



JUDICIAL STANDARDS COMMISSION  
STATE OF NORTH CAROLINA

**MEMORANDUM**

TO: Members of the North Carolina Judiciary

FROM: Commission Chairperson – Judge Wanda G. Bryant

DATE: 17 December 2015

With the new filing period beginning this month for the 2016 election cycle, the following information is offered to advise judges and judicial candidates of political conduct under the N.C. Code of Judicial Conduct. By order of the Supreme Court dated 6 November 2015, amendments were made to Canon 2 and Canon 7. A copy of the Amendments as ordered is attached. Please be advised that this memo changes and updates previous political conduct memos.

Also addressed are a number of frequently asked questions encountered by the Commission and its staff that may be relevant to you and your courthouse. Canon 7 sets forth the parameters for political activity by judges and judicial candidates, balancing the need for an impartial and independent judiciary and the right of judicial candidates to engage in constitutionally protected political activity.

**Permissible Political Conduct**

*All judges may:*

- 1) attend and speak at various political events, conventions, and fund raisers for candidates for public office. Mere attendance at a candidate's campaign event or fund raiser will not be construed as a public endorsement of that candidate. A judge may also be listed or noted as a speaker within any publicity relating to such an event. (*Canon 7B(1)*)
- 2) identify himself/herself as a member of a political party. (*Canon 7B(3)*)
- 3) make financial contributions to a political party or organization, however a candidate's campaign committee is not a "political organization" within the meaning of Canon 7B(3). (*In re Wright*, 313 N.C. 495 (1985))

A judge who is also a judicial candidate may:

- 1) form a campaign committee to solicit and manage the expenditure of campaign funds. (Canon 7B(4))
- 2) personally solicit campaign funds and public support for his/her own candidacy. A judge may serve as treasurer of his/her own campaign. (Canon 7B(4))
- 3) conduct a joint campaign with another judicial candidate(s). (Canon 7B(3))
- 4) endorse any individual seeking election to any office, regardless of whether he/she has any election opposition. (Canon 7B(2))
- 5) respond to surveys from special interest groups. However, the judge should not respond to any portion of the survey soliciting responses which:
  - a. diminish public confidence in the integrity and impartiality of the judiciary; (Canon 2A)
  - b. convey the impression that the group is in a special position to influence the judge. (Canon 2B)
- 6) issue an invitation to a non-fund raising reception for any other candidate. Issuance of the invitation constitutes a public endorsement and solicitation of public support. (Canons 7B(2) and 7C(2))

A judge becomes a candidate by:

- 1) making a public declaration of candidacy; or
- 2) declaring or filing as a candidate with the appropriate election authority; or
- 3) authorizing solicitation or acceptance of contributions or public support; or
- 4) sending a letter of intent to the chair of the Judicial Standards Commission. (As a best practice, the Commission would prefer a letter of intent, which is kept in the office of the Judicial Standards Commission.)

**Prohibited Political Conduct**

No judge may:

- 1) solicit funds for a political organization, political party, or any candidate seeking election to any office, other than himself/herself or as part of a joint judicial campaign. (*Canons 7B(3) and 7C(1)*)
- 2) make a financial contribution or loan to any individual seeking election to any office, other than himself/herself or a joint judicial campaign. This prohibition includes donations to candidates who are related to the judge. If attending a fund raising event for an individual candidate or group of candidates, a judge may pay no more than the reasonable cost of any food and beverage provided. (*Canon 7B(3)*)
- 3) be listed as a “**sponsor**” or “**host**” of a fund raising event for another candidate, political party or organization. Sponsorship of or hosting a fund raising event is considered active assistance in raising funds. (*Canons 4C, 5B(2) and 7C(1)*)
- 4) request, encourage or allow public officials/employees subject to the judge's direction or control to engage in campaign activity while at their public employment. (*Canon 3B(2)*)
- 5) continue to hold judicial office once the judge becomes a candidate for election to a non-judicial office. (*Canon 7B(5)*) The office of Clerk of Court is considered to be a judicial office (*Formal Advisory Opinion 2009-05*). The Commission has informally advised that the office of District Attorney should not be considered to be a judicial office as the term is used within the Code of Judicial Conduct.
- 6) post or distribute campaign signs and literature in the courthouse or any other building where the judge is holding court. (*Canons 1 and 2*)
- 7) intentionally or negligently misrepresent any fact, or intentionally and knowingly misrepresent his/her identity or qualifications. (*Canons 1, 2A and 7C(3)*) Please see the cautionary note below concerning how a judge’s name and office sought are presented to voters.
- 8) personally solicit campaign contributions and public support from parties and attorneys presently appearing before the judge. No solicitations should occur within the courthouse. (*Canons 1, 2A and 3A(1)*)

