law Examiners on behalf of a recent graduate whom the judge encouraged to attend law school and who clerked for them at various times over the past two years. [\*Pennsylvania Informal Advisory Opinion 6/28/2013.\*](#)
- A judge may allow a friend to list the judge as a reference on a bar admission application. [\*Pennsylvania Informal Advisory Opinion 5/25/2004.\*](#)

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- A judge may write a letter of recommendation to the Board of Law Examiners in support of a lawyer the judge has regularly met with and occasionally dined with as members of the same organization. [\*Pennsylvania Informal Advisory Opinion 9/29b/2011\*](#).
- A judge may allow a law student to list the judge as a character reference for the state bar examination. [\*West Virginia Advisory Opinion 2000-5\*](#).

### *Government appointments*

- A judge may provide a letter of recommendation for a personal friend applying for an appointive position on a government agency or board that makes decisions regarding prisoners but should not endorse one candidate over another. [\*Arizona Advisory Opinion 1992-6\*](#).
- A judge may write a factual letter to the President regarding an appointment to the board of directors of the Legal Services Corporation. [\*Florida Advisory Opinion 1993-32\*](#).
- A judge may write reference letters for individuals who are seeking voluntary positions in a branch of the government. [\*Pennsylvania Informal Advisory Opinion 3/27/2009\*](#).
- A judge may write a letter of recommendation for an individual seeking an appointment to a governmental position. [\*South Carolina Advisory Opinion 5-1992\*](#).
- A judge may write a reference letter for an attorney seeking an appointment to the Worker's Compensation Board of Review. [\*West Virginia Advisory Opinion 2020-23\*](#).

### *Awards*

- A judge may complete a questionnaire about a lawyer who is being considered for membership in a legal honorary society. [\*Connecticut Informal Advisory Opinion 2012-16\*](#).
- A judge may provide a letter of reference for an individual who has been nominated as a Youth of the Year by a non-profit organization. [\*Connecticut Informal Advisory Opinion 2012-5\*](#).
- A judge may provide a letter of support for an attorney who has been nominated to receive a professional service award from a private organization. [\*Connecticut Informal Advisory Opinion 2009-5\*](#).
- A judge may permit two defense attorneys who regularly appear before them to include the judge's name as a reference on an application nominating the judge's court attorney for an award from a legal publication. [\*New York Advisory Opinion 2015-64\*](#).
- A judge may write a letter in support of a local family services agency's nomination for a newspaper's annual award. [\*New York Advisory Opinion 2008-175\*](#).
- A judge may write a letter in support of a former colleague's nomination for a professional award. [\*New York Advisory Opinion 2008-92\*](#).

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- At the request of a local bar association, a judge may write a letter to assist the association nominate an attorney for an award given by the state bar association. [\*New York Advisory Opinion 2002-118\*](#).
- A judge may send a letter of recommendation for an attorney nominated for a prestigious state bar association award. [\*North Carolina Advisory Opinion 2007-2\*](#).

### Use of judicial letterhead for letters of recommendations

In most states, whether judges may write letters of recommendation on court stationery—that is, official letterhead with emblems of their judicial status such as title, court, and jurisdiction seal or logo—is expressly addressed in the code of judicial conduct or an advisory opinion, although the precise rule varies from jurisdiction to jurisdiction. Any rule permitting or prohibiting use of official letterhead logically also permits or prohibits under similar circumstances use of an official court email address and/or an email signature with the judge’s title and court.

The codes in 21 jurisdictions include [\*\*Comment 2 to Rule 1.3 of the model code\*\*](#): “The judge may use 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.” Those 21 jurisdictions are: Arkansas, Colorado, Connecticut, D.C., Georgia, Hawaii, Idaho, Kentucky, Maryland, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Dakota, Oklahoma, Pennsylvania, Rhode Island, Washington, and Wyoming. In addition, [\*\*Canon 1F of the Virginia code of judicial conduct\*\*](#) states: “When using court stationery for letters of recommendation, a judge should indicate that it is his or her personal opinion.”

