

COMMONWEALTH OF PENNSYLVANIA



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JUDICIAL ETHICS ADVISORY BOARD

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# GENERAL GUIDANCE

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General Ethics Guidance No. 1-2025

## REFERENCE LETTERS

The Supreme Court of Pennsylvania has designated the Judicial Ethics Advisory Board (JEAB or Board) as the approved body to render Advisory Opinions and General Guidance regarding ethical concerns involving persons subject to the Code of Judicial Conduct and the Rules Governing Standards of Conduct of Magisterial District Judges (Codes). The Rules of the JEAB provide that, when a Judicial Officer complies with General Guidance of the JEAB, such compliance may be taken into account in determining whether discipline should be recommended or imposed. PA.J.E.A.B. RULE 206(c). This document qualifies as “General Guidance” of the JEAB.

In addition to reviewing the JEAB’s General Guidance, Judicial Officers and candidates for judicial office may request an Advisory Opinion from the JEAB. *See* PA.J.E.A.B. RULE 201.

Where a Judicial Officer complies with an Advisory Opinion of the JEAB, such compliance shall be entitled to substantial weight in determining whether discipline should be recommended or imposed. *See* PA.J.E.A.B. RULE 206. The “Rules of Reliance” provide greater protection to a Judicial Officer or judicial candidate who obtains an Advisory Opinion of the Board than that offered by only reviewing a General Guidance.

## **Introduction:**

The Canons and Rules of judicial ethics<sup>1</sup> clearly state that a judge may provide a reference or recommendation based upon a Judge’s personal knowledge. *See* Comment 2 to Rule 1.3 (*Avoiding Abuse of the Prestige of Judicial Office*). However, Rule 3.3 (*Testifying as a Character Witness*) *i.e.*, Rule of Judicial Administration 1701(e), prohibit a judge from “testify[ing] voluntarily as a character witness.”

Judicial Officers often seek guidance from the Board inquiring “*under what circumstances could a reference or recommendation letter be considered prohibited character testimony?*” Because of the frequency of these inquiries, the Board has elected to issue this publication to provide guidance to those Judicial Officers subject to the Code of Judicial Conduct and Rules Governing Standards of Conduct of Magisterial District Judges regarding this specific topic.

The JEAB therefore provides this General Guidance titled “Reference Letters.”

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## **What is a Reference Letter?**

Black’s Law Dictionary, 6<sup>th</sup> Edition, defines “reference” as “a person who will provide information for you about your character, credit, *etc.* The act of sending or directing one person to another, for information or advice as to the character [...] of a third party, who desires [...] to obtain credit with him.” More simply put, a reference letter is a positive endorsement of a person’s skills and attributes, written by someone familiar with that person’s work, character, and accomplishments. Like other people in positions of trust and influence, judges are often asked to write reference letters - and may do so - subject to those caveats contained within the Code.<sup>2</sup>

## **Character Reference versus Character Testimony**

The Board has opined on a variety of requests from judges concerning their ability to draft a letter of reference, recommendation letter, to complete a character and fitness statement, and similar character statements.<sup>3</sup> Upon reviewing its own Opinions and those of other jurisdictions, the Board has found that requests for reference letters largely fall into two groups. The first group

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<sup>1</sup> Code of Judicial Conduct, 42 Pa.C.S.A. (enacted on January 8, 2014, and effective July 1, 2014). Rules of Standards of Conduct Governing Magisterial District Judges. 207 Pa. Code Chapter 33. Collectively hereinafter “Codes”. *See* Pa.R.J.E.A.B 102(a). For purposes of this General Guidance, the term “judge” used herein references all Judicial Officers subject to the Codes.

<sup>2</sup> Unless otherwise noted, for purposes of readability, citations will be made generally to the applicable Canon/Rule as opposed to both the Code of Judicial Conduct and Rules Governing Standards of Conduct of Magisterial District Judges.

<sup>3</sup> For purposes of this General Guidance, the term “reference letter” includes “letters of recommendation” and similar types of letters/correspondences, *etc.*

consists of requests by those seeking a reference for employment, bar admission, education, government appointments, and/or awards. The Code generally permits judges to write such reference letters.

