

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OPINION 98-4

Issued April 3, 1998

Withdrawn by Adv. Op. 2021-12

[Former CJC Opinion-provides advice under the former Ohio Code of Judicial Conduct which is superseded by the Ohio Code of Judicial Conduct, eff. 3/1/2009.]

SYLLABUS: A judge or attorney hearing officer may make a written statement of recommendation for an applicant seeking certification as an attorney specialist when requested to do so by a certifying agency. The fact that the applicant appears before the judge or hearing officer does not make such statement of recommendation improper. The recommendation is to be based on knowledge of the competence of the applicant and is required as part of the certification process for an attorney specialist under Gov. Bar R. XIV §3(A)(2).

OPINION: This opinion addresses whether it is ethically proper for judges and attorney hearing officers to write recommendation letters for applicants seeking certification as attorney specialists.

Is it proper for a judge or attorney hearing officer to make a written statement of recommendation for an applicant for certification as an attorney specialist when requested to do so by a certifying agency?

The certification of attorneys as specialists is permitted in Ohio since the 1993 adoption of Rule XIV of the Supreme Court Rules for the Government of the Bar of Ohio. To be certified as a specialist, an attorney must be registered as active and receive certification from an agency. The agency must be approved as a certifying agency. To receive approval, the agency must meet the standards set forth in the rule as well as any other standards adopted by the Supreme Court Commission on the Certification of Attorneys as Specialists.

A certifying agency is required under Gov. Bar R. XIV § 3(A)(2) to determine that an attorney possesses special competence as demonstrated by “[r]ecommendations from attorneys or judges who are familiar with the competence of the attorney, none of whom are related to, or engaged in legal practice with, the attorney.” As a result, judges and attorney hearing officers are being asked by certifying agencies to provide recommendations regarding attorneys who appear before them.

For example, an applicant for certification as an attorney specialist in Ohio Workers’ Compensation Law must have statements of references from judges, Industrial Commission hearing officers, and attorneys. These individuals are asked to rate applicants in the following areas: preparation; resourcefulness; knowledge of workers’ compensation law; knowledge of workers’ compensation procedures; effectiveness as an advocate; ethical conduct; written communication skills; oral communication skills. A

choice of three possible responses is to be made: “Has special competence; Does NOT have special competence; Unknown.” Also, a narrative response is to be made to the questions “Do you feel this person should be certified in workers’ compensation law in Ohio? Why or why not?”

Upon completing the recommendation the judge or hearing officer signs the following statement.

I certify that any information provided is from personal knowledge or from other reliable sources and has not been obtained from the applicant, his/her relatives or professional associates. I am furnishing this information to the OSBA and the Workers’ Compensation Specialty Board with the understanding that this information will be kept confidential by the board and will not be released by the board of the OSBA without my prior written permission. I understand the applicant has relinquished the right of access to information contained in this form, and I will not provide him/her a copy of this completed reference form.

Recommendations by judges do raise ethical concerns. In Opinion 95-5, the Board identified several concerns. A judge may be perceived as voluntarily acting as a character witness. A judge may be perceived as lending prestige of the office to advance the private interests of others. A judge may be creating an appearance of impropriety. However, these ethical concerns were not considered insurmountable bars to making recommendations. The Board advised that certain recommendations were proper. A judge may make a recommendation for an individual applying to law school if based on “firsthand knowledge of the capabilities and character of the applicant.” A judge may make a recommendation for a judicial law clerk applying for employment as an attorney if based on “personal, day to day, knowledge of the professional and intellectual capabilities of the clerk.” A judge may make a recommendation for an individual seeking appointment to a federal judgeship if the recommendation is based on “factual knowledge of the ability and suitability of the individual.” *See* Ohio SupCt, Bd of Comm’rs on Griev & Disc, Op. 95-5 (1995).

Herein, a judge or an attorney hearing officer is being asked to make a recommendation regarding an attorney who appears before him or her. The fact that an applicant appears before the judge or attorney hearing officer does not make such statement of recommendation improper. By making a statement of recommendation regarding the attorney, the judge or attorney hearing officer is not changing his or her view or attitude regarding the attorney. He or she is merely expressing his or her knowledge of the competence of the applicant in response to an inquiry required by the rules governing the specialization process. If a judge did harbor personal bias or prejudice concerning an attorney, that judge would be required under Canon 3(E)(1)(A) of the Code of Judicial Conduct to disqualify himself or herself from presiding over cases involving a party represented by that attorney. Hearing officers would also disqualify themselves for personal bias or prejudice.

In conclusion, the Board advises that a judge or attorney hearing officer may make a written statement of recommendation for an applicant seeking certification as an attorney specialist when requested to do so by a certifying agency. The fact that the applicant appears before the judge or hearing officer does not make such statement of recommendation improper. The recommendation is to be based on knowledge of the competence of the applicant and is required as part of the certification process for an attorney specialist under Gov. Bar R. XIV § 3(A)(2).

Advisory Opinions of the Board of Commissioners on Grievances and Discipline are informal, nonbinding opinions in response to prospective or hypothetical questions regarding the application of the Supreme Court Rules for the Government of the Bar of Ohio, the Supreme Court Rules for the Government of the Judiciary, the Code of Professional Responsibility, the Code of Judicial Conduct, and the Attorney's Oath of Office.