Similarly, although not in the state’s code, New York opinions advise that, provided a judge clearly notes “personal and unofficial” on the stationery, a judge may write a letter of recommendation on their official letterhead, for example, for an attorney who appears before them and who is an associate law professor applying for a promotion to a full professorship ([\*New York Advisory Opinion 1993-26\*](#)) or on behalf of a high school senior with whom they are acquainted for a college scholarship ([\*New York Advisory Opinion 2013-5\*](#)).

In contrast, [\*\*Comment 2 to Rule 2-1.3 of the Missouri code\*\*](#) questions the need for a recommendation on official stationery “to recite that it is the ‘personal’ act of the judge,” noting that “references sent to educational institutions, governmental agencies, scholarship committees, and businesses” are “reviewed by sophisticated individuals” who are not likely to misinterpret a judge’s recommendation as a court act. That comment seems to imply that Missouri judges may use official stationery for all appropriate references even without a “personal and unofficial” notation, although it does not expressly state that.

In most states, whether judges may write letters of recommendation on court stationery. . . is expressly addressed in the code of judicial conduct or an advisory opinion, although the precise rule varies from jurisdiction to jurisdiction.

At least eight states have code provisions that expressly allow judges to use judicial stationery for any permitted letter of recommendation without requiring an indication that the recommendation is personal.

- The [Arizona](#) and [West Virginia](#) codes omit the qualification “if the judge indicates that the reference is personal” from the model comment giving permission to use judicial letterhead.
- [Canon 2B\(2\)\(e\) of the California code](#) states that written references or letters of recommendation “may include the judge’s title and may be written on stationery that uses the judicial title.”
- [Commentary to Canon 2B of the Florida code](#) states: “A judge may use judicial letterhead to write character reference letters when such letters are otherwise permitted under this Code.”
- [Comment 2 to Rule 1.3 of the Illinois code](#) (effective January 1, 2023) states: “Judicial stationery may be used for references and recommendations.” See also [Illinois Advisory Opinion 1996-2](#) (“a judge may recommend a neighbor for a state fellowship or internship if the judge has personal knowledge of the applicant and may use court stationery to send the recommendation”).
- [Comment 2 to Rule 1.3 of the Indiana code](#) states: “A judge may provide a reference or recommendation for an individual based upon the judge’s personal knowledge and may use official letterhead . . . .”
- [Comment 2 to Rule 51:1.3 of the Iowa code](#) states: “The judge may use official letterhead for such reference or recommendation.”
- [Comment 2 to Rule 1.3 of the Ohio code](#) states: “A judge may provide a reference or recommendation for an individual based upon the judge’s personal knowledge. The judge may use official letterhead for such reference.”

In six states, judges are allowed to use judicial letterhead for letters of recommendation if the judge knows the person being recommended from their judicial role but are required to use personal stationery for personal contacts.

- [Alaska Advisory Opinion 2020-1](#) states: “Judges may use court letterhead for reference letters when the judge is comfortable providing a reference and has knowledge as a judge relating to the reference, for example, for the judge’s law clerk, other court employees seeking future employment, and lawyers who have appeared before the judge seeking new employment or a judicial office.”
- [Maine Advisory Opinion 1998-3](#) states: “A judge may use official stationery when writing a letter of recommendation for someone the judge knows through the judicial department (for example, as an employee of the clerk’s office or a practicing attorney) but if the basis for the reference is unrelated to the judge’s office then use of letterhead is inappropriate.”
- [Comment 2 to Rule 1.3 of the Massachusetts code](#) provides: “The judge may use official letterhead and sign the recommendation using the

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judicial title if the judge’s knowledge of the applicant’s qualifications arises from observations made in the judge’s judicial capacity. The recommendation may not be accompanied by conduct that reasonably would be perceived as an attempt to exert pressure on the recipient to hire or admit the applicant. Where a judge’s knowledge of the applicant’s qualifications does not arise from observations made in the judge’s judicial capacity, the judge may not use official letterhead, court email, or the judicial title, but the judge may send a private letter stating the judge’s personal recommendation. The judge may refer to the judge’s current position and title in the body of the private letter only if it is relevant to some substantive aspect of the recommendation.”