### **Campaign Advertising and Political Speech**

*Issue: What is appropriate content for a judge’s judicial campaign materials and other communications?*

There is no bright-line answer to this inquiry and each situation will depend upon the specific facts and circumstances of the campaign speech in question. The Commission has received numerous inquiries and some complaints regarding the content of judicial campaign material. Canon 7A, rewritten in the wake of Republican Party of Minnesota v. White, 536 U.S. 765 (2002), provides a safe harbor of permissible political conduct. It affirms “the right of judicial candidates to engage

in constitutionally protected political activity.” Therefore, it is the opinion of the Commission that judges and judicial candidates have broad latitude in the content of their political advertising, even though the Commission encourages a higher aspirational standard regarding campaign conduct.

*The following are a few noteworthy limitations to this latitude:*

A judge or a candidate should not intentionally or knowingly misrepresent his/her identification or qualifications. (*Canon 7C(3)*)

A judge should abstain from public comment about the merits of a pending proceeding in any state or federal court dealing with a case or controversy arising in North Carolina or addressing North Carolina law. (*Canon 3A(6)*)

A judge should uphold the integrity and independence of the judiciary. A judge should participate in establishing, maintaining, and enforcing, and should personally observe, appropriate standards of conduct to ensure that the integrity and independence of the judiciary shall be preserved. (*Canon 1*)

A judge should avoid impropriety in all the judge’s activities. A judge should respect and comply with the law and should conduct himself/herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. (*Canon 2A*).

A judge should remember his or her continuing obligations under Canon 1 and Canon 2A. Campaign materials that suggest a judge’s bias or predisposition for or against certain litigants, or that would create a reasonable suggestion that a judge would show favor toward a particular side in a legal dispute would violate these canons. Further, an intentional and knowingly false representation of an opponent would violate a judge’s obligations to observe appropriate standards of conduct and to conduct himself/herself in a manner that promotes public confidence in the integrity of the judiciary.

### **Campaign Solicitations and Contributions to Others**

*Issue: May a judge solicit campaign contributions and public support from parties and attorneys presently appearing before the judge? May a judge solicit campaign contributions and public support from parties and attorneys in the court house, if those parties and attorneys are not presently appearing before the judge?*

It should go without saying that the answer to both is a clear “No!” Such conduct would be in violation of Canons 1, 2A, and 3A(1). Such conduct creates a public appearance tantamount to *quid pro quo* corruption.

The term “presently appearing before the judge” is to be read to clearly include those litigants and attorneys appearing before a judge in a court room. It is not to be read so broadly as to include attorneys or parties who may still have a matter within the jurisdiction of a judge but who currently have no hearings or appearances scheduled before that judge. Even when litigants or attorneys are

not presently appearing before a judge, however, it is still improper to solicit them within the court house. It is improper for a judge to use a state computer or telephone for political purposes.

This year the Commission has received multiple calls about improper solicitation of litigants and attorneys, and in many of these cases the matter had first been referred to the North Carolina State Board of Elections. There is an open line of communication between the NCSBE and the Commission regarding campaign-related misconduct. All judges should carefully review applicable campaign and election regulations, and guide their campaign and financial reporting activities accordingly.

