

## JUDICIAL INQUIRY COMMISSION

DATE ISSUED: February 18, 2014

ADVISORY OPINION 14-925

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OFFICIAL COURT STATIONERY; PERSONAL “JUDICIAL” STATIONERY;  
POLITICAL CAMPAIGN STATIONERY

### ISSUES

- I. May a judge use personal “judicial” stationery, with a modified version of the Great Seal of Alabama printed on it, for notes of congratulations and thanks, including notes of thanks to campaign supporters? **Answer:** No.
- II. May a judge use personal “judicial” stationery, with the courthouse address printed on it and/or the envelopes for notes of thanks to campaign supporters? **Answer:** No.

### FACTS

The inquiring judge would like to use personal “judicial” stationery that includes the judge’s title as judge; a modified version of the Great Seal of Alabama; and the courthouse address. The judge intends to use the stationery for sending notes of congratulations and thanks, including notes of thanks to campaign supporters.

### DISCUSSION

The inquiring judge’s question has both legal and ethical implications. Although the Commission is not authorized to advise a judge on the law, it notes Attorney General Opinions 2003-114 and 95-00145 recognize State law limits the use of an image or facsimile of the Great Seal of Alabama. Those opinions acknowledge an image or facsimile of the Seal may be used on stationery of a State agency, but neither opinion expressly addresses a State official’s use of the Seal on the official’s non-official or private stationery. In addition, use of the Seal under certain circumstances could violate § 36-12-61, Code of Alabama (2013), which provides it is unlawful for any State officer or employee “to use or permit to be used any state-owned property of any character or description, including stationery, stamps, office equipment, office supplies, . . . or any other property used by him, in his custody or under his control for the promotion or advancement of the interest of any candidate for the nomination or election to any public office of the State of Alabama.”

The judicial ethics considerations relevant to the judge’s inquiry are pursuant to the following provisions of the Alabama Canons of Judicial Ethics:

A judge should uphold the integrity and independence of the judiciary. Canon 1.

A judge should avoid impropriety and the appearance of impropriety in all his activities. Canon 2.

A judge . . . should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. Canon 2A.

A judge . . . should not lend the prestige of his office to advance the private interests of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him. Canon 2C.

In addition, if a judge's use of the Seal is not permissible under State law, *e.g.*, § 36-12-61, the judge would be in violation of that provision of Canon 2A that requires judges to respect and comply with the law. If the judge uses the Seal on campaign stationery, he or she would also be in violation of a judge's duty to endeavor to refrain from political activity inappropriate to the judicial office. Canon 7A(1).

**Prohibition against Using the Prestige of the Office:** Foremost, a judge may not use any stationery that implies his or her position as a judge if, in the use of that stationery, the judge lends or appears to lend the prestige of the judicial office to advance the private interests of the judge or others to gain any advantage or deferential treatment of any kind or the judge otherwise exploits the judicial office. Thus, the judge cannot use the title "Judge" or any other indicia of judicial office on stationery used for personal financial matters, private business dealings, private disputes, charitable endeavors,<sup>1</sup> private family matters such as discharging parental duties, endorsement of a business, request for another judge to render favorable treatment, voluntary character references on behalf of someone involved in investigatory or adjudicating proceedings, or similar purposes.

**Official Court Stationery:** It may have once been common or, at least tolerated, for judges to use official court stationery for private purposes, *i.e.*, to communicate to relatives, friends, attorneys, other officials, etc. on matters other than those involving official court matters, so long as the correspondence did not appear to lend the prestige of the judicial office to advance private interests. However, the assumption a reasonable person would not view a judge's use of official court stationery as an abuse of office has been seriously questioned, *see* Raymond J. McKoski, "Ethical Considerations in the Use of Judicial Stationery for Private Purposes," 112 Penn. St. L. Rev. 471, 482 (Fall 2007). Often times a judge's private use of official court letterhead can create the impression the judge expects the correspondence to be given extra weight, credibility, or special consideration because of the power and prestige of the judicial office. Moreover, private use of official court stationery blurs the distinction between a judge's official and private acts. In addition, it may constitute, or give the appearance of, misappropriation of public resources for personal purposes.

To avoid any potential for—or even the appearance of—misuse of official court stationery, the Commission recommends the simple rule that official court stationery should be used only when the matters communicated relate to official court business, the law, the legal system, or the administration of justice—not for a judge's personal purposes.

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<sup>1</sup> Advisory Opinion 00-753 prohibits the use of the judicial title or official stationery for civic or charitable fund-raising.

**Personal “Judicial” Stationery:** Many judges have printed, at the expense of the judge or his or her campaign, personal stationery that includes the title “Judge.”<sup>2</sup> Those judges have used such stationery for nonofficial or personal matters, such as notes of congratulations, recognition, and thanks.

A judge’s personal “judicial” stationery, however, should not cast, to a reasonable observer, the appearance of official court stationery, e.g., that it is provided at government expense and/or uses seals or logos appropriate for official court correspondence. “The controlling consideration is not whether an astute observer familiar with the intricacies of government stationery might be able to distinguish personal from official stationery, but whether the letterhead contains information, designations, or symbols that an ordinary observer would associate with the judge’s professional responsibilities rather than the judge’s personal undertakings.” McKoski, supra, at 482. See, e.g., Advisory Opinion 00-746 (the use of the State Unified Judicial System seal would give a casual observer the impression the judge was using official court stationery).

