

ETHICS ADVISORY COMMITTEE

STATE OF NORTH DAKOTA

OPINION 91-1

ISSUE

Whether a judge may write a letter of support for a lawyer in connection with a proceeding involving either discipline or reinstatement to practice.

ANSWER

It is the Committee's opinion that a judge may not write a letter of support for a lawyer in connection with a proceeding involving either discipline or reinstatement to practice. The judge may, and in fact must, respond to an official request from an appropriate authority for information in connection with these proceedings.

Rule 2B provides that: "A judge shall not lend the prestige of the judicial office to advance the private interests of others ... . A judge shall not testify voluntarily as a character witness." While similar provisions have been interpreted by other jurisdictions to permit judges to write letters of recommendation for employment or law school admission purposes, they have been construed to prohibit character reference letters in connection with investigatory or adjudicatory proceedings. Cuerdon-Kahn, *Letters of Recommendation*, *Jud. Conduct Rep.*, Summer, 1989, at 1, 5. The commentary to Canon 2B of the ABA Model Code of Judicial Conduct 1990 indicates that "a judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation," but it cautions against possible abuse of the prestige of the office; initiating communications to a sentencing judge, as distinguished from responding to requests for information, is specifically prohibited.

The commentary to North Dakota's Rule 2B addresses the issue of a judge's testimony as a character witness, which is analogous to a letter of support in a disciplinary or reinstatement proceeding. The commentary explains: "The testimony of a judge as a character witness injects the prestige of the judge's office into the proceeding in which the judge testifies and may be misunderstood to be an official testimonial. This Rule, however, does not afford the judge a privilege against testifying in response to an official summons."

Responding to official requests for information in connection with a disciplinary or reinstatement proceeding is not only permitted by the Rules of Judicial Conduct; it is mandated by the Rules of Professional Conduct, to which judges, as lawyers, are subject. Rule 8.1 provides that a lawyer may not "knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority ... ." Another example of the judge's duty to cooperate with official agencies is Section 27-23-04 of the North Dakota Century Code, which requires judges to "give reasonable assistance and information" to the Commission on Judicial Conduct in connection with its investigations or proceedings.