

Maryland Judicial Ethics Committee

Opinion Request Number: 2020-22

Date of Issue: November 10, 2020

Published Opinion Unpublished Opinion Unpublished Letter of Advice

A Judge may not write a letter to the Attorney Grievance Commission attesting to the character of a former employee

Issue: May a Judge write a letter to the Attorney Grievance Commission attesting to the character of a former employee?

Answer: No.

Facts: A judge has been requested by a former employee, against whom an ethics complaint has been filed, to write a letter on his/her behalf to the Attorney Grievance Commission attesting to the former employee's reputation for honesty and ethical conduct.

Analysis: Two Rules of the Maryland Code of Judicial Conduct apply:

Rule 18-103.3 Testifying as a Character Witness:

Except when duly subpoenaed, 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.

Rule 18-101.3 Avoiding Lending the Prestige of Judicial Office:

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

The Attorney Grievance Commission (the "Commission") is an administrative body, its members appointed by the Court of Appeals and governed by the Maryland Rules of Procedure. Title 19, Chapter 700. The Commission consists of 12 members, nine of whom are attorneys. It conducts adjudicative proceedings in dealing with matters of attorney discipline. It may dismiss a complaint against an attorney or terminate the proceeding (Rule 19-715(b)); agree to a conditional diversion agreement (Rule 19-716); direct the filing of a Petition for Disciplinary or Remedial Action with the Court of Appeals (Rule 19-721).

The Commission appoints Bar Counsel whose duties include the responsibility to investigate complaints of attorney misconduct. Among the procedures available to Bar Counsel in conducting the investigation is the issuance of subpoenas. If Bar Counsel concludes that the attorney has committed misconduct, Bar Counsel will file a statement of charges with the Commission.

The Commission conducts an adjudicatory proceeding when it considers complaints of attorney misconduct, the very type of proceeding to which Rule 18-103.3 is addressed.

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Although the Requestor has not been asked to “testify,” writing a letter attesting to the character of an individual in this instance is tantamount to giving testimony. Rule 18-103.3 prohibits the Requestor from writing the letter of character reference when no subpoena has been served on the judge.

Rule 18-101.3 addresses the issue of lending judicial prestige more generally; it applies to general letters of reference or recommendation – not to adjudicatory boards.

Comment [2] to Rule 18-101.3 highlights an underlying principle:

A judge may provide a reference or recommendation for an individual based upon the judge’s personal knowledge. The judge may use an 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.* (Emphasis added.)

The request for an opinion does not suggest the use of letterhead stationery, but the Comment cautions against any perception of “an attempt to exert pressure by reason of the judicial office.” The receipt of a letter from a judge to a body of attorneys considering disciplinary action against a colleague could not fail to carry the perception of exerting pressure whether or not the letter is written on letterhead stationery.

Apparently, the disciplinary proceedings at the present stage consist only of the filing of a complaint; there is no pending subpoena of the Requestor. Should the disciplinary matter proceed beyond the initial stage and a subpoena be issued to the Requestor, the Committee suggests that he/she consider the guidance set out in the Comment to Rule 18-103.3:

Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.

Application: The Maryland Judicial Ethics Committee cautions that this Opinion is applicable only prospectively and only to the conduct of the Requestor described herein, to the extent of the Requestor’s compliance with this opinion. Omission or misstatement of a material fact in the written request for opinion negates reliance on this Opinion. Additionally, this Opinion should not be considered to be binding indefinitely.

The passage of time may result in amendment to the applicable law and/or developments in the area of judicial ethics generally or in changes of facts that could affect the conclusion of the Committee. If the request for advice involves a continuing course of conduct, the Requestor should keep abreast of developments in the area of judicial ethics and, in the

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event of a change in that area or a change in facts, submit an updated request to the Committee.