

April 28, 2005

District Judge David Stewart
3rd Division
500 West Markham Street, Room 112
Little Rock, Arkansas 72201
dstewart@littlerock.org

Advisory Opinion 2005-01

Dear Judge Stewart:

You write that you have been contacted by a criminal defendant who is a life long friend and by his attorney. The defendant will soon be sentenced in a federal tax felony. You have been asked to write a letter based on your personal knowledge of the individual and direct that letter to the sentencing judge.

Canon 2(B) of the Arkansas Code of Judicial Conduct provides:

A judge shall not allow family, social, political or other relationships to influence the judge=s judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

In particular, the Commentary provides:

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. However, a judge must not initiate the communication of information to a sentencing judge or a probation or corrections officer but may provide to such persons information for the record in response to a formal request.

It is our opinion that a formal request@ means a request from the court, the United States

Attorney, or a governmental agency involved in the criminal matter. A request from the individual or his attorney is not a formal request. As we have stated in Advisory Opinion 2000-03, such a letter has the appearance of lending the prestige of judicial office to advance the personal interest of a single individual. There is a significant difference between a judge=s letter on judicial stationery recommending an individual for admission to a law school or for a position with a law firm, and a letter to a sentencing judge. The former is permitted by the Code and its commentary; the latter is not.

Sincerely,

Howard W. Brill
for the Committee