

**Rule 3.01, Comment 5**  
**Using the Judicial Office for Private Purposes**  
**Judge Ray McCoski, Lake County, IL**  
**October 19, 2004**

Judge McCoski applauds the Commission's effort to provide needed guidance about the propriety of using official stationary for judicial recommendations and summarizes the three different approaches that have resulted from the lack of such guidance in the present Code:

- flat prohibition of use of official letterhead for recommendations
- reference letters authorized by the Code are allowed if communicated on judicial letterhead; and
- use of official stationary allowed only if the recommendation is related to the judicial function.

In Judge McCoski's view, the third approach, as taken by Rule 3.01, Comment 5, is least desirable for the following reasons:

- It lacks ease of application and imposes a burden on a judge who must determine, at his or her peril, whether the recommendation is "based upon information obtained through the judge's expertise or experience as a judge" and whether court stationary or blank paper should be used.
- The test suggested in the Comment will be subject to differing interpretations and will not foster uniformity.
- Many states permit the use of judicial stationary for any recommendation or reference permitted under the Code. Judge McCoski observes that unless this permissive rule has caused problems or proved unworkable in the jurisdictions that have adopted it, there is no reason not to include it in the Code and notes that two state supreme courts have included comment in their codes of judicial conduct overruling ethics advisory bodies that limited the use of judicial stationary for recommendations.
- The rationale behind the proposed limitation on the use of judicial stationary is not readily apparent insofar as it does not prohibit a judge from using the judicial title in the body of a letter, but only prohibits the use of judicial stationary.

In Judge McCoski's view, the guiding principle for recommendation letters should be solely whether the recommendation is based on the judge's personal knowledge, regardless of the context in which the judge obtained the personal knowledge.

Judge McCoski recommends the following revision of Rule 3.01, Comment 5:

A judge may provide a reference or recommendation for an individual based upon the judge's personal knowledge. References and recommendations may be communicated on the judge's judicial letterhead.

Judge McCoski also suggests the following alternative, albeit less favored:

A judge may provide a reference or recommendation for an individual based upon the judge's personal knowledge. References and recommendations may not be communicated on the judge's judicial letterhead.

**Rule 4.04**  
**Civic or Charitable Activities**  
**Judge Ray McKoski, Lake County, IL**  
**October 19, 2004**

Judge McCoski commends the Commission for its excellent treatment in Rule 4.04 and its Comment of the major ethical and practical concerns surrounding a judge's participation in fund-raising activities on behalf of law-related organizations. The Rule's prohibition of fund-solicitation addresses the dual concerns that potential donors either may be intimidated into making contributions when solicited by a judge or may expect future favors in return for their contribution. At the same time the proposed Rule permits a judge to participate in fund-raising events where the nature of the judge's participation does not implicate the rationale supporting the restriction of judicial fund-raising.

Judge McCoski views Rule 4.04 as an important and necessary change from the present Code which prohibits a judge from speaking or being the guest of honor at a law-related organization's fund-raising event. (*See* 1990 Code Canon 4 Comment which prohibits a judge from swearing in officers at a bar association installation dinner if the ticket price exceeds the cost of the event; further precludes a judge from presiding over an event of a law-related organization of which the judge is an officer; and makes no exception for a judge speaking or being honored at an event sponsored by an organization made up entirely of judges. ) In contrast, Rule 4.04 provides a vitally needed revision and clarification of the ethical responsibilities of judges who participate in fund-raising activities of organizations devoted to the improvement of the law, the legal system or the administration of justice.