- **North Carolina Tips on the Use of Official Letterhead** states: “Official letterhead is generally permitted for recommendations based on the judge’s observations of the individual made in the scope of the judge’s official duties and professional judicial activities; personal stationery should be used for recommendations based on knowledge formed and maintained outside the judicial role.”
- **Comment 2 to Rule 1.3 of the Tennessee code** states: “A judge may use official letterhead if the judge’s professional knowledge is germane to the purpose of the letter, such as writing a letter of recommendation for a former or current law clerk or a letter of recommendation for admission to law school.”
- A **Wisconsin Ethics Commission policy** suggests that “the type of stationery to be used depends upon how the public official knows the person for whom the reference letter is being written. If the official knows the subject through state government business, then state government stationery is appropriate. If the subject of the letter is known to the official primarily in a social context, e.g., a relative, friend, neighbor or a school or social acquaintance, personal stationery should be used.” The Wisconsin Ethics Commission interprets regulations that apply to elected officials in the state, including most judges.

In two states, code provisions allow judges to use judicial letterhead for particular types of subjects (law clerks and interns) and/or in particular contexts (employment and education).

- **Comment 2 to Rule 2.3 of the New Jersey code** states: “The New Jersey Supreme Court has determined that in certain limited situations a judge may write a letter of recommendation for a current or former law clerk or intern on judicial letterhead; in all other situations, if a letter of recommendation is appropriate, it should be on the judge’s personal stationery. The situations in which the judge may use judicial letterhead for letters of recommendation for law clerks or interns are as follows: (a) when the letter is addressed to another state or federal government official (this would include letters regarding subsequent additional clerkships or internships); (b) when the letter is addressed to a law school, university, or college in connection with a possible

teaching position for the law clerk or intern; and (c) when a potential employer requests a recommendation.”

- **Comment 2 to Rule 1.3 of the Utah code** states: “A judge may provide a general letter of recommendation assessing the qualifications and experience of an individual who has worked under the judge’s supervision. The general letter of recommendation may be submitted to any prospective employer, including individuals and entities that regularly appear before the judge’s court. In making such references or recommendations, the judge may refer to his or her judicial office and use official letterhead only for employment or educational opportunities.”

In two states, judges are not allowed to use official letterhead for letters of recommendation under any circumstances.

- **Canon 2B of the Louisiana code** states: “Letters of recommendation may be written only on private stationery which does not contain any official designation of the judge’s court, but the judge may use his or her title.”
- **South Carolina Advisory Opinion 5-1992** states that a judge should write a letter of recommendation for students seeking admission to colleges or professional schools, or seeking employment or appointment to a governmental position “on plain paper, without indicating the writer is a judge.”

There does not appear to be a specific code provision or advisory opinion addressing the use of official letterhead for recommendations in nine states (Alabama, Delaware, Kansas, Michigan, Mississippi, Oregon, South Dakota, Texas, and Vermont) and for federal judges.

### **Promoting businesses**

In contrast to the general permission for hiring, education, and similar contexts, judges may not provide references that will be used to promote an individual’s business interests or a recommendation in support of a commercial venture. **Nebraska Advisory Opinion 2007-4**; **North Dakota Advisory Opinion 1992-1**; **Virginia Advisory Opinion 2006-1**; **U.S. Advisory Opinion 73** (2017).