The second group consists of persons involved in some sort of adjudicative matter (formal or informal civil, criminal, administrative, investigatory, *etc.*) seeking a letter as to their character in an effort to persuade or influence the outcome of the proceeding. Examples of these types of letters are those sought in connection with sentencing, parole, pardon, clemency, discipline, a restoration of a right or privilege lost through an adjudication, criminal conviction, *etc.* “Character letters” such as these are prohibited by Rule 3.3 (*Testifying as Character Witness*) and Rule of Judicial Administration 1701(e), since their primary purpose is to influence the outcome of a proceeding by being entered into the record as evidence to be considered by the factfinder/arbitrator of justice (*i.e.*, to provide character testimony) in rendering a decision.

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### **Character Reference Letters (Permitted):**

A judge’s ability to write a reference letter is primarily governed under Canon 1 which states “[a] judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.” Rule 1.3 (*Avoiding Abuse of the Prestige of Judicial Office*) further directs that “[a] judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.” The Code does not consider writing a reference letter to be an “abuse” of judicial office and in fact, Comment 2<sup>4</sup> to Rule 1.3 clearly authorizes a judge to write a reference letter:

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 reasons of the judicial office.

Rule 1.3, Comment [2].

When writing a reference letter, it is expected that a judge may comment on, *inter alia*, a person’s honesty, punctuality, loyalty, *etc.*, as topics like these are inherent to character. Providing character statements in these types of letters does not constitute “character testimony” as prohibited by Rule 3.3. Although a judge is not prohibited from commenting on a person’s character in a

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<sup>4</sup> The JEAB acknowledges that the effect of the Comments is unclear. The Pennsylvania Supreme Court adopted Canons 1 through 4 and the corresponding Rules by Order dated January 8, 2014; the Court made no mention of the Comments, although they are published with the Code. Nonetheless, the JEAB uses the Comments to determine the purpose, meaning, and proper application of the Canons and Rules. This is consistent with the ABA’s Revised Model Code of Judicial Conduct (2007).

reference letter, the ability to write a reference letter is not without any limitations. As Comment 2 of Rule 1.3 notes, any reference must be based on personal knowledge. Therefore, a judge should not agree to provide a reference letter for someone the judge does not personally know or otherwise does not possess knowledge sufficient to serve as a basis for a reference.

### What is Personal Knowledge?

To be able to provide a reference, a judge must have “personal knowledge” of the person for whom they are providing a reference. Various judicial ethics entities have generally opined that “personal knowledge” may include any of the following:

- “Substantial” (Indiana Advisory Opinion 3-1988; New Jersey Memorandum re Letters of Recommendation (1982)).
- “Gathered over a substantial period of time” (New Jersey Memorandum re Letters of Recommendation (1982); U.S. Advisory Opinion 73 (2017)).
- “Based on more than just a mere acquaintance or occasional social interaction” (Ohio Advisory Opinion 2021-12).
- “‘Firsthand’ and not based only on what someone else said” (Indiana Advisory Opinion 3-1988; Ohio Advisory Opinion 2021-12); Nebraska Advisory Opinion 2007-4).
- “Longstanding and intimate” or “special knowledge derived from some relationship” (U.S. Advisory Opinion 73 (2017)).

*See Gray, Cynthia, Recommendations by Judges, Judicial Conduct Reporter, Vol. 44, No. 2, Summer 2022.*

Even though a judge may have substantial “personal knowledge”, one should not provide a reference as a mere favor for someone. The decision to provide a reference must be undertaken with prudence and a judge must carefully weigh whether they are being asked to provide a reference because of a true personal connection or rather due to the prestige of their judicial office. If a judge believes or suspects that they are being sought as a reference primarily because of their judicial office, it would be best to decline the request.

Not all those factors listed above need be present to establish personal knowledge. For example, sufficient personal knowledge may be established through a short term, but focused relationship, such as: observing an academic intern, experience as a past or current employer or supervisor, observation of the performance of the person as an attorney or other professional in the courtroom/courthouse, serving/participation with the subject of the recommendation in religious,

civic, educational, or fraternal organizations, or some other personal or professional relationship between the judge and the subject. Id. If so limited, the reference letter should indicate as much.

