

Ethics and Professionalism In DWI Cases

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November 2008



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A magistrate is a cousin to a police officer. Should the magistrate

1. Preside over DWI matters involving the cousin
2. Work out schedules so they are never on duty at the same time
3. Never hear a matter involving a cousin
4. Not hear cases unless the evidence is strong (over 0.08)



You are at a Rotary Club. A person you know is involved with MADD. They comment on how mad they are at the number of impaired driving charges against Hispanics. You should

1. Politely change the subject
2. Tell them you think they are right
3. Tell them you think they are wrong
4. Treat this as a teachable moment about the role of the courts to be neutral

You are asked to join your local MADD chapter. You should

1. Accept the invitation and ask for waiver of the annual dues
2. Accept, but only as a consultant about the system
3. Accept without condition
4. Decline

Should you participate in BatMobile operations?

1. Always
2. Never
3. Usually, unless there are special circumstances
4. Usually not, unless there are special circumstances

I believe law enforcement officers

1. Always tell the truth
2. Don't always tell the truth, but I believe them until they don't tell the truth
3. Are no different than anyone else in their credibility
4. Deserve to be given the benefit of the doubt

A local bondsman gives you a ham every year. You should

1. Give the ham to the local homeless shelter
2. Refuse to accept it
3. Take it and enjoy it
4. Tell the bondsman that any gifts should be something that can be eaten in the office

A local defense firm gives a barbeque dinner to each office in the courthouse. You should

1. Oink
2. Tell him your office can't accept it
3. Take the food, and remind him that you shouldn't be getting gifts in the future
4. Take the food and invite the prosecutors to the meal

You get an invitation to the local Highway Patrol Christmas Party. You should

1. Go and enjoy their hospitality
2. Decline the invitation, graciously
3. Decline the invitation and tell them it is not ethical for you to go
4. Go every other year

You are invited to the criminal defense lawyer's annual picnic.

1. Go, have fun
2. Decline, graciously
3. Decline because it's improper, and say so
4. Go every other year

You are invited to SADD's Picnic. You should

1. Go
2. Decline, graciously
3. Decline, and say it's improper
4. Go just once

Magistrates and Ethics

- Magistrate is public officer—not a regular employee
- Discipline is by judicial proceeding, not by hiring authority
- Grounds are statutory

Magistrate as a Public Officer— The First Step

- Take oath of office
- Exercise sovereign power of the state
- Term of office
- Limited removal procedure

Removal Procedure

- Impeachment
- Statutory removal authority, by superior court judge
- “Grounds for removal are the same as for a judge” GS 7A-173, *State v. Greer*, 308 NC 515; *In Re Kiser*, 126 NC App. 206

Grounds for Removal

- Judge may be removed or censured for
 - Willful misconduct in office
 - Willful and persistent failure to perform his duties
 - Habitual intemperance
 - Conviction of crime involving moral turpitude
 - Conduct prejudicial to administration of justice
 - Generally not a basis for removal unless done more than once

Willful Misconduct

- Improper and wrong conduct acting in official capacity
- Done intentionally and knowingly (or with gross unconcern for the conduct)
- In bad faith
- Examples—dishonesty, corruption, or knowing misuse of office, or to accomplish purpose beyond the legitimate exercise of his or her authority
- *In Re Edens*, 290 NC 299; *In Re Stuhl*, 292 NC 239; *In Re Nowell*, 293 NC 235

Willful Misconduct

- Not limited to time in court
- Improper sexual activity between judge and defendant included
- Generally criminal charges against judge will also constitute willful misconduct

Conduct Prejudicial to Administration of Justice

- Less serious than willful misconduct
- Often taken in good faith, but still appears to objective observer that conduct is un-judicial and lowers public esteem for the office
- Motive doesn't matter; conduct does
- Personal benefit not required
- Can't use inexperience or lack of training
- Private matters also covered
- *Edens, Stuhl, Nowell, supra; In Re Crutchfield, 289 NC 597; In Re Peoples, 296 NC 109; In Re Martin, 295 NC 292*

Removal of Magistrate

- While grounds are the same, procedures are different
 - Judges subject to Judicial Standards Commission
 - Magistrate subject to hearing before superior court
- Remedies also different
 - Judges may be censured, and may lose retirement benefits if removed
 - Removal is only remedy for magistrates and is mandatory if grounds found to exist (*Kiser*)

Code of Judicial Conduct—Why Should You Care?

- “A violation of the Code of Judicial Conduct may be deemed conduct prejudicial to the administration of justice that brings the judicial office in disrepute, or willful misconduct in office, or otherwise as grounds for disciplinary proceedings . . . No other code or proposed code shall be relied upon in the interpretation and application of this Code of Judicial Conduct.” *Preamble to Code of Judicial Conduct*

Code of Judicial Conduct

- Purpose is to provide certainty, accountability and professional identity
- Can be aspirational or prohibitive or both
- Also provides safe harbors in difficult areas
- Newly amended; now emphasis more on CODE than ETHICS
 - Ethics is a code of values which guide our choices and actions and determine the purpose and course of our lives. Ayn Rand

Canons of Ethics

- Canon—noun, an accepted principle or rule; a criterion or standard of judgment; a body of principles, rules, standards, or norms
- Canon 1—Uphold integrity and independence of the judiciary
- Canon 2—Avoid impropriety in all activities
 - No longer the appearance of impropriety
 - Use of prestige of office; personal references; character evidence; membership in organizations

Canon 3

- Canon 3—Impartiality and diligence
 - Order, dignity, courtesy
 - Ex parte communications
 - Promptness
 - Comments on merits of pending cases
 - Administrative duties and duty to report violations
 - Recusal

Canons

- Canons 4 and 5—Outside activities to improve the system or the community
 - Don't do it if it casts doubt on your ability to be impartial
 - Community activities, but no fundraising
 - Financial activities
 - Gifts
 - Estates of relatives
 - Service on commissions and committees

A magistrate is a cousin to a police officer. What should you do?

