

Informal Opinion 14-01
January 7, 2014

Question:

A district court judge has asked the Ethics Advisory Committee whether the judge may write a letter to an AP&P agent's superiors commending the agent's work in connection with establishing and helping with drug court.

Answer:

The judge may write the letter but must avoid using any language that might subsequently raise questions about the judge's ability to be impartial.

Discussion:

The requesting judge presides over drug court. The judge is appreciative of the work that an AP&P agent has done for the drug court. The judge proposes to write a letter to the supervisors of the AP&P agent to express appreciation for the agent's efforts. The letter would address the agent's efforts generally and not in relation to any particular case. The agent is one of only two agents in the county and it is possible that the agent may testify in the future at an evidentiary hearing on an alleged probation violation.

Although the proposed letter would not constitute a letter of recommendation, the ethics advisory opinions on such letters may be helpful in answering this question. The ethical restrictions related to letters of recommendation are primarily found in Rules 1.2 and 1.3 of Canon 1 of the Utah Code of Judicial Conduct. Rule 1.3 states that 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." The Comment to the rule states that a "judge may provide a reference or recommendation for an individual based upon a judge's personal knowledge, and if there is no likelihood that the reference or recommendation would reasonably be received as an attempt to exert pressure by reason of judicial office."

Letters of recommendation are used by applicants to bolster qualifications for employment. The letters are thus used to advance the economic interests of the applicant. Nevertheless, judges may write such letters provided that they do not abuse the prestige of judicial office by writing letters under circumstances that could be perceived as coercive. The proposed letter in this situation is not for the purpose of endorsing an individual for employment nor is it otherwise intended to advance the interests of the agent. The circumstances do not otherwise suggest that the letter could be perceived as unduly influencing the agent's supervisors. The proposed letter therefore is not prohibited under rule 1.3.

The question then is whether writing the letter might undermine public confidence in the impartiality of the judiciary in violation of rule 1.2. Writing the letter might also implicate rule 2.2, which requires judges to perform all duties of judicial office fairly and impartially. Because the AP&P agent might someday testify before the judge, the question is whether writing the letter could be perceived as undermining the judge's ability to impartially evaluate the agent's testimony.

In Informal Opinion 98-13, the Ethics Advisory Committee answered the question of whether a judge may sign a letter of recommendation in support of a private counseling service seeking a federal grant. In answering that question, the Committee provided guidance that is relevant to this opinion:

Even when letters of recommendation are permitted on behalf of individuals, a judge may not write a letter on behalf of someone who will frequently appear before the judge. The reason for this is that it could be reasonably perceived that the judge would give undue credence to the arguments, testimony or evidence of the person who has received the letter.

Although the Committee was referencing letters of recommendation, the same concerns apply to the proposed letter. A judge may not write a letter commending the work of an individual if it creates a perception that the judge would give undue credence to the individual's testimony if the individual were to testify. The question is then whether such commendation letters are prohibited entirely or whether it is possible for a judge to craft a letter that avoids creating impressions of partiality. The Committee is of the opinion that the Code does not require a blanket ban on such letters. However, judges must be very careful about the language used in any such letter.

In this circumstance, the judge is grateful for the AP&P agent's efforts in establishing and helping with the operation of the drug court. Although the judge does not provide details on the agent's work, the Committee is of the opinion that the judge could write a letter generally describing the agent's efforts and generally expressing appreciation for the efforts. The judge should avoid using specific examples of the agent's work when those examples might convey an opinion on the agent's veracity or integrity. The commendation should be in the simplest terms possible. For example, a judge could iterate the fact that the agent has provided services to the drug court, the judge is appreciative of the agent's effort, and the judge wants the agent's supervisors to know that the efforts are appreciated.

In conclusion, a letter of commendation concerning an AP&P agent who appears in the judge's court is not prohibited by the Code of Judicial Conduct. However, a judge must be very careful and not express opinions beyond appreciation for the individual's efforts.