

You have presented a hypothetical involving a complaint brought against a judge before the Judicial Inquiry and Review Commission (“the Commission”). Lawyer A occasionally represents clients before Judge X. When Judge X has a complaint filed against him with the Commission, Lawyer A files a letter of support with the Commission on behalf of the judge. The subject matter of the complaint did not involve a case of Lawyer A.

Under the facts you have presented, you have asked the committee to opine whether whenever this attorney appears before the judge, must the attorney disclose to opposing counsel that the attorney sent the letter of support for the judge to the Commission?

Your request specifically asks whether Rule 3.5(d) triggers a conflict of interest, requiring disclosure by the attorney to opposing counsel in this situation. Rule 3.5(d) states as follows:

A lawyer shall not give or lend anything of value to a judge, official, or employee of a tribunal under circumstances which might give the appearance that the gift or loan is made to influence official action.

The concern raised for the lawyer in the hypothetical is that a letter of support provided as part of a Commission investigation of a judge must be kept confidential, under Virginia Code §17.1-913, which would preclude the attorney from disclosing to opposing counsel that he sent the letter on behalf of the judge.

This committee does not consider Rule 3.5(d) as reaching the sort of action taken by this attorney. Paragraph (d) expressly applies only to gifts and loans. This letter to the Commission is neither. Rather, it represents participation as a citizen in a government process. Rule 3.5(d) does not preclude that participation and does not require its disclosure by this attorney when appearing before the judge.

This committee notes that the attorney in this hypothetical does have to be mindful of Rule 8.4(d), which precludes an attorney from stating or implying “an ability to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official.” As the attorney in the hypothetical must by statute keep his letter to the Commission confidential, he should have no problem complying with Rule 8.4(d).

The committee notes that while your request only expressly asked about the attorney’s proper conduct, your request did highlight provisions in the Canons of Judicial Ethics regarding the conduct of the judge. Interpretation of those rules is outside the purview of this committee and, therefore, the committee declines to opine on that issue.

This opinion is advisory only, based only on the facts you presented and not binding on any court or tribunal.