

CANON 7 OF THE
N.C. CODE OF JUDICIAL CONDUCT

A judge may engage in political activity consistent with his status as a public official.

The provisions of Canon 7 are designed to strike a balance between two important but competing considerations: (1) the need for an impartial and independent judiciary and (2) in light of the continued requirement that judicial candidates run in public elections as mandated by the Constitution and laws of North Carolina, the right of judicial candidates to engage in constitutionally protected political activity. To promote clarity and to avoid potentially unfair application of the provisions of this Code, subsection B of Canon 7 establishes a safe harbor of permissible political conduct.

A. Terminology. For the purposes of this Canon only, the following definitions apply.

(1) A *Acandidate@* is a person actively and publicly seeking election to judicial office. A person becomes a candidate for judicial office as soon as he makes a public declaration of candidacy, declares or files as a candidate with the appropriate election authority, authorizes solicitation or acceptance of contributions or public support, or sends a letter of intent to the chair of the Judicial Standards Commission. The term *Acandidate@* has the same meaning when applied to a judge seeking election to a non-judicial office.

(2) To *Asolicit@* means to directly, knowingly and intentionally make a request, appeal or announcement, public or private, oral or written, whether in person or through the press, radio, television, telephone, Internet, billboard, or distribution and circulation of printed materials, that expressly requests other persons to contribute, give, loan or pledge any money, goods, labor, services or real property interest to a specific individual's efforts to be elected to public office.

(3) To *Aendorse@* means to knowingly and expressly request, appeal or announce publicly, orally or in writing, whether in person or through the press, radio, television, telephone, Internet, billboard or distribution and circulation of printed materials, that other persons should support a specific individual in his efforts to be elected to public office.

B. Permissible political conduct. A judge or a candidate may:

(1) attend, preside over, and speak at any political party gathering, meeting or other convocation, including a fund-raising function for himself, another individual or group of individuals seeking election to office and the judge or candidate may be listed or noted within any publicity relating to such an event, so long as he does not expressly endorse a candidate (other than himself) for a specific office or expressly solicit funds from the audience during the event;

(2) if he is a candidate, endorse any individual seeking election to any office or conduct a joint campaign with and endorse other individuals seeking election to judicial office, including the solicitation of funds for a joint judicial campaign;

(3) identify himself as a member of a political party and make financial contributions to a political party or organization; provided, however, that he may not personally make financial contributions or loans to any individual seeking election to office (other than himself) except as part of a joint judicial campaign as permitted in subsection B(2);

(4) personally solicit campaign funds and request public support from anyone for his own campaign or, alternatively, and in addition thereto, authorize or establish committees of responsible persons to secure and manage the solicitation and expenditure of campaign funds;

(5) become a candidate either in a primary or in a general election for a judicial office provided that he should resign his judicial office prior to becoming a candidate either in a party primary or in a general election for a non-judicial office;

(6) engage in any other constitutionally protected political activity.

C. Prohibited political conduct. A judge or a candidate should not:

(1) solicit funds on behalf of a political party, organization, or an individual (other than himself) seeking election to office, by specifically asking for such contributions in person, by telephone, by electronic media, or by signing a letter, except as permitted under subsection B of this Canon or otherwise within this Code;

(2) endorse a candidate for public office except as permitted under subsection B of this Canon or otherwise within this Code;

(3) intentionally and knowingly misrepresent his identity or qualifications.

D. Political conduct of family members. The spouse or other family member of a judge or a candidate is permitted to engage in political activity.

Political Conduct For All Judges

WHAT YOU CAN DO

- § Attend political gatherings, including political party meetings and conventions, political organization meetings, and campaign events and fundraisers for candidates for public office - 7B(1) (Mere attendance at a candidate=s campaign events and fundraisers will not be construed as a public endorsement of that candidate in violation of 7C(2).)
- § Speak to political gatherings - 7B(1)
- § Be a member of a political party and identify yourself as such - 7B(3)
- § Contribute to a political party or organization - 7B(3) (A candidate=s campaign committee is not a Apolitical organization@ within the meaning 7B(3) therefore you may not contribute to it unless it is your own or a joint judicial campaign of which you are a part. *In re Wright*, 313 N.C. 495 (1985).)
- § Act as a leader or hold any office in a political party at the national, state, or local level - 4C, 5B(2) and 7B(6)
- § Serve as an officer, director, *etc.* of a political organization, defined by the Commission as Aa political party or other group, a principal purpose of which is to further the election or appointment of candidates to political office,@ because such an organization is Aconducted for the...political advantage of its members@ - 5B
- § Allow your spouse or other family members to be politically active - 7D
- § Make speeches in support of a political organization, including a political party - 7B(1) and 7B(6)

WHAT YOU CANNOT DO

§ Solicit funds for a political organization, including a political party - 7C(1)

§ Make a financial contribution or loan to any individual seeking election to any office - 7B(3)

Examples:

May you serve as an ex-officio member of the county party executive committee to select the successor to a county elected public official such as the sheriff, clerk of superior court, register of deeds, or county commissioner? Yes, this conduct is permissible pursuant to 4C and 7B(1), and the same reasoning would allow your service as your precinct=s representative on the county=s party platform committee.

