

Advisory Opinion #2020-01

(adopted August 28, 2020)

Question: *When is it appropriate for judges to use official court letterhead for correspondence?*

Opinion: Generally, judicial court letterhead may be used for any correspondence where the judge is appropriately exercising the judicial office. Consequently, court letterhead may be used for reference letters where the judge is comfortable providing a reference and has knowledge relating to the reference as a judge. For example, it is appropriate to use court letterhead for reference letters for the judge's law clerk or other court employees seeking future employment opportunities. So too, a judge may use official letterhead for reference letters for lawyers who have appeared before the judge, whether that lawyer is seeking new employment or a judicial office.

Official letterhead may not be used for any private purpose unrelated to the judicial office or for any purpose otherwise prohibited by the Alaska Code of Judicial Conduct. Our previous Advisory Opinion #97-1 addressed the special issues surrounding letters from judges to the Alaska Judicial Council. While not specifically addressing whether those letters may be written on official letterhead, the opinion assumes that those communications would. In that opinion, we advised that unsolicited letters to the Judicial Council concerning the qualities of an applicant for a judgeship are appropriate but distinguished those letters from letters that would be sent to the Governor to influence the Governor's final selection (if unsolicited are improper).

While use of judicial letterhead for a personal purpose unrelated to the judge's official role is clearly improper, there are many activities related to the judicial role that are not clear. For example, whether a judge can write to a funding source for a program that the court has found useful may be an appropriate communication and one that can be authored on official letterhead. Questions that need to be addressed include: (1) Is the recipient a neutral entity unlikely to come before the court? And, (2) Are there competing entities for the funds that are equally deserving of support by the court? Because judges may not solicit funds, the content of any letter of support should focus solely on the merits of the program and the judge's experience with the service provider.

Finally, because official letterhead is an assertion of the judicial office, the judge should know to whom the letter will be addressed. To avoid embarrassment or unanticipated conflicts, a judge should not author a letter on official letterhead "to whom it may concern."

This opinion differs from the Commentary to Rule 1.3 of the ABA Model Code of

Judicial Conduct¹³. It is the Commission’s view that there is no appropriate “personal” use of official letterhead. While some uses are not directly related to the adjudicative functions of the judge, the content must be related to the judge’s official role. A judge’s official role, permitting use of official letterhead, includes various educational outreach and civic leadership activities under Canon 4 of the Alaska Code of Judicial Conduct. Further, in these “off the bench” judicial activities, judges must be cautious to maintain the dignity and impartiality of judicial office.

13 American Bar Association Model Code of Judicial Conduct
Comment on Rule 1.3

[1] It is improper for a judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind. For example, it would be improper for a judge to allude to his or her judicial status to gain favorable treatment in encounters with traffic officials. Similarly, a judge must not use judicial letterhead to gain an advantage in conducting his or her personal business.

[2] 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 reason of the judicial office.

[3] Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees, and by responding to inquiries from such entities concerning the professional qualifications of a person being considered for judicial office.