#### Examples of Sufficient Personal Knowledge:

The Board has opined several times on requests regarding recommendation letters and where the Board believed it appropriate to write reference letters. For example:

- A judge may write a letter of recommendation on official letterhead for a personal friend applying to law school. (43-JEAB-2023)
- A judge may write a letter of recommendation for a former intern applying to law school. (88-JEAB-2024)
- A judge may give a positive letter of recommendation for an attorney applying to the American Academy of Matrimonial lawyers after having served on a continuing education panel with the subject. (32-JEAB-2023)
- A judge may write a letter of recommendation on official letterhead based on personal knowledge for an individual applying to the Police Academy. (11-JEAB-2023)
- A judge may write a letter of reference for an individual seeking nomination to the Constable Education and Training Board. (141-JEAB-2023)
- A judge may write a letter of recommendation for a court clerk who has applied for a position as a probation officer. (117-JEAB-2024)

#### What is Not Considered Personal Knowledge?

Providing a letter of recommendation for someone a judge does not know or merely as a favor for someone is inappropriate. While the Board has not yet specifically opined on this question, several other jurisdictions have done so, and although not binding, the Board nonetheless considers these advisories informative. For example, judges in other jurisdictions have been advised to not provide a letter of recommendation for:

- A neighbor's relative whom the judge has never met.
- A law school applicant whom the judge has not interacted with in a traditional employment setting making the judge's personal knowledge inadequate, or
- An individual seeking state employment who had appeared before a judge as a juvenile when the judge was not familiar with that individual's job skills.

Gray, Cynthia, *Recommendations by Judges*, Judicial Conduct Reporter Summer 2022. Id.

If a judge's personal knowledge of the individual requesting the recommendation letter is insufficient, second-hand, or of too short a relationship, the judge should decline to provide a letter of recommendation.

The foregoing are specific examples of situations where drafting a letter of recommendation was deemed permissible/impermissible. They are non-exclusive, and should you not find an example akin to your question or situation, judges are encouraged to contact the JEAB to submit a request for an Advisory Opinion specific to your case.

### **Character "Testimony" Letters (Prohibited):**

Any letter written on behalf of an individual which is to be submitted in connection with an adjudicative proceeding, be it sentencing, parole,<sup>5</sup> pardon, clemency, discipline, *etc.*, is regarded as prohibited character "testimony."

Rule 3.3 (*Testifying as a Character Witness*) refers judges to Rule of Judicial Administration 1701, which clearly directs "No judge or district justice shall testify voluntarily as a character witness." 201 Pa. Code Ch. 17, Rule 1701.

The Board interprets the phrase "testify voluntarily as a character witness" to include submitting a writing (letter, statement, declaration, *etc.*) on behalf of an individual involved in adjudicative proceedings, which is to be submitted as part of the record/entered as evidence or otherwise be considered by the factfinder/arbitrator of justice as a means of influencing the outcome of a proceeding by conveying character testimony. A letter touting the character of an individual submitted in conjunction with an adjudicatory proceeding is indistinguishable from live testimony and it is inconsequential whether the letter is submitted under oath or affirmation.

Should a party nonetheless seek to subpoena character testimony from a Judicial Officer, "[n]o subpoena to compel a judge or magisterial district judge to testify as a character witness shall be issued or enforced unless the issuance of the subpoena shall have been specially allowed by the Supreme Court pursuant to this rule." *See* Rule of Judicial Administration, 1701(b). The prohibition of providing character testimony does not prohibit a judge from appearing as a fact witness in a proceeding.<sup>6</sup>

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<sup>5</sup> However, a sentencing judge may, without addressing character, make a recommendation regarding parole, as specifically permitted by Section 6134(b) of the Prisons and Parole Act. *See* 61 Pa.C.S.A. § 6134.

<sup>6</sup> If a judge receives a subpoena to testify as a factual witness, it is suggested the judge contact the Administrative Office of Pennsylvania Courts Legal Division and inform AOPC of the subpoena received. If the judge is required to testify, arrangements should be made to avoid unduly interfering with judicial duties. *See* Rule 2.1 (*Giving Precedence to the Duties of Judicial Office*). Lastly, a judge must be certain to avoid using the prestige of judicial office to bolster the judge's testimony or allow counsel to do the same. *See* Rule 1.3.