- A judge may not provide a letter praising the skills and abilities of an attorney to be included in an advertising brochure for a litigation consulting business. **California Judges Association Advisory Opinion 40** (1988).
- A judge may not provide a letter of reference to be used to promote a friend’s real estate business. **New York Advisory Opinion 2005-126**.
- A judge may not endorse a friend’s character for use in an advertising flyer for the friend’s business. **Washington Advisory Opinion 1987-4**.
- A judge may not write a letter of recommendation as part of an application to the Department of Business and Professional Regulation for a real estate license for a friend who has a prior misdemeanor arrest. **Florida Advisory Opinion 2013-8**.

- A judge may not review a personal vacation or a vacation organized by a bar association for an online publication even if the review is anonymous and does not refer to their judicial status. [\*New York Advisory Opinion 2019-87.\*](#)
- A judge may not provide a testimonial for their former campaign manager to use in advertisements or other promotional materials but may permit the manager to provide their name as a reference during discussions with specific prospective customers and, if contacted by prospective customers, may, without making a recommendation about hiring, describe their personal experience with the campaign manager, their personal knowledge of the manager's abilities, and their level of satisfaction with the services rendered. [\*New York Advisory Opinion 2014-85.\*](#)
- A judge may not allow an agency that ran the media campaign for their election to use complimentary quotes from the judge's thank you letter even if they are identified only as an anonymous "judicial candidate." [\*New York Advisory Opinion 2001-46.\*](#)
- A judge may not provide a testimonial that the media consulting company the judge used for their election campaign would post on its website. *Louisiana Advisory Opinion 222 (2009).*
- A judge may not provide a letter of reference to a bank on behalf of a friend who is seeking financing for a business. [\*New York Advisory Opinion 1989-15.\*](#)
- A judge may not provide a letter of reference to help a person obtain financing for a commercial treatment facility, particularly when the judge can make referrals to the facility. [\*Utah Informal Advisory Opinion 1991-2.\*](#)
- A judge may not provide a letter supporting a private business in its bid to continue to provide services to a municipality. [\*New York Advisory Opinion 1997-16.\*](#)

For a discussion of judges' writing book reviews and providing blurbs for book covers, see the post on the [Center for Judicial Ethics blog](#).

## Anonymous complaints to judicial conduct commissions

Most judicial conduct commissions can investigate anonymous complaints based on the authority, which most commissions have, to initiate a complaint on their "own motion" or to investigate "information from any source." Judges have been sanctioned following disciplinary proceedings that originated with an anonymous complaint, although the eventual findings of

Judges may not provide references that will be used to promote an individual's business interests or a recommendation in support of a commercial venture.

