



ETHICS AND JUDICIAL SERVICE

**North Carolina Magistrates
2017 Spring Conference**
April 4-7, 2017
Harrah's Resort, Cherokee, NC

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Commission Counsel
Judicial Standards Commission

Magistrates & Judicial Ethics

The mission of the Magistrate is to protect and preserve the rights and liberties of all of the people, as guaranteed by the Constitution and laws of the United States and North Carolina, by providing a fair, independent and accessible forum the just, timely and economical resolution of their legal affairs.

[http://www.aoc.state.nc.us/magistrate/AboutUs/index
.htm:](http://www.aoc.state.nc.us/magistrate/AboutUs/index.htm)

The Magistrate's Mission and Shared Values in the Code of Judicial Conduct

- ❖ Independence
- ❖ Integrity
- ❖ Impartiality



CONFIDENCE IN MAGISTRATES PROMOTES THE SAME GOALS AS CONFIDENCE IN JUDGES

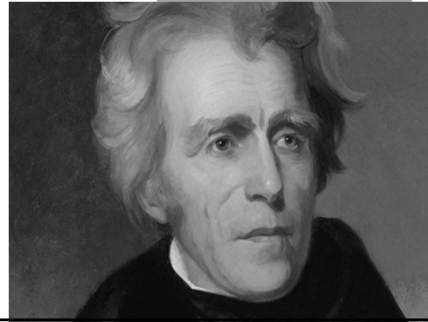


- ❖ Accountability for magistrates, like that for judges, is just one piece of the puzzle intended to:
 - Ensure public confidence in the courts
 - Preserve judicial independence
 - Maintain the rule of law

Judicial Independence

"All the rights secured to the citizens under the Constitution are worth nothing, and a mere bubble, except guaranteed to them by an independent and virtuous Judiciary."

- Andrew Jackson



Rule of Law

1. A system of self-government in which all persons, including the government, are accountable under the law
2. A system based on fair, publicized, broadly understood and stable laws
3. A fair, robust, and accessible legal process in which rights and responsibilities based in law are evenly enforced
4. Diverse, competent, and independent lawyers and judges



Credit: Bill Watterson



Public Confidence



PUBLIC TRUST & CONFIDENCE IN THE NORTH CAROLINA STATE COURTS

October – November 2015 Survey Results

December 15, 2015

Prepared by: Emily Portner, NCCALJ Research Associate

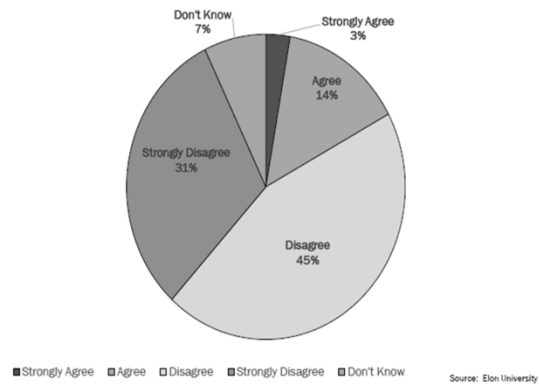
LAW AND JUSTICE

JUDICIAL INDEPENDENCE

TAKEAWAYS:

- While 60% agree that judges make decisions based on facts, North Carolinians overwhelmingly (76%) feel judges' opinions ultimately influenced by their status as elected officials, and by political parties themselves
 - Consistent with 2015 NCSC national survey results (61%)
- Three-fourths feel the state court system overall is influenced by politics
 - Belief is stronger (82%) amongst respondents who know "a lot" about NC court system

Are North Carolina courts free from political influence?

