

# Nebraska Judicial Ethics Committee Opinion 16-3

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## ***Question Presented--***

*May a judge or magistrate, at an employee's request, write a letter of recommendation for that employee discussing the employee's abilities as an employee who has applied for a job in a different court? May the letter be on the court's letterhead? May the letter be signed with the title "Judge of the Court?" Would the same answer apply if the clerk was applying for a job outside of the court system, that is, in the private sector?*

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## **Conclusion**

Although a judge or magistrate should be sensitive to possible abuse of the prestige of office, a judge or magistrate may, based on the personal knowledge of the judge or magistrate, serve as a reference or provide a letter of recommendation for a court clerk, whether the clerk is applying for a job within the court system or in the private sector. The letter of recommendation may be on court letterhead and may be signed with the title "Judge."

## **Applicable Code Sections**

Neb. Rev. Code of Judicial Conduct § 5-301.3, and comment 2

Neb. Rev. Code of Judicial Conduct § 5-303.3

## **References in Addition to Nebraska Revised Code of Judicial Conduct**

Nebraska Judicial Ethics Opinion 90-2

Nebraska Judicial Ethics Opinion 91-1

Nebraska Judicial Ethics Opinion 92-7

Nebraska Judicial Ethics Opinion 98-4

Nebraska Judicial Ethics Opinion 07-4

Virginia Judicial Ethics Advisory Opinion 06-1

U.S. Advisory Opinion 73 (2009)

Massachusetts Advisory Opinion 94-1

New York Advisory Opinion 88-10

Arizona Advisory Committee 92-6

## **Discussion**

Over the years, this Committee has held that as long as a judge has personal knowledge of the individual seeking the recommendation, the judge may provide a recommendation for another person involving employment or education opportunities, bar admission, professional awards, and other similar situations.

This Committee has previously held that judges do not violate the Code of Judicial Conduct by submitting:

(1) a letter of support for a funding grant on behalf of a victim assistance or CASA agency, based on the judge's personal knowledge. See Nebraska Judicial Ethics Opinion 98-4;

(2) letters of recommendation for acquaintances who are applying to law school, for a judgeship, or for employment in general. See Nebraska Judicial Ethics Opinion 90-2;

(3) a response to a request from Martindale-Hubbell to rate an attorney so long as the evaluation is confidential and is not used to create the public impression that a judge endorses a particular lawyer. See Nebraska Judicial Ethics Opinion 91-1;

(4) a letter of recommendation on behalf of a court clerk nominated for "Outstanding County Official of the Year." See Nebraska Judicial Ethics Opinion 92-7; and

(5) a letter of recommendation to a particular college on behalf of a student the judge has known for most of the student's life, subject to certain guidelines and limitations. See Nebraska Judicial Ethics Opinion 07-4.

This Committee, in Nebraska Judicial Ethics Opinion 07-4, adopted the following guidelines, originally set out in Virginia Judicial Ethics Advisory Opinion 06-1, which are applicable to a judge writing a letter of recommendation for employment purposes:

1. Judges shall not testify as a character witness. This prohibition extends to writing a letter as a character witness, or a letter that is the substantial equivalent. See, also, § 5-303.3.
2. In order to avoid lending the prestige of judicial office to advance the private interests of others, judges should send the letters directly to the institution or group that is accepting the letters. Judges should address the letter specifically to the institution or group and should avoid such salutations as "To whom it may concern." The judge may choose to ask that the recipient of the letter maintain confidentiality and not share the letter with any other institution or person.
3. Reasonable steps must be taken to avoid lending the prestige of the office to the recommendation. See § 5-301.3, comment 2. If judges use official stationery, they should indicate clearly on the letter that the communication is "personal and unofficial." Judges should take this precaution even when using personal stationery, if the envelope bears any indication that it comes from a court.
4. A judge writing a letter of recommendation or acting as a reference must have substantial personal knowledge of the subject of the reference. See § 5-301.3, comment 2. Thus, the information provided by the judge should be limited to what the judge personally has observed and not what others have told the judge about the individual or include opinions about the individual's reputation.

Permitting a judge to provide letters of recommendation recognizes that "judges are members of society, and of the community at large, and . . . not every action of a judge is intended, or could reasonably be perceived, as an assertion of the prestige of judicial office." U.S. Advisory Opinion 73 (2009).

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. See Massachusetts Advisory Opinion 94-1.

Prohibiting judges from writing letters of recommendation "would prevent, for example, 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." See New York Advisory Opinion 88-10.

The Code of Judicial Conduct 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.” See Arizona Advisory Committee 92-6.

Thus, as long as a judge has personal knowledge of the individual seeking the recommendation, the judge may provide a recommendation for another person involving employment. The Committee sees no reason to differentiate between people who work with the judge and people the judge is acquainted with, or between applications for employment opportunities in other courts or in the private sector.

Given the Committee’s opinion that court letterhead may be used for a letter of recommendation, which presumably includes the judge’s name and title, the Committee sees no reason for the judge not to be able to sign the letter with the title “Judge.”

**Disclaimer**

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

APPROVED AND ADOPTED BY THE COMMITTEE  
ON JUNE 23, 2016

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