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misconduct were based on other evidence uncovered in the ensuing investigation or on the judge's stipulations. *See, e.g., Yellowhorse, Order* (Arizona Commission on Judicial Conduct March 29, 2019) (judge reprimanded for allowing defendants to have their charges dismissed in exchange for donations to charities chosen by the judge); *Jayne, Order* (Arizona Commission on Judicial Conduct August 21, 2013) (judge reprimanded for failing to disqualify himself from a case involving an individual who contributed to his campaign and whose business took over a campaign debt and for granting the donor's request to serve as his granddaughter's representative even though, as a non-attorney, he could not legally do so); *Letter of Admonishment to Finch* (Arkansas Judicial Discipline and Disability Commission May 24, 2004) (judge admonished for failing to control his temper in and out of court and being frequently absent from work); *In re Sachse*, 240 So. 3d 170 (Louisiana 2018) (judge suspended for six months without pay for stalking and harassing his ex-wife in violation of protective orders); *In re Free*, 158 So. 3d 771 (Louisiana 2014) (judge suspended for 30 days without pay for taking an all-expenses-paid trip on a private jet to a hunting ranch with attorneys in a case shortly after the case was concluded, in addition to other misconduct); *In re Alford*, 977 So. 2d 811 (Louisiana 2008) (judge removed for dependency on prescription medications that seriously impaired her judgment and mental faculties while performing judicial duties, a pattern of absenteeism and tardiness, and other misconduct); *In re Freeman*, 995 So. 2d 1197 (Louisiana 2008) (judge suspended without pay until the end of his term for failing to resign his office when he became a candidate for a non-judicial office); *In re Jefferson*, 753 So. 2d 181 (Louisiana 2000) (judge removed for abusing his contempt power three times, banning a prosecutor from his courtroom and then dismissing 41 cases when the prosecutor did not appear, participating in a case as counsel for four years after becoming a judge, and disobeying orders of the administrative judge); *In re McInnis*, 769 So. 2d 1186 (Louisiana 2000) (judge censured for performing accounting services for the sheriff's office, failing to disclose the arrangement, and misleading the commission about the relationship); *Inquiry into Karasov*, 805 N.W.2d 255 (Minnesota 2011) (judge suspended without pay for six months for failing to reside within her judicial district for three months and failing to cooperate and be candid during the investigation); *Commission on Judicial Performance v. Roberts*, 227 So. 3d 938 (Mississippi 2017) (judge reprimanded and fined \$3,000 for issuing a default judgment that differed in kind and exceeded in amount what was demanded in the complaint); *Public Admonition of Cross and Order of Additional Education* (Texas State Commission on Judicial Conduct April 18, 2018) (judge admonished for referring to a man in a guardianship case who had wounds that had become infested with maggots as "Mr. Maggot" or "Maggot Man," or words to that effect); *Public Reprimand of Jasso and Order of Additional Education* (Texas State Commission on Judicial Conduct April 18, 2018) (judge reprimanded for sexually harassing an employee); *Public Admonition of Rodriguez* (Texas State Commission on Judicial Conduct February 15, 2002) (court of appeals judge admonished for allowing a bumper sticker endorsing a candidate for

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governor to remain on the back of a vehicle with her official judge license plates); *In re Bennett, Stipulation, agreement, and order* (Washington State Commission on Judicial Conduct April 22, 2022) (judge admonished for donating to a mayoral candidate and introducing the candidate at her campaign kick-off rally).

Commissions consider anonymous complaints “to ensure that lawyers, court personnel, or litigants can bring misconduct and incapacity to the attention of the Commission without the fear of retaliation,” as a comment to the rules of the Georgia Judicial Qualifications Commission explains. Similarly, the Kentucky Supreme Court stated that, “sad to say, judicial retaliation is not unknown in our Commonwealth” when it rejected a judge’s argument and held that the Judicial Conduct Commission was not required to dismiss an anonymous, unsigned report. *Maze v. Judicial Conduct Commission*, 612 S.W.3d 793 (Kentucky 2020). The Court explained that the rule that permits the Commission to begin a preliminary investigation on its own motion “is broad” and allows the Commission to investigate “based on a newspaper story, a television report, a social media post, a written complaint or even an anonymous complaint.” It did note that an anonymous complaint may lack “sufficient detail to permit an investigation or to enable the Commission to follow up with the sender.” (In the case before it, the Court concluded that the investigation had been initiated by the judge’s self-report rather than the anonymous complaint.)

Some states have rules, policies, or internal operating procedures that expressly address anonymous complaints; those provisions are copied below.

#### Rule 8A, Rules of the Arkansas Judicial Discipline & Disability Commission

... The Commission on its own motion may make inquiry with respect to the conduct of a judge. All complaints shall bear the name of the complainant, unless anonymous or based upon media reports. If the complaint is anonymous or based upon a media report, it shall be signed by the Executive Director, but not sworn. . . .

#### Operating procedure of the Arkansas Judicial Discipline & Disability Commission

... A complaint may also be triggered by an anonymous contact, a media report, or a referral from another agency.

#### 1.1 Policy declarations of the California Commission on Judicial Performance

Staff will evaluate anonymous complaints for merit; if a complaint is deemed sufficiently meritorious, it will be placed on the oversight agenda for consideration by the commission as to whether or not it should be docketed.

