

JUDICIAL ETHICS OPINION NO. _____

Inquiry has been submitted to the Committee for issuance of an opinion directing whether a Judge may prepare and transmit a personal letter on private stationery to friends and/or acquaintances endorsing the candidacy of another Judge. The request originates from a Judge desiring to contact personal friends in a jurisdiction separate from that within which he presides.

The Tennessee Code of Judicial Conduct establishes standards for ethical conduct of judges which are designed to uphold and maintain the integrity of the judiciary while avoiding even the appearance of impropriety in judicial activities. At all times a judge must promote public confidence in the integrity and impartiality of the judiciary. To this end, “a Judge shall not lend the prestige of judicial office to advance the private interests of the Judge or others”, Rule 10, Tennessee Rules of the Supreme Court, Canon 2(B). Though not intended as a statement of additional rules, the Commentary provides guidance relative to the purpose and meaning of the Canons. According to the Canon 2 attendant Commentary:

“Although a Judge should be sensitive to possible abuse of the prestige of office, a Judge may, based on the Judge’s personal knowledge, serve as a reference or provide a letter of recommendation.”

In such circumstance, the trial Judge should convey only information based on personal knowledge and the letter should be written on private stationery, Judicial Ethics Committee, Opinion No. 94-5.

Rule 10, Canon 5(A)(1)(b) provides as follows:

A. General Requirements.

(1) Except as provided by 5B(2), 5C, and 5D, a judge or candidate for election or appointment to judicial office shall not:

(b) Publicly endorse or publicly oppose another candidate for public office;

The attendant Commentary provides as follows:

“Section 5A(1)(b) does not prohibit a judge or judicial candidate from privately expressing his or her views on judicial candidates or other candidates for public office.”

Clearly, a trial judge should not be required to forego his or her First Amendment right to free speech in all instances, Opinion 94-5, supra. The Committee opines that a Judge may prepare and transmit a personal letter on private stationery to friends and/or acquaintances of the Judge, promoting the candidacy of another Judge. The Judge transmitting such an endorsement should notify the recipient that the views espoused within the written correspondence are for personal and private consideration and that such written endorsement should not be publicly disseminated to others or otherwise published in a manner resulting in a public endorsement.

For the Committee _____
Thomas R. Frierson, II
Chancellor