While the Board's interpretation of Rule 3.3 and Rule 1701(e) appears to be broad, it is supported by the requirement of Rule 1.3 that a judge not abuse the prestige of office. When character witness testimony is sought, its purpose is specifically to persuade the finder of fact to reach a desired conclusion about an individual. When a judge acts as character witness s/he is advocating on behalf of that individual. The requirement that a judge may only provide character testimony upon issuance of a dispensation granted by the Supreme Court should not go unacknowledged or be underappreciated. The Supreme Court has firmly established via its rules that a judge should only be permitted to provide character witness testimony in the most limited of circumstances.

The Board's interpretation of the distinction between what is a permissible "character reference" versus a prohibited "character testimony" is consistent with the interpretations of other judicial ethics advisory entities. Those ethics entities agree that the restriction on testifying as a character witness extends beyond the courtroom and as such have advised that judges not submit written statements or otherwise weigh in regarding requests for those seeking a restoration of rights or privileges lost through an adjudication of malfeasance, including attorney or judicial discipline proceedings. See Gray, Cynthia, *Vouching for Pardon, Parole, or Clemency*; Judicial Conduct Reporter Fall 2018; Gray, Cynthia, *Acting as a Character Witness*; Judicial Conduct Reporter Summer 2003.

The Board too has opined on several inquiries regarding requests for "character testimony" letters, and, consistent with advice given in other jurisdictions, has opined against Judicial Officers providing such letters. Examples include:

- A judge was prohibited from providing a character letter for a former employee charged with a DUI. (125-JEAB-2023)
- A judge was prohibited from providing a close family friend a character reference letter to be considered in a summary trial. (28-JEAB-2023)
- A judge was prohibited from voluntarily providing a statement regarding a person's work habits to be used as a part of a wrongful termination matter filed in federal court. (187-JEAB-2023)
- A judge was prohibited from voluntarily providing a character witness recommendation for a relative to the Pennsylvania Board of Probation and Parole. (122-JEAB-2023)
- A judge was prohibited from providing a letter of support/character reference for a sentencing judge's consideration upon a family friend pleading guilty to federal criminal offenses. (20-JEAB-2022)

## **“Good Moral Character Affirmations” Concerning Bar Admission:**

Completing a “good moral character affirmation,” even one requiring the statement to be made subject under the penalty of perjury, to be used as part of an applicant’s initial bar admission, is akin to providing a letter of recommendation and is not prohibited character testimony. If, however, the individual is re-applying for bar admission after having lost or relinquished their license for disciplinary reasons, such affirmations are inappropriate as they are rehabilitative in nature and meant to convey “character testimony.”

## **Use of Official Judicial Letterhead for Reference Letters:**

As permitted by Rule 1.3, Comment [2], a reference letter that may be written by a judge may be written on judicial letterhead provided:

- The judge indicates the reference is personal and the letter includes a statement of the source and extent of the judge’s personal knowledge.
- There is no likelihood that the use of the letterhead would reasonably be perceived as an attempt to exert pressure by reasons of the judicial office.

While a letter appropriate for judicial letterhead also is appropriate for personal stationary, the inverse is not always true. There are occasions when a judge may want to write a letter other than a recommendation letter that may only be appropriate on personal stationary (*i.e.* a personal dispute). Writing a letter concerning a personal dispute would be inappropriate on judicial letterhead because of how it may influence or exert pressure on the receiving/reviewing party. Because of this concern, it also would be inappropriate to reference your judicial title in a letter written on personal stationary.

To reduce the risk that a judge’s position may be inadvertently abused, any recommendation letter should be addressed directly to the person or entity for whom it is intended. A letter addressed “To Whom It May Concern” is discouraged because it is subject to indiscriminate circulation beyond the judge’s knowledge or control. In the alternative, to reduce the potential for the abuse of the prestige of office, a letter may be addressed with particularity to the intended recipient (*e.g.*, “Managing Partner,” “Director of Operations,” *etc.*).