#### Rule 17, Comment [2], Rules of the Georgia Judicial Qualifications Commission

... The Director and the Investigative Panel may consider complaints submitted anonymously or confidentially in the same manner as other complaints in order to ensure that lawyers, court personnel, or litigants can bring

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**Most judicial conduct commissions can investigate anonymous complaints based on the authority, which most commissions have, to initiate a complaint on their “own motion” or to investigate “information from any source.”**

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misconduct and incapacity to the attention of the Commission without the fear of retaliation.

**Rule XXIII §3(a)(2), Louisiana Supreme Court Rules**

An anonymous complaint is a complaint submitted without a name and contact information. An anonymous complaint may not be the subject of a preliminary inquiry unless it states facts, not mere conclusions, that can be independently verified and the Chair authorizes a preliminary inquiry to be made. If the Chair declines to authorize a preliminary inquiry, the complaint is processed pursuant to the [Judiciary] Commission’s internal rules.

**Rule III, Louisiana Judiciary Commission Rules**

... The Commission ... may consider alleged misconduct or disability of any judge from whatever source, including anonymous complaints and news reports, and may do so on its own motion.

**Rule 6F, Rules of the Massachusetts Commission on Judicial Conduct**

Following the docketing of an anonymous complaint ... , the Executive Director shall not conduct any inquiry or investigation of it unless the Commission, upon the recommendation of the Executive Director, determines by majority vote that the allegations of the anonymous complaint would, if true, constitute misconduct or disability within the jurisdiction of the Commission, and the seriousness or the notoriety of the misconduct alleged outweighs the potential prejudicial effect of an investigation into the merits of the complaint. If the Commission does not make such a determination, the complaint shall be dismissed, and the Executive Director shall promptly notify the judge of both the complaint and its dismissal. If the Commission does make such a determination, ... the Executive Director shall promptly notify the judge of the anonymous complaint ....

**IOP 9.207(A)-8, Internal Operating Procedures of the Michigan Judicial Tenure Commission**

The Commission occasionally receives anonymous information but generally does not consider it. If such information is received, it is circulated among the Commissioners. A Commissioner may then place a “hold” on the item, causing it to be placed on the next agenda for discussion. Similarly, if a matter has been reported in the media, that item may be circulated among the Commissioners, who may then place the item on the next agenda for discussion. The Commission may elect to open its own investigation ....

**Section 2.1(G), New York State Commission on Judicial Conduct Policy Manual**

The Commission may authorize investigation of anonymous complaints that are sufficiently detailed and allege conduct that, if true, would constitute misconduct. An anonymous complaint authorized for investigation shall be treated as a complaint brought by the Commission on its own motion ....

**OP 3.02, Pennsylvania Judicial Conduct Board Operating Procedures**

... All such anonymous complaints received must be presented to the Board at its next regularly scheduled meeting for review and approval in advance of either opening a file or initiating a preliminary inquiry or investigation. If the source of the anonymous complaint is known, such information shall be recorded by Chief Counsel for purposes of any ensuing preliminary inquiry or investigation as well as for advising the complainant of the ultimate disposition of the Board. If the Board approves the opening of a file based on an anonymous complaint, Chief Counsel will open a file and assign it to counsel, who will conduct a preliminary inquiry. If the preliminary inquiry reveals facts that corroborate the anonymous complaint, it will remain open and investigation will move forward in its normal course to final disposition by the Board. If the preliminary inquiry does not reveal facts that corroborate the anonymous complaint, the anonymous complaint will be presented to the Board for dismissal with a notation that the preliminary inquiry did not corroborate the complaint.

**Rule 5, Rules of the Tennessee Board of Judicial Conduct**

Disciplinary Counsel is authorized to investigate anonymous complaints or information coming from sources other than a written complaint, provided Disciplinary Counsel deems the information sufficiently credible or verifiable through objective sources.

