

## Maryland Judicial Ethics Committee

**Opinion Request Number:** 1989-06

**Date of Issue:** December 12, 1989

Published Opinion     Unpublished Opinion     Unpublished Letter of Advice

### Judges Should Not Make Collective Recommendations on Candidates Being Considered by Judicial Nominating Commissions

A judge has requested an opinion as to whether the judges of a circuit court, acting in concert, may submit to a judicial nominating commission their recommendations with respect to applicants for a vacancy on that circuit court. We gather from the request that the judges would, in some fashion, consider the various applicants and then, by ballot, decide whom to recommend and whom not to recommend. Since the poll and the results are to be conducted in the same manner as the Bar Association, we assume the actual communication to the Commission would indicate which of the applicants the judges found “qualified” or “highly qualified” and which were found “unqualified”.

In [Opinion Request No. 1975-02 (unpublished)], this Committee concluded that, if requested by a Judicial Nominating Commission, it would not be inappropriate for a judge “to express an opinion regarding the professional qualifications of an individual who is being considered for appointment to judicial office.” Later, in [Opinion Request No. 1980-01], we modified that caveat and decided that a judge could express such an opinion to a Commission whether or not requested. We noted, however, that there may be conduct which, while not specifically violative of the Canons or Rules of Judicial Ethics, a prudent judge would find inadvisable.

At issue here is not a communication by a single judge, but by an entire bench, acting collectively. It therefore goes beyond an individual judge informing the Commission of his or her honest evaluation of a particular applicant based on the judge’s personal knowledge of that applicant. It smacks, rather, of a mini-plebiscite, with the judges promoting or rejecting applicants based on the judges’ individual and perhaps quite different standards. What is ultimately conveyed to the Commission is not, therefore, necessarily an informed appreciation of an applicant’s abilities and integrity based on personal knowledge, but rather a conclusory evaluation that may be simply the product of compromise among the judges.

Apart from the fact that a collegial “qualified” or “unqualified” is, to a large degree, a usurpation of the role assigned to the Commission, it suffers from two other deficiencies. First, it tells the Commission nothing definitive or really useful about the various applicants’ particular abilities or integrity, which is what the Commission needs to consider. Second, there is no assurance that the collective summary evaluation is really based on each judge’s personal knowledge of each applicant. Indeed, the actual basis for the various evaluations, if there is a single basis, would be most unclear.

Viewed in this light, we fail to see any real relevance or usefulness of this kind of process. There are, however, some practical disadvantages of it. For one thing, a Judicial Nominating Commission, and especially the lawyer members of it, may well feel imposed upon and threatened by such a collective effort. If the Commission does not recommend to the Governor an applicant found qualified by the Bench or does recommend an applicant found unqualified by the judges, the

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lawyer members may well and understandably wonder whether one or more of the judges would be angered at the seeming rejection of their recommendations. Moreover, this kind of process could well lead to a round of inappropriate “lobbying” of the judges by various applicants and their supporters. And finally, there is the real danger of animosity and disharmony on the Bench should an applicant publicly found unqualified by the judges actually be appointed by the Governor.

For all these reasons, the Committee believes that it would be wholly inappropriate for the judges to engage in this kind of collective recommendation.