- **Canon 2A., B. A judge should . . . conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. . . A judge should not allow his family, social or other relationships to influence his judicial conduct or judgment.**
- **Canon 3C.(1). A judge should disqualify himself in a proceeding in which his impartiality may reasonably be questioned, including but not limited to instances where: (a) He has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceedings;**

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- **A judge should not allow his family, social or other relationships to influence his judicial conduct or judgment. . . nor should he convey or permit others to convey the impression that they are in a special position to influence him.**
- **Canon 3A.(1). A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law, and except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending [or impending] proceeding.**

Canon 3.A.(6)

(6) 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 and should encourage similar abstention on the part of court personnel subject to the judge's direction and control. This subsection does not prohibit a judge from making public statements in the course of official duties; from explaining for public information the proceedings of the Court; . . . or from addressing educational, religious, charitable, fraternal, political, or civic organizations.

Should you join MADD?

Canon 4

A judge may participate in cultural or historical activities or engage in activities concerning the legal, economic, educational, or governmental system, or the administration of justice.

A judge, subject to the proper performance of the judge's judicial duties, may engage in the following quasi-judicial activities, if in doing so the judge does not cast substantial doubt on the judge's capacity to decide impartially any issue that may come before the judge:

A. A judge may . . . participate in . . . activities concerning the . . . legal, or governmental system, or the administration of justice.

Should you participate in BatMobile operations?

- **Canon 3A.(1). A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law, and except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding.**
- **A judge should not allow his family, social or other relationships to influence his judicial conduct or judgment. . . nor should he convey or permit others to convey the impression that they are in a special position to influence him.**
- **GS 20-38.4**

§ 20-38.4. Initial appearance.

- (a) Appearance Before a Magistrate. – Except as modified in this Article, a magistrate shall follow the procedures set forth in Article 24 of Chapter 15A of the General Statutes.
- (1) **A magistrate may hold an initial appearance at any place within the county and shall, to the extent practicable, be available at locations other than the courthouse when it will expedite the initial appearance.**
- (2) In determining whether there is probable cause to believe a person is impaired, the magistrate may review all alcohol screening tests, chemical analyses, receive testimony from any law enforcement officer concerning impairment and the circumstances of the arrest, and observe the person arrested.
- (3) If there is a finding of probable cause, the magistrate shall consider whether the person is impaired to the extent that the provisions of G.S. 15A-534.2 should be imposed.
- (4) The magistrate shall also:
- a. Inform the person in writing of the established procedure to have others appear at the jail to observe his condition or to administer an additional chemical analysis if the person is unable to make bond; and
 - b. Require the person who is unable to make bond to list all persons he wishes to contact and telephone numbers on a form that sets forth the procedure for contacting the persons listed. A copy of this form shall be filed with the case file.

Officers and Testimony

Canon 2

A judge should avoid impropriety in all the judge's activities.

- A. 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.
- B. A judge should not allow the judge's family, social or other relationships to influence the judge's judicial conduct or judgment.

Canon 3

A judge should perform the duties of the office impartially and diligently.

- A. Adjudicative responsibilities.
 - (4) A judge should accord to every person who is legally interested in a proceeding, or the person's lawyer, full right to be heard according to law, . . .

Gifts and Social Functions

Canon 5

A judge should regulate the judge's extra-judicial activities to ensure that they do not prevent the judge from carrying out the judge's judicial duties.

- (4) Neither a judge nor a member of the judge's family residing in the judge's household should accept a gift from anyone except as follows:
 - (a) A judge may accept a gift incident to a public testimonial to the judge; an invitation to the judge or the judge's spouse to attend a bar-related function, a cultural or historical activity, or an event related to the economic, educational, legal, or governmental system, or the administration of justice;

Gifts and Social Functions

Canon 5

A judge should regulate the judge's extra-judicial activities to ensure that they do not prevent the judge from carrying out the judge's judicial duties.

- (b) A judge or a member of the judge's family residing in the judge's household may accept ordinary social hospitality; a gift, favor or loan from a friend or relative; a wedding, engagement or other special occasion gift;
- (c) Other than as permitted under subsection C.(4)(b) of this Canon, a judge or a member of the judge's family residing in the judge's household may accept any other gift only if the donor is not a party presently before the judge and, if its value exceeds \$500, the judge reports it in the same manner as the judge reports compensation in Canon 6C.

Social Functions

Canon 2

A judge should avoid impropriety in all the judge's activities.

- A. 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.
- B. A judge should not allow the judge's family, social or other relationships to influence the judge's judicial conduct or judgment. The judge should not lend the prestige of the judge's office to advance the private interest of others; nor should the judge convey or permit others to convey the impression that they are in a special position to influence the judge.

More Than Ethics?

- Do unto others as you would have them do unto you.
- Always do right—this will gratify some and astonish the rest. Mark Twain
- Aim above morality. Be not simply good; be good for something. Henry David Thoreau
- Remember, people will judge you by your actions, not your intentions. You may have a heart of gold
— but so does a hard-boiled egg. Anon.