**Rule 17, Washington State Commission on Judicial Conduct Rules of Procedure**

Any named or anonymous organization, association, or person, including a member of the commission or staff, may make a complaint of judicial misconduct or incapacity to the commission.

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Throwback  
Thursdays.

**Recent cases****Prejudicial delay**

Based on stipulations and an agreement that included the justice's retirement, the California Commission on Judicial Performance publicly admonished an appellate court justice for (1) delays in deciding approximately 200 cases over a 10-year period and (2) failing to properly exercise his authority as administrative presiding justice to prevent chronic delays in cases assigned to other justices. ***In the Matter Concerning Raye, Decision and order*** (California Commission on Judicial Performance June 1, 2022).

The justice had been the Administrative Presiding Justice of the Third District Court of Appeal since 2010. The Commission noted that from 2011 to 2021, the justice authored opinions in over 1,200 matters, a

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substantial percentage of which were decided within a year after briefing was completed.

However, during the same period, “a significant number of cases languished for years,” and more than a year passed between the completion of briefing and the issuance of an opinion or dismissal in approximately 200 matters assigned to the justice. Two of his cases were delayed between six and seven years; five between five and six years; 17 between four and five years; 29 between three and four years; and 45 between two and three years. In the justice’s oldest completed case, the parties dismissed the matter when seven years and nine months had passed after it was fully briefed. In his oldest pending case, a criminal matter with youthful offenders, the case has been fully briefed for eight years and seven months without a decision.

The delays were “pre-submission,” that is, between the case being fully briefed and the oral argument being heard or waived or the case being dismissed. The Third District does not schedule oral argument or ask the parties if they want to waive oral argument until the justice assigned to the case has written a draft opinion on which at least two justices on the panel agree.

Although acknowledging that the Third District has a high volume of cases, the Commission found that the justice’s delays could not be “attributed solely to an overburdened court” as cases assigned to “virtually all” of the other justices on the court did not show a similar pattern of delay. Moreover, it noted that, after an inquiry from the Commission, the percentage of cases assigned to the justice that were decided more than a year after being fully briefed declined to approximately 7% from 14-35%, suggesting that he could have more promptly decided matters. The Commission emphasized that the justice had “failed to prioritize efforts so that older cases could be resolved before work began on newer ones.” The Commission found that the evidence did not show that the justice had intentionally disregarded his duties but noted that he had been “aware of his growing backlog of cases.”

The justice had also known that, throughout the time he served as the administrative presiding justice, “there were chronic delays in cases assigned to some of the other justices on the court. From January 2011 through March 2021, decisions in 1,861 matters were delayed for more than one year from the completion of the briefing; 768 of those cases were pending for more than two years after the completion of the briefing in the case.”

The Commission noted that, although the justice repeatedly discussed the issue of delay with the other justices, he did not “propose and advocate changes to court procedure that would ensure the prompt resolution of older cases.” As a result, it found, he did not fulfill his administrative responsibility and failed “to provide a forum for the expeditious resolution of appellate disputes.”

The Commission further found that the justice’s “conduct caused prejudice to civil litigants and criminal defendants.” It explained:

Prejudice can occur in civil cases by parties suffering from uncertainty as disputes remain unresolved, or the payments of money judgments are delayed. In criminal cases, appellants are prejudiced if they have served all or part of a reversed sentence, or when faded memories or lost evidence hamper resentencing hearings or retrials. Prejudice can also manifest as “increased anxiety, mistrust, hopelessness, fear, and depression” that “results from the very thwarting of the hope that liberty will be restored through a right that the State has guaranteed — the appellate process.”

### Blurred boundaries

Two recent judicial discipline cases from South Carolina illustrate the ethical challenges that can arise when judicial officers are married to law enforcement officers.

Based on an agreement for discipline by consent, the South Carolina Supreme Court publicly reprimanded a magistrate for failing to follow proper waiver procedures after disclosing that his wife was a captain in the sheriff’s office and failing to disclose when the officers in a case were supervised by his wife. *In the Matter of Barker*, 875 S.E.2d 44 (South Carolina 2022).

