



**POLITICAL CONDUCT & JUDICIAL ETHICS**

**SUPERIOR COURT JUDGES SUMMER CONFERENCE 2018**

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**THE NEW POLITICAL LANDSCAPE FOR JUDGES**

- **What we know:**
  - Partisan races
  - No use of emergency judges to fill in for "conflicts" cases
- **What may occur:**
  - New judicial districts?
  - No primaries?
  - Constitutional referendum on legislative selection of judges?



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**IN TIMES OF UNCERTAINTY, REMEMBER THE CORE VALUES . . .**


"A frequent recurrence to **fundamental principles** is absolutely necessary to preserve the  **blessings of liberty.**" NC Constitution, Article 1, Section 35.

- **Independence** –
 

"The legislative, executive, and supreme judicial powers of the State government shall be **forever separate and distinct** from each other." NC Const., Art. 1, Sec. 6.
- **Impartiality** –
 

"All courts shall be open . . . and right and justice shall be administered **without favor, denial, or delay.**" NC Const., Art. I, Sec. 18.
- **Integrity** –
 

"The General Assembly shall prescribe a procedure . . . for the censure and removal of a Justice or Judge of the General Court of Justice for wilful misconduct in office, wilful and persistent failure to perform his duties, habitual intemperance, conviction of a crime involving moral turpitude, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute. NC Const., Art. IV, Sec. 17(2).



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### KEY ETHICAL CONSIDERATIONS IN POLITICAL CONDUCT

Canon 7 of the Code of Judicial Conduct governs political conduct specifically, but you CONTINUE to be bound by:

- Canon 1: "personally observe" standards of conduct that reflect "integrity and independence"
- Canon 2: "avoid impropriety" and "at all times" promote "public confidence in the integrity and impartiality of the judiciary"
- Canon 3A: discharge your judicial duties "unswayed by partisan interests, public clamor, or fear of criticism"
- Canon 3C: disqualify in cases where your "impartiality could reasonably be questioned"




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### BIG ISSUES IN CAMPAIGN CONDUCT

- Campaign Finance - Soliciting or Making Contributions
- Endorsing Other Candidates
- Disqualification Issues Relating to Campaign Conduct
- Running for Non-Judicial Office
- Campaign Materials - Flyers & Ads, Websites, Social Media
- Answering Questions in Surveys, Debates & Media Interviews




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### CAMPAIGN FINANCE – MAKING CONTRIBUTIONS UNDER CANON 7

- You **may** contribute to:
  - Political parties or organizations
  - Your own campaign
  - A joint campaign you have formed with another judicial candidate
- You **may NOT** contribute to:
  - Individual candidates (even your own family members)
  - Campaign committees for individual candidates
- Your spouse/family members **MAY** contribute to campaigns
  - **BEWARE!** the joint checking account problem – you must make sure your name is crossed out and that the candidate or campaign treasurer does not identify you as a contributor




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### CAMPAIGN FINANCE -SOLICITING CONTRIBUTIONS UNDER CANON 7

- You **MAY** solicit funds for your campaign or a joint campaign:
  - You **MAY personally** solicit contributions to your campaign (or joint campaign) and serve as your treasurer or form a campaign committee to do so
  - **DO NOT** solicit contributions in the courthouse or during the performance of official judicial duties, and **NEVER** solicit from parties appearing before you
  - **NOTE:** *Williams-Yulee v. Florida Bar* (US Supreme Court 2015)
- You **MAY NOT** solicit contributions for parties or candidates:
  - Canon 7 restricts judges from "specifically asking for such contributions in person, by telephone, by electronic media, or by signing a letter"
  - **FAO 2010-07:** do not sponsor or consent to being listed as a "sponsor" or "host" of a fundraising event for any organization or individual




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### ENDORISING OTHER CANDIDATES

- **What is the definition of endorse?**
  - Asking other persons to support a specific individual "to be elected to public office"
  - Does not encompass recommendations for appointed positions
- **Who can endorse?**
  - **Only judicial CANDIDATES** may endorse
  - **RECOMMENDED:** letter of intention mailed to the Judicial Standards Commission --identify the year and seat you seek
- **Who cannot endorse?**
  - Any judge who cannot stand for election in the next election cycle (emergency judges, retired judges subject to recall, judges reaching the statutory age limit for elected judicial office, special superior court judges who are not candidates for an elected judicial position)




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### DISQUALIFICATION ISSUES

- **Campaign staff and volunteers**
  - Disqualify from cases involving your campaign manager, treasurer and others who play a "significant role" in your campaign and for at least six months after the election
  - The parties may remit this conflict through written agreement (Canon 3D)
  - Conflict is **not generally imputed** to law firms employing campaign staff
- **Opponents**
  - Disqualify from cases where your opponent is appearing and for at least six months after the election if you win
  - **Same rules for campaign staff** of your opponent as apply to your own campaign staff (conflict may be remitted, applies for six months after election, generally not imputed to employer of the individual unless facts show basis for conflict)
- **Contributors/Donors** – no set amount that requires disqualification
  - Generally **do NOT disqualify UNLESS** you know the donor has made an **unusually large donation** (or has **hosted an event** that led to significant contributions), the donation is large and **occurred while a case is pending before you**, or if the contribution is coupled with other facts that would call into question your impartiality