May you serve on the board of directors of the Lincoln Forum? Yes, service would allowed as per 4C and 5B(2) provided such service does not cast substantial doubt on your ability to decide impartially any issue that may come before you.

May you attend a party convention, party legislative reception, party fundraising event, or Young Dem/Young Rep meeting? Yes, attendance at such events is allowed by 7B(1), and you could pay for a ticket to such functions because 7B(3) permits you to contribute to a political party or organization.

May you speak to a Young Dem/Young Rep meeting re: judicial campaigning? Yes, 7B(1) allows you to attend and speak at political gathering.

May your name be listed as a special guest, guest of honor, contributor, etc. on the invitation to a political party fundraising event? Yes, a listing of this nature would be permitted by 7B(1), so long as you do not expressly endorse a candidate (other than yourself) for a specific office or expressly solicit funds from the audience during the event. However, you may not be listed as a sponsor, as the Commission considers sponsorship analogous to assistance in raising funds, prohibited by 4C and 5B(2). You may never solicit funds for a political party, organization or individual as per 7C(1).

May you work in the Rep/Dem party booth at the county/state fair handing out literature, including candidates= campaign literature? Yes, if you are a candidate as defined by 7A(1), you may publicly endorse other candidates. However, while you

are working at the booth, contributions to the party **may not** be accepted.

May you contribute to non-judicial candidates who are not family members? No, 7B(3) prohibits such contributions whether or not you are a judicial candidate and whether or not you are related to the individual. In fact, the Court censured the respondent judge in *In re Wright*, 313 N.C. 495 (1985), for contributing to the campaign committees of a senatorial and a gubernatorial candidate, one of whom had appointed the respondent to his judgeship and both of whom, if elected, would be in positions to appoint/recommend the appointment of judges, and declared the conduct to be Aconduct prejudicial to the administration of justice.@

May your name be listed as a special guest on the invitation to a judicial candidate=s campaign fundraising event? Yes, 7B(1) allows you to be listed or noted within any publicity relating to such an event. However, at the event you may not expressly endorse a candidate (other than yourself) for a specific office nor expressly solicit funds from the audience.

May you attend a \$100.00 reception for a judicial candidate? Yes, 7B(1) allows you to attend such political gatherings, however you can pay no more than the reasonable cost of any food and beverage provided because the excess would be a contribution in violation of 7B(3).

May you contribute to the campaign of a cousin to whom you are close? No, 7B(3) provides that you may not personally make financial contributions or loans to any individual seeking election to office (other than yourself) except as part of a joint judicial campaign.

May your spouse contribute to her sister=s campaign for the legislaure? Yes, 7D allows your spouse to make political contributions, but it must be made solely in your spouses name.

May you use official court letterhead for a letter recommending an individual for appointment to a judgeship? No, personal stationery must be used so that the recommendation does not lend the prestige of judicial office to advance the appointment candidate=s private interests in violation of 2B. However, should your recommendation be formally requested by the appointing official, then your response would be in furtherance of your public duties, thereby necessitating use of official court letterhead.

Political Conduct Rules Apply Differently to Those of You Who Are Candidates

WHAT YOU CAN/CANNOT DO

	<u>Non-Candidate</u>		<u>Candidate</u>
	<u>Judge</u>		<u>Judge</u>
Attend candidates= campaign events, including fundraisers	Yes	7B(1)	Yes
Contribute to family member candidate	No	7B(3)	No
Recommend an individual=s appointment to judgeship	Yes	2B	Yes
Make speeches in support of, publicly endorse, or solicit non-monetary support for: non-judicial candidates judicial candidates	No	7B(2)	Yes
	No	7C(2)	Yes
Solicit funds for candidates	No	7C(1)	No
Contribute to: non-judicial candidates judicial candidates	No	7B(3)	No
	No		No

Examples:

May you endorse candidates even if you are an unopposed judicial candidate?

Yes, 7B(2) allows judicial candidates to endorse any individual seeking election to any office, and it contains no requirement that your candidacy be opposed.

May you, as a judicial candidate, run and pay for a campaign ad that asks people to vote for you and 3 other judicial candidates?

