

Wyoming Supreme Court Judicial Ethics Advisory Committee

W.S.C.J.E.A.C. Advisory Opinion 2016-02

QUESTION PRESENTED

May a judge write a character reference for a family member to a judge presiding over that family member's sentencing in a criminal proceeding in another state?

RESPONSE

A judge should not provide character references for an individual in a criminal case unless compelled by process.

FACTS

A relative of a Wyoming judge has committed, plead guilty to, and is pending sentencing for a very serious crime in another state. The question for this Committee was presented in the form of a draft of the letter the Wyoming judge seeks to share with his relative's sentencing judge. No subpoena or other process was served on the Wyoming judge. The letter is not on letterhead of the Court, nor is there any mention of what the author does for a living. In other words, the letter is devoid of any reference to the Wyoming Judiciary. Other details of the letter are not necessary to the Committee's response.

APPLICABLE PROVISIONS OF THE CANONS

Rule 1.2. Promoting Confidence in the Judiciary.

A judge shall act at all times in a manner that promotes public confidence in the independence,* integrity,* and impartiality* of the judiciary, and shall avoid impropriety* and the appearance of impropriety.*

***Comment.** – [3] Conduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary. Because it is not practicable to list all such conduct, the Rule is necessarily cast in general terms.*

Rule 1.3. Avoiding Abuse of the Prestige of Judicial Office.

A judge shall not abuse the prestige of judicial office to advance the personal or economic interests* of the judge or others, or knowingly* allow others to do so.

Comment. – [2] *A judge may provide a reference or recommendation for an individual based upon the judge's personal knowledge. 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.*

Rule 3.3. Testifying as a Character Witness.

A judge shall not testify as a character witness in a judicial, administrative, or other adjudicatory proceeding or otherwise vouch for the character of a person in a legal proceeding, except when duly summoned.

Comment. – *A judge who, without being subpoenaed, testifies as a character witness abuses the prestige of judicial office to advance the interests of another. See Rule 1.3.*

DISCUSSION

The emphasis in these rules clearly rests on restraint in the use of a judge's office for promotion of any interest, however subtle, or whether real or apparent. That being said, the common practice of writing references, even on court stationery, is specifically allowed, and understood to be proper. The bar against vouching for the character of an individual in a judicial proceeding, however, is, and must be, higher.

The judges here do not know one another, and it is perhaps unlikely that a judge in another state would have any idea who the Wyoming judge is or what he does for a living. However, in today's information environment, it would take only a moment for anyone reading the Wyoming judge's name to learn of his status as a judge. This must be accounted for in discerning the reach of this prohibition.

Other jurisdictions responding to this issue have generally held that voluntarily writing on behalf of a friend or relative to a sentencing judge is inappropriate, even though not testifying under oath or in the form of affidavits. This committee agrees writing informally is analogous to testifying as it relates to this rule, and the rule itself is much broader in that it prohibits vouching for character. *In re Fogan*, 646 So.2d191 (Fla. 1994); *Washington Ethics Advisory Committee Opinion 92-17*; and *Alabama Judicial Inquiry Commission Opinion 00-744*.

The Committee is cognizant of the attenuation of the danger where judges of two different states would not likely know one another. *See AZ Jud. Adv. Op. 10-05*. However, in addition to our concern about the ease of identification via internet searches, there are

litigants and lawyers who might identify the source as a judge. And, of course, parties and their counsel are not bound by this rule.

CONCLUSION

The rules applicable here must be interpreted in ways that meet the goal of maintaining the integrity of the system, however tempting it may be to carve out exceptions in cases where harm is uncertain or where the motives of the writer are pure. The proposed conduct of this Wyoming judge would violate the Canons of our Code of Judicial Conduct.

FINALIZED AND EFFECTIVE this 29th day of February, 2016 by the Wyoming Supreme Court Judicial Ethics Advisory Committee.