*Issue: May a judge give to a political party, political organization, or an organization that is supporting a specific candidate or limited group of candidates?*

A judge or candidate may make financial contributions to a political party or organization, provided that he/she may not make financial contributions or loans to any individual seeking election to office (other than himself/herself), except as part of a joint judicial committee. (*Canon 7B(3)*)

The term “joint judicial campaign” is no longer defined within the Code of Judicial Conduct, however past advisory opinions make it clear that this exception to the prohibition against campaign contributions to other elected offices is intended to allow joint campaign activity, such as joint events, shared campaign mailings, and the sharing of incidental judicial campaign costs, such as travel. The Commission advises that, in order to participate in a joint judicial campaign, all participants must be active candidates currently engaged in campaign activity, and any shared expenses must be for the mutual benefit of all participants within the joint judicial campaign. Again, however, candidates should be mindful of any applicable reporting requirements under state election law and ensure that any joint judicial campaign activity is appropriately reported to the State Board of Elections.

*Issue: May a retired judge subject to recall or an emergency judge make a campaign contribution?*

No, emergency, special, and retired/recall judges **are** subject to the Code of Judicial Conduct, including Canon 7, therefore the prohibition against making contributions or loans to any individual seeking elective office applies to retired, emergency, and recalled judges as well as active judges. Of course, if a judge has retired and seeks no future commission or appointment to serve then he or she is under no such prohibition.

*Issue: Though a judge may not give a personal contribution to another candidate, may a judge’s political committee give or disburse excess campaign funds to another candidate’s committee?*

No, the North Carolina Supreme Court, in the opinion In Re Wright, 313 N.C. 495 (1985), reviewed this specific issue and held that a candidate’s campaign committee is not a political organization but is the “alter ego of the candidate.” The Court found that allowing a judge’s campaign committee to make contributions that were otherwise prohibited by the judge would clearly circumvent and render moot the clear rule established by the Code of Judicial Conduct.

*Issue: May a judge's family member give a personal contribution to another candidate?*

A judge's spouse and other family members are permitted to engage in political activity. (*Canon 7D*) If a judge's family member would like to make a financial contribution to an individual's campaign, the judge should make sure the family member does so in a way that makes clear that the contribution comes from the family member and not the judge. If the judge and family member share a joint checking account, the family member should cross out the judge's name on the check to avoid any confusion. The family member may want to confer with the candidate's campaign treasurer as well to make sure the contribution is appropriately attributed to the family member and not the judge.

### **Political Events and Campaign Fundraising Events**

*Issue: Though a judge may not contribute to a candidate's fundraising event, may a judge attend? May a judge pay for expenses associated with any meal or benefit provided to attendees of the fundraiser?*

A judge or candidate may attend, preside over, and speak at any political party gathering, meeting or other convocation, including a fundraising function for himself/herself, another individual or group of individuals seeking election to office. (*Canon 7B(1)*)

Though Canon 7B(3) prohibits a judge or judicial candidate from contributing to another candidate, Canon 7B(1) expressly permits a judge or judicial candidate to attend such functions. Where the benefits provided to attendees of a function are incidental the judge has no obligation to make any payment for attending, but should always obtain the consent of the event's host before attending. Where attendees of the function may receive some benefit, such as a meal, that would otherwise cost the host of the event, the judge may reimburse the host of the event for the reasonable costs of the meal or other benefit.

The Commission advises that the best practice for a judge reimbursing a host for the costs of attending a fundraising event is to make payment directly to the host or caterer of the event, rather than to candidate's political committee. Too often such reimbursements may be reported by the committee as "contributions" and therefore appear as violations of the Code, even though they are otherwise allowable expenses.