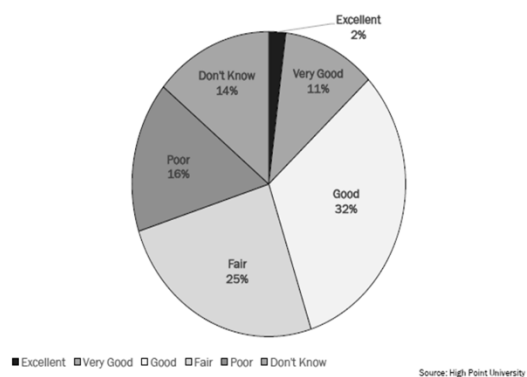


OPINIONS OF QUALITY

TAKEAWAYS:

- North Carolinians divided on perceptions of state court quality
 - Most common response was "good"
 - 13% feel trial courts are performing "excellent" or "very good"
 - Over one-third (41%) feel they are "fair or poor"

Overall, what is your opinion of your local courts?

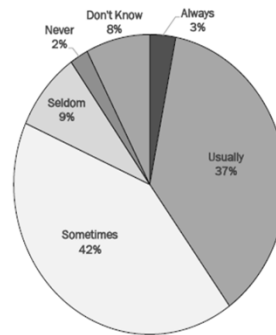


OVERALL PERCEPTIONS OF FAIRNESS

TAKEAWAYS:

- North Carolinians view state courts as providing reasonably fair outcomes
 - 40% feel outcomes are "always" or "usually" fair
 - Over half (53%) feel that outcomes are fair only some of the time, or not at all
- What could be affecting this?

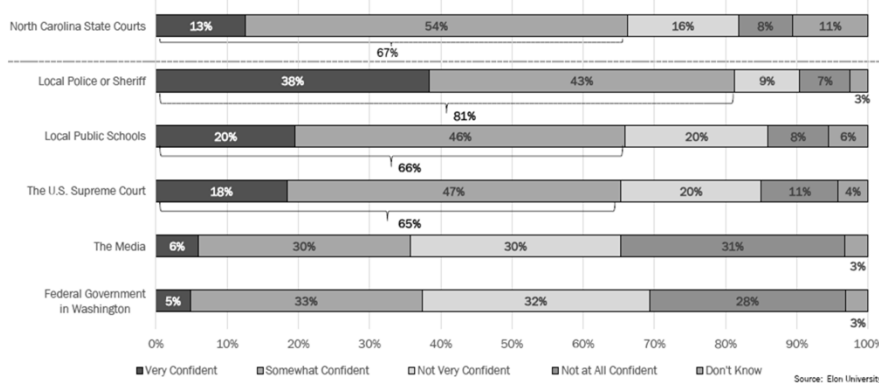
How often do people receive fair outcomes in the North Carolina State Courts?



■ Always ■ Usually □ Sometimes □ Seldom ■ Never ■ Don't Know Source: Elon University

OVERALL CONFIDENCE

I'd like to know how much confidence you have in the following public institutions...



DIFFERENCES IN ACCOUNTABILITY MECHANISMS FOR MAGISTRATES & JUDGES

N.C.
Constitution
Art. IV, §17(3)

N.C. Gen.
Stat.
§7A-173

N.C. Gen.
Stat.
§7A-376

N.C. Const. Art. IV, § 17(3)



N.C. Const. art. IV, § 17
Current through 2016 Regular Session

North Carolina Constitution > CONSTITUTION OF NORTH CAROLINA > ARTICLE IV: JUDICIAL

Sec. 17. Removal of Judges, Magistrates and Clerks

- (1) **Removal of Judges by the General Assembly.** Any Justice or Judge of the General Court of Justice may be removed from office for mental or physical incapacity by joint resolution of two-thirds of all members of each house of the General Assembly. Any Justice or Judge against whom the General Assembly may be about to proceed shall receive notice thereof, accompanied by a copy of the charges alleged for his removal, at least 20 days before the day on which either house of the General Assembly shall act thereon. Removal from office by the General Assembly for any other cause shall be impracticable.
- (2) **Additional method of removal of Judges.** The General Assembly shall prescribe a procedure, in addition to impeachment and address set forth in this section, for the removal of a Justice or Judge of the General Court of Justice for mental or physical incapacity interfering with the performance of his duties, which is, or is likely to become, permanent, and 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 incompetence, conviction of a crime involving moral turpitude, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute.
- (3) **Removal of Magistrates.** The General Assembly shall provide by general law for the removal of Magistrates for misconduct or mental or physical incapacity.
- (4) **Removal of Clerks.** Any Clerk of the Superior Court may be removed from office for misconduct or mental or physical incapacity by the senior regular resident Superior Court Judge serving the county. Any Clerk against whom proceedings are instituted shall receive written notice of the charges against him at least 10 days before the hearing upon the charges. Any Clerk so removed from office shall be entitled to an appeal as provided by law.