**Political Campaign Stationery:** A judge may not use any stationery containing any indicia of official court correspondence, other than the judge’s title, for any political campaign communication, i.e., not a government seal, a courthouse address, courthouse telephone numbers, etc. See, e.g., Advisory Opinions 00-755 (a judge may not use official court stationery for a political endorsement letter for a judicial candidate); 00-746 (a judicial incumbent’s re-election campaign stationery may not use the State Unified Judicial System seal or the judge’s courthouse address and telephone and fax numbers because such would create an appearance of impropriety, which is contrary to a judge’s duties under Canon 2, and might also constitute a violation of § 36-12-61 and, thus, violate Canon 2A). See also Florida Advisory Opinion 92-2 (a judge may not send thank you notes for campaign contributions on official court stationery because official stationery should be used only for official business, not private purposes; running for office is a personal endeavor; and thanking private contributors through official channels would most certainly raise a reasonable question of the judge’s impartiality); McKoski, supra, at 496 (a courthouse address or telephone number on campaign stationery improperly invites political contacts to the judge’s workplace).

In assessing whether a judge’s correspondence has the appearance of political campaign conduct, the Commission construes “political” broadly and generically to signify such conduct and activity by the judge that, had it occurred in a campaign when the judge had active opposition, would be recognized as legitimate and reasonable “campaign conduct.” Advisory Opinion 93-482. For example, in Advisory Opinion 93-482, the Commission considered a judge’s letters of congratulation to the new admittees of the Alabama State Bar creates the appearance of political campaign conduct. Therefore, the Commission advised the inquiring judge he or she should not use state office supplies, including

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<sup>2</sup> In Advisory Opinion 93-482, the Commission advised it is permissible, under the Canons of Judicial Ethics, for a judge to use campaign contributions to pay the expenses of letters of condolence and letters of congratulation.

official court stationery, or state personnel to send such correspondence; otherwise, the judge's use of State resources would evoke an appearance of impropriety. The Commission also advised, for the judge to avoid any appearance of impropriety, the judge's personal or campaign letterhead should indicate the letters do not involve the use of any state funds or personnel. Another category of correspondence signifying political campaign conduct is thank-you letters to jury venirepersons if those letters do not meet the requirements set out in Advisory Opinion 08-894. See also Advisory Opinion 93-482. See also In re Berkheimer, 877 A.2d 579 (Ct. Jud. Disc. 2005) (judge disciplined for using his office and employees in preparing and mailing congratulatory notes, containing a photograph of the judge in his robe and the court address, to constituents who were mentioned in the local newspaper for some particular accomplishment; such notes were a thinly veiled attempt to improve re-election prospects—in essence, part of an on-going political campaign conducted from the judge's office using court employees).

**Disclaimer Ineffective:** Any misuse of the sovereignty of the State or the prestige of the judicial office is not dissipated by any designation on the stationery, e.g., “paid for with personal funds”; “not printed at government expense”; “personal”; or “personal and unofficial.” See Advisory Opinion 00-746 (the notation “Reelection Campaign,” on a judicial incumbent's re-election campaign stationery that uses the State Unified Judicial System seal, does not dissipate the appearance of impropriety); Washington Ethics Advisory Committee Opinion 86-15 (disclosure of the source of funds used to purchase the stationery is not dispositive in determining appropriate use).

**Conclusion:** Official court stationery should be used only when the matters communicated relate to official court business, the law, the legal system, or the administration of justice—not for a judge's personal purposes. A judge's personal “judicial” stationery (1) may not be used for lending the prestige of the judicial office for private gain or for exploiting the judicial office; (2) must be printed at the judge's expense; (3) cannot be confused with the court's official stationery;<sup>3</sup> and (4) particularly when used for communications that could be considered political campaign conduct, should not use any indicia of the office of judge, except the title.

Therefore, if the judge's correspondence on his personal “judicial” stationery could subsequently be misused, the Commission suggests the judge include the notation “Personal, unofficial, and confidential.”

#### REFERENCES

Alabama Canons of Judicial Ethics, Canons 1, 2, 2A, 2C, 7A(1).

Advisory Opinions 08-894; 00-755; 00-753; 00-746; 93-482.

§ 36-12-61, Code of Alabama (2013).

Alabama Attorney General Opinions 2003-114; 95-00145.

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<sup>3</sup>Personal “judicial” stationery with the courthouse address and/or telephone number(s) is non-problematic if the stationery is used for non-political purposes.

In re Berkheimer, 877 A.2d 579 (Ct. Jud. Disc. 2005).

Florida Advisory Opinion 92-2.

Washington Ethics Advisory Committee Opinion 86-15.

Raymond J. McKoski, "Ethical Considerations in the Use of Judicial Stationery for Private Purposes," 112 Penn. St. L. Rev. 471, 482 (Fall 2007).

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This opinion is advisory only and is based on the specific facts and questions submitted by the judge who requested the opinion pursuant to Rule 18 of the Rules of Procedure of the Judicial Inquiry Commission. For further information, you may contact the Judicial Inquiry Commission, P. O. Box 303400, Montgomery, Alabama 36130-3400; tel.: (334) 242-4089; fax: (334) 353-4043.