*Issue: Though a judge may not contribute to a candidate's fundraising event, may a judge appear in any publicity materials related to the event?*

A judge or judicial candidate may be listed or noted within any publicity relating to such an event, so long as he/she does not expressly endorse a candidate for a specific office (other than himself/herself if that judge is, in fact, a candidate) or expressly solicit funds from the audience during the event. (*Canon 7B(1)*)

*Issue: Regarding political party fundraisers, what, if any, of these activities are permitted? May a judge attend a party fundraiser? Purchase tickets for himself/herself and a spouse? Purchase*

*tickets for others? Purchase a table of eight and/or be featured in the program as a supporter? Sell tickets to others or encourage them to buy their own tickets?*

It has been previously discussed that a judge may attend such an event and may purchase tickets to such an event. A judge may also purchase tickets and give them to others. There is no Code provision prohibiting such an expense, especially if the judge is himself/herself a candidate and the tickets are part of the judge's campaign expenses.

There is no limitation against a judge receiving extra tickets or other benefits (such as an advertisement in a program) in exchange for a contribution of a certain size. However, the judge must not be listed as a "sponsor" or "host" of the event due to prohibitions against the active assistance of fundraising and the implications these titles have in soliciting others to also give to the organization. However, a judge may be recognized as a contributor to an organization, and so long as a judge is not listed under the specific titles of "sponsor" or "host", the Commission has viewed other terms acknowledging and recognizing the level of the judge's contribution to be permissible, including "Patron", "Friend", "Judicial Contributor" and "Gold/Silver/Bronze Level" givers. (*Formal Advisory Opinion 2010-07*)

Because a judge should not solicit funds on behalf of a political party, organization, or individual (other than himself/herself) seeking election, a judge should not sell tickets to a fundraiser for a political party or political organization. (*Canon 7C*)

### **Use of the Courtroom or Trappings and Indicia of Judicial Office**

*Issue: May a judge have photos taken in his or her court room, wearing his or her judicial robe, for use in campaign materials? May a judge have photos or video taken of him or her presiding in court?*

The specific conduct of the judge and the use of his or her robe and the court room are subject to Canons 1A and 2A of the Code which provide that the judge's conduct should ensure the preservation of the integrity, independence, and impartiality of the judiciary. Therefore any use thereof should be appropriate, tasteful, and not a misuse of public property.

The Commission advises that campaign photographs may be taken of a judge in his or her courtroom, and wearing his or her robe. However, such pictures should only be taken when the courtroom is otherwise not in use and not during hours when the judge is assigned to court. Further, court rooms must be available for such use by all judicial candidates and cannot be limited solely to incumbent judges. The Commission would advise against using any photography or video from an actual session of court, where a judge is conducting state business, for political purposes.

*Issue: May a judge use, for campaign purposes, stationary, cards, and similar materials bearing the state seal and other indicia of their office, so long as it is paid for privately, and not by the state?*

The use of the state seal, or any court seal, is not expressly prohibited under the Code of Judicial Conduct and may be appropriate to use in certain circumstances. However, in order to prevent

confusion and to avoid the appearance of impropriety, any such materials bearing a seal or indicia of your office should include a clear and visible statement that the materials are not printed or mailed at government expense. The perception that government resources are being used for campaign purposes undermines public faith and confidence in the integrity and impartiality of the judiciary and it is the responsibility of the judge to take reasonable steps to prevent such confusion.

*Issue: May a judge use a state email address to send campaign emails? May a judge send campaign emails to other judicial officials at their state email addresses?*

A judge should not use court resources, such as a state email account or state computer, for campaign purposes. To use public resources for personal political purposes would violate Canons 1, 2A, and 2B of the Code.

Just as a judge should not use state resources for his or her own political purposes, a judge should facilitate the compliance of other judges and court officials with this standard. Where possible a judge should not send campaign emails to other judicial officials at their state email addresses. However, the Commission acknowledges that sometimes campaigns rely on mass email communications sent to large distribution lists, such as the list of all licensed attorneys sold by the State Bar, or membership lists of certain bar groups. Where a judge has listed his or her state email address as contact address for that group's purposes, a judicial candidate may inadvertently send materials to that address. Such incidents would not be viewed as misconduct, however candidates should be cautioned that political mail sent to a state email address may not be well-received by the recipient.