Because an in-depth discussion of the personal stationary versus judicial letterhead topic is outside the scope of this General Guidance, as such, if any question exists as to whether judicial letterhead or personal stationary should be used, please request an advisory from the JEAB.



## **Other Letters:**

### **Recommendation Letters Regarding Funding:**

Judges may be asked to, or desire to, provide letters in support of grant funding for projects or programs with which they have affiliation or interest. Whether a judge may write such a letter depends on whether the project or program desiring the grant funding “concerns the law, the legal system, or the administration of justice” pursuant to subsection (D) of Rule 3.2 (*Appearances Before Governmental Bodies and Consultation with Government Officials*). See examples below:

- A judge sending correspondence on official letterhead to express support of a Teen Court program and the funding of such a program through grant money was permissible because of the program’s relation to the law, legal system, and the administration of justice pursuant to Rule 3.2. (91, 95-JEAB-2024)
- However, a letter of support regarding a grant for the local YMCA that had no relation to law, the legal system, or the administration of justice was impermissible. (14-JEAB-2022)

### **Recommendation Letters Regarding Judicial Appointments:**

Rule 1.3, Comment [3] permits a judge’s participation in the process of judicial selection by “cooperating with appointing authorities and screening committees” and “responding to inquiries from such entities” relating to the professional qualifications of the candidate. As such, the Board has opined that a *sua sponte* letter of support of judicial candidates is inappropriate, but judges may respond to an inquiry regarding qualifications of judicial candidates from screening committees and nominating authorities. (8, 9, 10-JEAB-2022)

### **Letters in response to requests from the Pennsylvania Parole and from the Pennsylvania Board of Pardons**

A judge may respond to a request from the Pennsylvania Parole Board and the Pennsylvania Board of Pardons for information and for an opinion about a defendant who was sentenced by that judge. A judge may not, however, initiate contact and volunteer any information or an opinion to the Pennsylvania Parole Board or to the Pennsylvania Board of Pardons.

## **CONCLUSION:**

As a Judicial Officer, you are generally permitted to write letters of reference (*i.e.*, letters written in support of an individual seeking employment, bar admission, education, government appointment, and/or an award or recognition). In drafting such letters, you may refer to an individual’s character (*e.g.*, honesty, punctuality, loyalty, *etc.*) without violating the Rules. This may include submitting a “Character and Fitness” or similar statement under penalty of perjury/unsworn falsification such as those submitted regarding an individual seeking admission to the Bar.

However, a judge is prohibited from providing “character testimony” by writing a reference letter which is (or could reasonably be interpreted) as being submitted for the purpose of influencing the outcome of a proceeding or adjudication. Letters sent on behalf of an individual seeking, for instance, a mitigation of sanctions or a restoration of a right/privilege lost, are prohibited, since letters such as these are an attempt to rehabilitate an individual’s standing by character testimony. Regardless of whether it is through a sworn statement before a tribunal or written in the form of a letter, any effort to provide character testimony is prohibited.

In general:

1. A judge should never write a reference letter for someone the judge does not personally know.
2. A judge may write a reference letter if it is the type of letter that would be written in the ordinary course of business (*e.g.*, a court employee seeking a reference regarding the employee’s work history) or based upon a judge’s personal knowledge. The letter should include a statement of the source and extent of the judge’s personal knowledge.
3. The letter ordinarily should be addressed directly to the person or entity for whose information it is being written. The “blank check” letter addressed “To Whom It May Concern” is discouraged because it is subject to indiscriminate circulation beyond the judge’s knowledge or control. In order to reduce the potential for the abuse of the prestige of office, the letter should describe the intended recipient with particularity (*e.g.*, “Managing Partner”, “Director of Operations”, *etc.*).
4. Reference letters may be written by a judge for someone whom the judge knows personally and not professionally, such as a relative, close friend, neighbor, or student if the letters are the type that the judge would normally be requested to write because of the judge’s personal relationship.
5. Any recommendation letter that may be written by a judge may be written on judicial letterhead as permitted by Rule 1.3, Comment [2].
6. A judge may not write a letter for someone who is the subject of a legal, investigative, or adjudicative proceeding, as doing so conveys character testimony and may transgress Rule 3.3 and Rule of Judicial Administration 1701(e).