Yes, such an ad would be allowed pursuant to 7B(3), and even though your campaign pays for it and thereby makes a contribution to the other candidates= campaigns.

May you and the other judges in your judicial district issue an invitation to a

non-fundraising reception for a judicial candidate? Yes, but *only* those judges who are themselves judicial candidates, because issuance of the invitation constitutes a public endorsement and solicitation of support allowed by 7B(2) for judicial candidates, but prohibited by 7C(2) for judges who are not candidates.

Political Conduct Related to a Judicial Candidate=s Own Campaign

WHAT YOU CAN DO

- § Form a campaign committee to solicit and manage the expenditure of campaign funds - 7B(4)
- § Personally solicit campaign funds and public support for your candidacy - 7B(4)
- § Conduct a joint campaign with other judicial candidates - 7B(3)

WHAT YOU CANNOT DO

- § Allow public officials/employees subject to your direction or control to do for you what you cannot do yourself - 3B(2)
- § Intentionally or negligently misrepresent any fact - 2A
- § Intentionally and knowingly misrepresent your identity or qualifications - 7C(3)
- § Preside in certain proceedings in which particular individuals involved in your or your opponent=s campaign appear - 3C(1)
- § Continue to hold judicial office once you become a candidate for election to non-judicial office - 7B(5) (A *Acandidate@* is defined as one who makes a public declaration of candidacy, declares or files with the appropriate election authority, or authorizes the solicitation or acceptance of contributions or public support or sends a letter of intent to the chair of the Judicial Standards Commission - 7A(1))
- § Use or allow the use of campaign funds for your/your family=s private benefit - 2A and 2B and state law

Examples:

May you solicit campaign support from defendants and attorneys appearing before you where the solicitations occurred, respectively, in the courtroom during court and in a courthouse hallway during a recess? No, the Court ordered the respondent=s censure in *In re Stephenson*, 354 N.C. 201(2001), for such conduct which the Court declared to be willful misconduct in office and conduct prejudicial to the administration of justice in violation of Canons 1, 2A and 3A(1) of the Code.

May your name and biographical information be included in a political party=s mailing to promote its slate of candidates, including non-judicial candidates? Yes, you may identify yourself as a member of a political party as per 7B(3) and endorse other candidates as per 7B(2).

May you post a campaign sign in a conspicuous location in a building where you are holding court? No, the use of public property for campaign purposes violates Canons 1 and 2 and may be against the law.

May you use official court letterhead for a letter seeking campaign contributions or support for your candidacy? No, this would use State resources for campaign purposes in violation of Canons 1 and 2 and possibly the law.

May you use stationery bearing the State seal and your official mailing address and telephone number for a campaign mailing if a statement appears at the bottom making it clear that State funds were not used for printing and mailing? No, a personal/campaign address and telephone number need to be used so it will be clear that State resources are not being used for campaign purposes in violation of Canon 2 and possibly the law.

May your campaign committee issue a fundraising event invitation where the return envelope notes it is for your personal attention, the return address includes your name, and the response card begins with a promise of support to you personally? Yes, 7B(4) allows you to personally solicit campaign funds and request public support from anyone for your own campaign.

May your campaign committee distribute a campaign mailing comprised of an informational letter signed by you and an enclosure on which forms of

support, including monetary support, could be indicated? Yes, you may authorize or establish a committee of responsible persons to secure and manage the solicitation and expenditure of campaign funds as per 7B(4).

May you or your campaign committee contribute your campaign funds to non-judicial candidates? No, pursuant to 7B(3) you may not make financial contributions or loans to any individual seeking election to office (other than yourself) except as part of a joint judicial campaign as permitted in 7B(2).

May you hold a campaign fundraiser in your home to benefit your candidacy? Yes, 7B(4) allows you to personally solicit campaign funds and request public support from anyone for your own campaign.

May you advertise your political party affiliation on yard signs, brochures, etc. during your campaign even though the election will be non-partisan? Yes, 7B(3) allows a judicial candidate to identify himself as member of a political party,⁶ and it includes no limitation as to partisan/non-partisan or opposed/unopposed elections.

May you respond to a survey form from a special interest group? Yes, but you should not respond to any portion of the survey soliciting responses that would:

- 1) not promote public confidence in the integrity and impartiality of the judiciary - 2A;
- 2) convey the impression that the group is in a special position to influence you - 2B;
- 3) cast substantial doubt on capacity to decide impartially any issue that may come before you - 4;

Closing Cautionary Notes

- 1) Be sure that participation in permissible political and campaign conduct does not result in running afoul of other Code provisions.
- 2) Emergency and Special judges are subject to the Code, including Canon 7.
- 3) Do not use State or other public resources in connection with political and campaign conduct.