### **Disqualification Issues**

*Issue: When should a judge disqualify from hearing matters connected to a campaign opponent? To associates of an opponent? To supporters of campaign staff of an opponent? What about a judge's own staff or supporters?*

A judge should disqualify himself/herself in a proceeding in which the judge's impartiality may be reasonably questioned. (*Canon 3C*)

Campaign Opponent & Opponent's Legal Associations - A judge who is a candidate should disqualify himself/herself from hearing matters involving the judge's campaign opponent regardless of whether or not a motion is made for disqualification. An alternative would be to strictly follow the remittal of disqualification procedures set forth in Canon 3D.

When an opponent works as an assistant district attorney or assistant public defender, a judge should work with the scheduling judge and elected District Attorney or appointed Public Defender to mitigate possible calendar conflicts that could be created by such disqualification.

A judge is not obligated to disqualify himself/herself from hearing matters involving other members of the opponent's law firm (or other public defenders or assistant district attorneys, if the opponent works for one of those institutions) should such a motion be made. There is no presumption of conflict. However, if the judge questions his or her own impartiality toward the



individual, or believes that there could be a reasonable perception of bias based on the campaign, the judge may opt to disqualify himself or herself in such a situation.

Campaign Staff - A judge who is a candidate should disqualify himself/herself from hearing matters involving a campaign manager, treasurer and others who play a significant role in an opponent's campaign or in the judge's own campaign regardless of whether or not a motion is made for disqualification. An alternative would be to strictly follow the remittal of disqualification procedures set forth in Canon 3D.

Campaign Contributors and Fundraisers - A campaign contribution or endorsement, alone, does not create a presumed conflict that would require a judge to disqualify himself or herself from hearing a matter involving the contributor or endorser.

If an otherwise unremarkable campaign contribution was presumed to create a conflict of interest justifying recusal, the potential for abuse and “judge shopping” – in which attorneys or litigants send token contributions to certain judges in order to force their disqualification in certain matters – would impair the effective administration of justice. But where the size and timing of financial support to a judge creates a reasonable presumption of influence, a judge should disqualify from matters involving that contributor.

In determining whether a reasonable conflict of interest exists, a judge should weigh the amount of the contribution relative to other contributors, the range of allowable contributions and the candidate's total budget, the timing of the contribution as it regards proximity in time to any past or pending legal action, and whether an individual is responsible for raising funds above and beyond those personally given to the judge, such as when someone organizes and hosts a fundraiser for the judge, especially if those efforts result in a significant amount of the judge's total campaign contributions.

### **Conduct by Court Personnel**

Senior Resident Superior Court Judges and Chief District Court Judges are encouraged to remind other public officials who work in our courthouses, including Magistrates and Clerks of Superior Court that political conduct on their part, or on the part of their staff, in the courthouse environs, and particularly during court sessions, diminishes the dignity and appearance of impartiality of the administration of justice.

All judges are requested to not use or permit staff to use State or other public resources in connection with campaign activities and to not permit staff or public employees under their control or supervision to wear or display campaign paraphernalia or otherwise participate in campaign activities in the courthouse, except as otherwise permitted in the Code. A judge may not require his/her staff to engage in campaign related activities.

### **Conduct by Non-incumbent Judicial Candidates**

The Commission frequently receives inquiries concerning alleged misconduct by judicial candidates who are not judges. While all judicial candidates are required to comply with Canon 7

of the North Carolina Code of Judicial Conduct, the Judicial Standards Commission has no authority or jurisdiction over the conduct of attorneys who are not currently judges. Instead, attorneys who are judicial candidates, but not yet judges, are under the jurisdiction of the North Carolina State Bar. Rule of Professional Conduct 8.2(b) requires that a lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct. Therefore, any violations of Canon 7 by judicial candidates who are not judges should be reported to the North Carolina State Bar, and not the Judicial Standards Commission, for appropriate review. Pursuant to Canon 3B(3) a judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct which the judge may become aware.

**Closing**

I hope this information will be of assistance to you, however should you have any specific questions, please contact the Commission's Counsel Jameson Marks at 919-831-3630 or by email at [jmm@coa.nccourts.org](mailto:jmm@coa.nccourts.org).