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### RUNNING FOR NON-JUDICIAL OFFICE

- Canon 7B(5) - a judge must "resign the judge's judicial office prior to becoming a candidate either in a party primary or in a general election for a non-judicial office"
- Clerk of Court is a "judicial office" and a judge does NOT need to resign to run
  - Formal Advisory Opinion No. 2009-05: office of clerk of superior court is a judicial office of the General Court of Justice because the North Carolina Constitution and General Statutes require clerks of superior court to exercise certain judicial functions and explicitly refer to clerks of superior court as "judicial officers."
- District Attorney is a "non-judicial office" and a judge MUST RESIGN to run
  - Formal Advisory Opinion No. 2017-01: District Attorney exercises no judicial power and instead prosecutes, in the name of the State of North Carolina, "all criminal actions and infractions requiring prosecution in the superior and district courts of his prosecutorial district."



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### CAMPAIGN MATERIALS - GENERALLY

- **Apply core values of impartiality, integrity and independence:**
  - Partisan elections do not mean we have partisan justice – duty to protect independence and impartiality of the courts even during a campaign - Canons 1, 2 & 3
  - False or misleading campaign ads or accusations about your opponent show a lack of integrity – Canon 1 [e.g., do not state "re-elect" if you have never been elected]
  - Undignified or offensive ads raise questions about your integrity and impartiality – Canons 1, 2 & 3
  - Statements that would suggest bias or lack of impartiality in certain cases or towards certain litigants threaten public confidence in the impartiality of the courts – Canons 1, 2 and 3C
  - Avoid comments about the merits of any pending cases – Canon 3A(6)
  - Monitor your social media pages for inappropriate content and comments



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### IN THE MATTER OF SMITH NEVADA COMMISSION ON JUDICIAL DISCIPLINE FEB. 23, 2017



**RE-ELECT JUDGE DOUG SMITH**  
22 YEARS SERVING AS YOUR JUDGE

**OVER 85 ENDORSEMENTS**

**JUDGE DOUG SMITH**  
THE CLEAR CHOICE DISTRICT COURT DEPT. 8

ENDORSED BY:



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IN THE MATTER OF CALLAGHAN  
WEST VIRGINIA SUPREME COURT OF APPEALS  
FEB. 9, 2017

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IN RE A DISTRICT COURT JUDGE  
ALASKA SUPREME COURT  
MARCH 10, 2017

“Witch Hunts are so  
18th century”  
(or maybe not . . . )

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CAMPAIGN MATERIALS – GENERALLY

- **DO NOT** use court or state equipment, computers, stationery, email, etc. to conduct campaign business
  - Do not use state owned equipment to print or disseminate campaign materials
  - Do not use official court stationery to send political messages or ads
- **DO NOT** require court staff and employees to help your campaign, and only allow volunteer work **AFTER BUSINESS HOURS**
- **DO NOT** engage in campaign conduct while on the job
  - Do not engage in campaigning while at work
  - Do not wear (or allow staff to wear) campaign buttons and other indicia of campaign conduct at work or post literature in the courthouse
- **YOU MAY**
  - Use court or state seal in personal stationery and campaign materials **SO LONG AS** conspicuously noted that it was not printed at state expense
  - Have photographs taken in your robe in the courtroom **SO LONG AS** they are not taken during actual proceedings or while courtroom is in use [your opponent may use the courtroom too, but not in robes unless a judge]



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### ANSWERING QUESTIONS

- **Surveys**
  - Special interest groups may send you surveys, and you MAY respond
  - BE CAREFUL not to make statements that would undermine your impartiality or convey the impression that they can influence you
- **Debates**
  - Be dignified, respectful and civil
  - Avoid comments on pending cases and other statements that might later be used to call into question your impartiality or integrity – may raise disqualification issues!
- **Media interviews**
  - Avoid interviews about cases, even those pending in other courts
- **Positions on Proposed Legislation Affecting the Courts**
  - Canon 4 allows judges to speak on matters affecting the administration of justice, including consulting with executive and legislative branch officials on these issues
  - Beware making comments on the legislation if the constitutionality or legality of the legislation



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### WHEN YOUR OPPONENT IS NOT . . .

... a sitting judge bound by the Code of Judicial Conduct.

- The Code provides that “[t]he provisions of Canon 7 of this Code shall apply to judges and candidates for judicial office.”
- Rule 8.2 of the NC Rules of Professional Conduct:
  - (a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, or other adjudicatory officer or of a candidate for election or appointment to judicial office.
  - (b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.



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### OTHER POLITICAL CONDUCT ISSUES

- Attending political events and fundraisers
  - **YOU MAY:**
    - attend political events and fundraisers
    - be listed as a speaker in the publicity for the event
    - endorse other candidates while at the event BUT ONLY IF YOU ARE A CANDIDATE YOURSELF
    - buy and share tickets – but BEWARE tickets for fundraisers for individual candidates – see below
  - **YOU MAY NOT:**
    - pay more than the actual cost of the meal if you are attending a fundraising event for an individual campaign - anything over that cost may be considered an improper campaign contribution
    - be listed as “host” or “sponsor” for any fundraising events, but you CAN be listed as a contributor, patron, friend or like name that does not suggest that you are leading the fundraising efforts



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