

Maryland Judicial Ethics Committee

Opinion Request Number: 1982-12

Date of Issue: July 6, 1982

■ Published Opinion Unpublished Opinion Unpublished Letter of Advice

Judge Not to Make Voluntary Recommendations of Former Constituents Unless Judge Has Special Knowledge of Their Qualifications

A recently appointed ... Judge has, through his Administrative Judge, requested an opinion from the Committee as to the propriety of making recommendations for promotion and appointment on behalf of former constituents. The judge, prior to his judicial appointment, was active in elective politics. He points out that writing letters of recommendation and making oral recommendations on behalf of friends, acquaintances and constituents was a routine part of his political activity. Since assuming judicial office, he has been requested by one acquaintance to recommend to the Secretary of the Maryland State Department of Personnel* a step increase for the employee making the request for such recommendation. The judge has been requested by a second acquaintance to recommend to the appointing authority the appointment of that acquaintance to the Board of Chiropractic Examiners.

Although no provision of the canons or rules addresses itself specifically to the question presented, the following canons and portions thereof are relevant and offer guidelines:

Canon IV ("Avoidance of Impropriety")

"A judge's official conduct should be free from impropriety and the appearance of impropriety; ... and his personal behavior, not only upon the Bench and in the performance of judicial duties, but also in his everyday life, should be beyond reproach."

Canon XIII ("Kinship or Influence")

"A judge ... should not suffer his conduct to justify the impression that any person can improperly influence him or unduly enjoy his favor, or that he is affected by the kinship, rank, position, or influence of any party or other person. He should not testify voluntarily as a character witness." (Emphasis added).

[Opinion Request No. 1980-01] of this Committee dealt with the propriety of a judge writing a letter of recommendation to a Judicial Selection Commission on behalf of a candidate for appointment to a judgeship. Although we concluded that there was no impropriety to making such a recommendation, we added the following words of caution:

"Of course, there can be judicial conduct which does not violate either the Canons and Rules of Judicial Ethics or other provisions of law, but which a prudent judge would deem it inadvisable to engage in. For an active judge regularly to give unsolicited advice to those operating the other branches of government would seem to fall into this category. While not actually in violation of Article 8 of the Declaration of Rights, such conduct would not entirely comport with the spirit of the

* As of the editing date [July 10, 2006], the Secretary of Budget and Management.

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separation of powers principle.”

We find even more persuasive our [Opinion Request No. 1981-03 (unpublished)] in which we concluded that it would be improper for a judge to write to the Attorney General of the United States, recommending the transfer of X from _____ Prison ... to the _____ Detention Center. Although the judge in that case was familiar with the rehabilitative work being done at the Detention Center, the Committee concluded that the writing of such a letter “would not be consonant with the Canons of Judicial Ethics.” We cautioned against the “appearance of impropriety when a member of the judiciary communicates with another public official ... on behalf of an individual.” Particularly pertinent is the following language from that Opinion:

“Nonetheless, it is our belief that the spirit of the prohibition against voluntary character testimony is directly involved. The reason for the prohibition is that a Judge in so testifying is to some degree lending to an individual the weight and dignity of his judicial position. Such testimony should not, therefore, be volunteered. See Opinion No. 15, Opinions of the Committee on Professional Ethics, American Bar Association, June 11, 1929. This Committee noted in [Opinion Request No. 1975-05 (unpublished)], 7 May 1975, that the prohibition of the Canon does not afford a judge ‘a privilege against testifying in response to an official summons.’ No such summons, however, is involved in this case nor is there any indication that the proposed addressee of the communication has requested its submission.”

With these as general guidelines, we turn to the two requests at issue before us. With respect to the request to intervene on behalf of the employee who is protesting his failure to receive a raise to the Secretary of the Maryland State Department of Personnel, it is the unambiguous feeling of the Committee that it would be improper for the judge to do anything with respect to this request. Neither the Maryland Public Service Commission nor the State Department of Personnel are seeking information to guide their decisions. They have already made their decision. It seems clearly implicit in the letter soliciting the judge’s help, that the employee would like the judge to “pick up the telephone,” “to put in a good word,” or somehow to indicate that the judge himself would appreciate it if the employee’s request for a raise could be accommodated. There is no indication whatsoever that the judge has any special knowledge of this employee’s unique qualifications or entitlement to a raise or any special expertise about the working of this executive agency. The judge would simply be lending the weight and prestige of his name and his office to benefit the employee.

With respect to the request to recommend someone for appointment to the Board of Chiropractic Examiners, we cannot furnish a definitive answer but can only provide guidelines. As a general rule, the active political figure who assumes the Bench would be well advised to discontinue routine or indiscriminate recommendations for all sorts of positions and appointments. There can be no rigid and absolute rule, however, that a judge is disentitled to make recommendations under all circumstances. A sound guideline would seem to be that if the judge has some very special knowledge about someone’s qualifications and has a strong, personal feeling in the situation, he is free, as a citizen, to pass on such knowledge and recommendation. If, however, the judge senses that it is his name and office that is sought rather than his personal knowledge of

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the applicant's qualifications, the judge should decline such endorsement. With respect to the request in this case, if the judge has some special knowledge of the qualifications of the individual in question to serve on the Board of Chiropractic Examiners, he is not prohibited from passing on that information. If he does not have such special knowledge, however, and is simply lending his name to the cause of a friend or acquaintance or former constituent, he should forbear.

The circumstances under which recommendations are sought and given are so infinite in their variety that a hard and fast rule is not possible. Of necessity, we are reduced to providing rough guidelines. 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.

When the judge feels that he is being called upon to make the pro forma endorsements that were the routine of his earlier political life, it is probably improper to make the recommendation. If the judge is in doubt, he is well advised to err on the side of restraint and forbearance. If, on the other hand, the judge possesses a store of valuable information about the appointment and has a strong sense of commitment with respect to it, he is free to proceed, but to proceed cautiously and modestly as a knowledgeable citizen who simply coincidentally happens to be a judge. In so doing, however, the judge should at the very least give consideration to such factors as using personal rather than official stationery in any written communication; the alternative course of action of simply permitting himself to be listed as a reference; or another alternative of suggesting that the person to whom the recommendation would be addressed request the information, to which request the judge could then respond. These, of course, are not absolute requirements; they are suggestions as to the type of considerations that should be going through the judge's mind in this inevitably ambiguous area.