As Marion County Magistrate, the magistrate never presided over any case or hearing in which his wife, a captain in the Marion County Sheriff’s Office, appeared or was directly involved. However, deputies who were “administratively” supervised by his wife regularly appeared before him in bond hearings, traffic citations, preliminary hearings, and other matters.

The magistrate admitted that his impartiality might reasonably be questioned in matters involving the sheriff’s office because his wife was employed there. In those cases, his practice was to state on the record: “My wife is a Captain with the Marion County Sheriff’s Office, and she was not involved in your case, but I would be happy to disqualify myself and have another judge hear your case.” The magistrate would then “ask whether a defendant objected; if the defendant did not speak up,” the magistrate would preside over the hearing. The magistrate said that no defendant ever requested that he recuse himself.

The magistrate admitted that he had violated the code “by failing to allow the parties and their lawyers time to consider the question of remittal outside his presence and by failing to ensure that any agreements to waive disqualification were placed on the record.” The Court emphasized that commentary in the code “makes clear that the parties’ consideration of whether to waive the judge’s disqualification must be made independently of the judge and that the judge ‘must not solicit, seek[,] or hear comment on possible remittal or waiver of the disqualification unless the lawyers jointly propose remittal after consultation as provided in the rule.’”

Further, the magistrate did not disclose when, even though his wife was not involved in a particular matter, she supervised the deputies who were

Two recent judicial discipline cases from South Carolina illustrate the ethical challenges that can arise when judicial officers are married to law enforcement officers.

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involved. This failure, the Court found, violated the code of judicial conduct because the supervisory relationship was “a fact which the parties might find relevant to a determination of whether to waive Respondent’s disqualification and which therefore should have been disclosed.”

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Based on an agreement for discipline by consent, the South Carolina Supreme Court suspended a magistrate for six months without pay for accessing messages with citizen complaints on the Facebook page of the sheriff’s department where her husband was sheriff and forwarding those complaints using her judicial email account; involving herself in sheriff’s department personnel matters; and preparing correspondence on behalf of the sheriff’s department. *In the Matter of Underwood*, 873 S.E.2d 689 (South Carolina 2022).

In 2017 and 2018, the magistrate was the Chief Magistrate of Chester County and her husband was the Chester County Sheriff. The sheriff’s department had a Facebook page through which members of the public could submit private tips about criminal activity.

On the sheriff’s behalf, the magistrate accessed the sheriff’s department’s Facebook messages, including complaints about suspected drug activity, trash, and noise. Using her judicial email account, she forwarded the complaints to sheriff’s department employees and requested that they take certain actions in response to the complaints. The signature block on her emails identified her as a Chester County Magistrate and listed the court’s address and telephone number.

In addition, in 2018, the magistrate helped her husband draft a disciplinary action concerning a sheriff’s department employee. The magistrate used her judicial email account to forward the draft to her husband for his review. Also in 2018, the magistrate prepared a letter from the community services division of the sheriff’s department recommending a student for a scholarship. Using her judicial email account, the magistrate directed sheriff’s department staff to copy the letter onto department letterhead and send it in a department envelope.

The Court found that the magistrate’s “actions blurred the boundaries between her role as an independent and impartial magistrate and someone acting on behalf of the Sheriff’s Department,” eroding public confidence in the judiciary regardless whether she “intended her emails and actions to remain private . . . .” The Court concluded that the magistrate’s “pattern of conduct with the Sheriff’s Department is sufficient to create in reasonable minds a perception that her ability to carry out her judicial responsibilities impartially is impaired . . . .”

The Court stated that, in light of her disciplinary history, a suspension was appropriate, noting that it had previously reprimanded the magistrate for hearing matters involving the sheriff’s department even though her husband was the sheriff. *In the Matter of Underwood*, 790 S.E.2d 761 (South Carolina 2016).

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