History

1971, c. 560, s. 1.

General Statutes of North Carolina
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(3) Removal of Magistrates.

The General Assembly shall provide by general law for the removal of Magistrates for misconduct or mental or physical incapacity.

Willful Misconduct

"A specific intent to use the powers of the judicial office to accomplish a purpose which the judge knew or should have known was beyond the legitimate exercise of his authority constitutes bad faith." - In re Nowell, 293 N.C. 235, 248 (1977)

"Willful misconduct in office is the improper or wrongful use of the power of his office by a judge acting intentionally, or with gross unconcern for his conduct, and generally in bad faith. It involves more than an error of judgment or a mere lack of diligence." This would encompass "any knowing misuse of the office, whatever the motive." - In re Nowell, 293 N.C. 235, 248 (1977)

"Further, if a judge knowingly and wilfully persists in indiscretions and misconduct which this Court has declared to be, or which under the circumstances he should know to be, acts which constitute wilful misconduct in office and conduct prejudicial to the administration of justice which brings the judicial office into disrepute, he should be removed from office." - In re Peoples, 296 N.C. 109, 157 (1978).

"A judge should be removed from office and disqualified from holding further judicial office only for the more serious offense of wilful misconduct in office."
- In re Peoples, 296 N.C. 109, 158 (1978).

Conduct Prejudicial to the Administration of Justice

"Conduct which a judge undertakes in good faith but which nevertheless would appear to an objective observer to be not only unjudicial conduct but conduct prejudicial to public esteem for the judicial office."
- In re Edens, 290 N.C. 299, 305 (1976).

"[A] judge may also, through negligence or ignorance not amounting to bad faith, behave in a manner prejudicial to the administration of justice so as to bring the judicial office into disrepute."
- In re Nowell, 293 N.C. 235, 248-249 (1977).

"Whether the conduct of a judge may be characterized as prejudicial to the administration of justice which brings the judicial office into disrepute depends not so much upon the judge's motives but more on the conduct itself, the results thereof, and the impact such conduct might reasonably have upon knowledgeable observers." - In re Crutchfield, 289 N.C. 597, 603 (1975).

Conduct Prejudicial to the Administration of Justice

“A violation of this Code of Judicial Conduct may be deemed conduct prejudicial to the administration of justice that brings the judicial office into disrepute”

- N.C. Code Jud. Cond. Preamble

Code of Judicial Conduct

- Written by the North Carolina Supreme Court
- District judges and superior court judges take their cues on what is appropriate for judicial officers from these rules, and may hold you to the same standards!
- Canon 3B(2) of the Code of Judicial Conduct:

“A judge should require the judge’s staff and court officials subject to the judge’s direction and control to observe the standards of fidelity and diligence that apply to the judge.”

CODE OF JUDICIAL CONDUCT: OVERVIEW

- ▶ Preamble
- ▶ Canons 1-7
 - ▶ Canons 1 & 2: Ethical duties of judges both on and off the bench
 - ▶ Canon 3: Ethical duties of judges while undertaking official duties
 - ▶ Canons 4 & 5: Ethical duties of judges in personal and civic activities
 - ▶ Canon 6: Gift and income reporting
 - ▶ Canon 7: Ethical duties of judges when engaged in political conduct
- ▶ Statute of Limitations
- ▶ Scope Note (Judicial Candidates, New Judges)

Canon 1:

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 2:

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

- Unlawful conduct - Canon 2A
- Letting family or personal relationships affect your judgment - Canon 2B
- Using the prestige of your office for your personal benefit or the benefit of others - Canon 2B
- Membership in discriminatory organizations – Canon 2C

Canon 3:

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

- ❖ Canon 3 relates to *official action* and is divided into three key areas:
 - **Canon 3A** – governing adjudicative duties
 - **Canon 3B** – governing administrative duties
 - **Canon 3C & D** – governing disqualification



"I'm calling a recess until tomorrow morning — that's enough justice for one day."

