



Commission on Judicial Conduct — THE JUDICIARY • STATE OF HAWAII

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FORMAL ADVISORY OPINION #01-02

DECEMBER 20, 2002

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QUESTION PRESENTED

May judges communicate with the Judicial Selection Commission with recommendations relating to selection or retention.

DISCUSSION

This Commission has in the past issued advisory opinions on the appropriateness of judges giving character references during the selection process. See Formal Advisory Opinion ("FAO") #01-00 (11/28/00) (discourages against unsolicited communications with appointing authorities); FAO#02-93 (12/8/93) (appropriate to respond in the selection process); Addendum to FAO #02-93 (3/31/94) (discourages against testifying at Senate confirmation hearings). In essence, this Commission has already advised that unless solicited for response or input, judges should refrain from initiating unsolicited communications or testimony to the appointing authorities or at Senate confirmation hearings. Pertinent to this issue is the Commentary to Canon 2B of the Code of Judicial Conduct which provides:

Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees seeking names for consideration, and by responding to official inquiries concerning a person being considered for a judgeship. (emphasis added).

Also applicable is that portion of Canon 2B of the Code which provides:

. . . 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.

Although the code does not prohibit unsolicited communications it seems to permit or urge response only when it is invited. Accordingly, this Commission generally discourages judges

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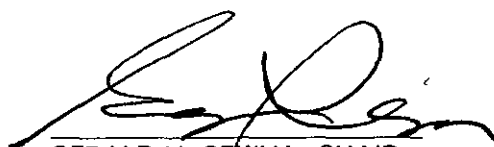
from communicating with authorities in the selection and retention process unless requested to do so.

Other jurisdictions are somewhat divided on this issue. See "Recommendations by Judges", Cynthia Gray, American Judicature Society (1996). This Commission believes that the more prudent position is to caution judges against communicating with the Judicial Selection Commission unless requested, invited or unless special circumstances exist.

CONCLUSION

Although the Code does not expressly prohibit such communications when not solicited, this Commission cautions against and discourages judges from communicating unless they are asked to respond, except when circumstances exist which in the exercise of the judge's sound discretion, it is especially compelling to do so.

FOR THE COMMISSION
ON JUDICIAL CONDUCT



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