

Judicial Inquiry Commission

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July 29, 1986

The Judicial Inquiry Commission has considered your request for an opinion regarding whether under the Alabama Canons of Judicial Ethics a judge may submit a letter to the Board of Bar Commissioners in support of an attorney against whom disciplinary action either has been taken or is being contemplated. In seeking this opinion, you request that we review Advisory Opinions 80-70 and 80-84.

In Advisory Opinion 80-70 the Commission advised that such a letter would be in the nature of voluntary testimony as a character witness and would thus be prohibited under Canon 2C of the Alabama Canons of Judicial Ethics.

The Commentary to Canon 2C was then amended, effective May 7, 1980, to provide:

“... This canon does not per se prohibit a judge from writing a letter of recommendation disclosing personal information of someone’s experience, character or ability. Such letter, however, should not be written if the recipient is engaged in litigation before the judge or it is likely that the recipient will be engaged in proceedings that would ordinarily come before the Court.”

In Advisory Opinion 80-84 the Commission noted the amendment and advised that the suggested letter was not necessarily prohibited by Canon 2C. The Commission further advised that such a letter should not be written if the person in whose support it was written appeared or was likely to appear in proceedings which ordinarily would come before the judge.

We have reviewed Advisory Opinion 80-84 and it is the opinion of the Commission that Canon 2C does not per se prohibit:

“... writing a letter of recommendation disclosing personal information of someone’s experience, character or ability.”

Nor is such letter prohibited if the person in whose support it is written has been or is likely to be engaged in proceedings which ordinarily come before the judge. However, such a letter is prohibited if the recipient of the letter is engaged or is likely to be engaged in proceedings before the judge.

The commentary to Canon 2C makes this distinction between the recipient of the letter and the person in whose support the letter is written. This distinction appears to be made for the reason that it is the recipient of the letter who would feel that by acting favorably on the judge's recommendation he could influence the judge. Conversely, the recipient might feel coerced by the judge's letter if the recipient of the letter is actively engaged in litigation before the judge.

To the extent that this opinion is in conflict with Advisory Opinion 80-84, that opinion is hereby specifically overruled.

Sincerely,

JUDICIAL INQUIRY COMMISSION