Canons 4 & 5: Regulating Your Extra-Curricular and Professional Activities

- ❖ It's good to be involved in your communities, professional organizations, non-profits, etc., but be careful.
- ❖ Things to avoid in all of these activities:
 - Belonging to groups that may cast doubt on your impartiality
 - Helping organizations in fundraising activities
 - Being involved with groups that often appear before you
 - Neglecting your judicial duties

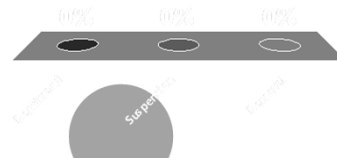
What Gets Judges in Trouble?



Interactive Q & A

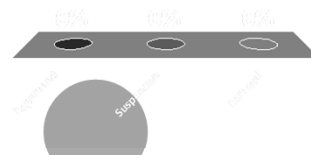
District Court judge added at least 82 traffic tickets of friends and church members to the docket and then dismissed or continued them without hearing evidence. The judge previously had received a private warning for similar conduct.

- A. Reprimand
- ✓ B. Suspension
- C. Removal



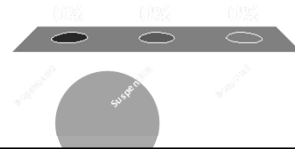
District Court judge removed about 50 traffic cases (incl. DWIs) from the calendar, placed the cases in his own file, then later dismissed them without notice to the DA. Some defendants had to pay a “cost of court” to the judge, who sometimes passed the money on to the clerk and at other times did not.

- A. Reprimand
- B. Suspension
- ✓ C. Removal



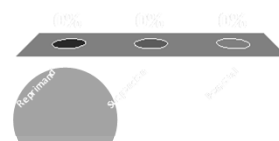
District Court judge failed to disclose and recuse based on a business relationship with a lawyer; tried to bully the DA into waiving the disqualification; lied to the DA about the status of the Commission's investigation; threatened retaliation against the DA; plus rude and insulting courtroom behavior.

- A. Reprimand
- ✓ B. Suspension
- C. Removal



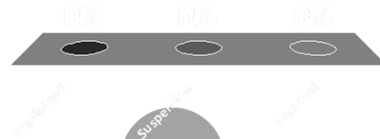
District Court judge refused to grant a defendant in a domestic violence case a continuance to hire a lawyer; ordered spousal support with no evidence and when not requested; referred disparagingly to a defendant's Hispanic ethnicity; ordered a defendant's wallet taken and searched for money; tried to influence the testimony of the court clerk on what happened; and lied to SBI agents investigating the misconduct.

- A. Reprimand
- B. Suspension
- ✓ C. Removal



District Court judge was convicted of failing to file federal tax returns.

- A. Reprimand
- B. Suspension
- ✓ C. Removal



Other Examples...

- ❖ District Court judge attempted to get female defendants to have sex with him in exchange for his help with their cases.
- ❖ District Court judge took bribes from undercover FBI agents to dismiss traffic cases and protect a gambling business.
- ❖ Superior court judge attempted to get the DA not to prosecute a rape case against someone who procured women for the judge; sought sex with defendants in exchange for helping with their cases; sexually assaulted a female probation officer; and tried to persuade another judge to not convene a grand jury to indict him.
- ❖ District Court judge failed to leave the boards of two companies when he took office despite being advised by the Commission to do so; he also lied to investigators about those companies providing him with health insurance.

