



ETHICS AND JUDICIAL SERVICE

NEW SUPERIOR COURT JUDGES TRAINING
JANUARY 2018
NC Judicial College

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JUDICIAL ETHICS IN PERSPECTIVE



- ❖ Enforcement of judicial ethics is just one piece of the puzzle intended to:
 - Maintain the rule of law
 - Ensure public confidence in the courts
 - Preserve judicial independence

Judicial Ethics – 3 Core Values

❖ Independence



❖ Integrity

❖ Impartiality



**CORE PRINCIPLES IN PRACTICE:
THE NC CODE OF JUDICIAL CONDUCT**

- ▶ Promulgated by the NC Supreme Court
- ▶ First version adopted in 1973, latest amendment in 2015
- ▶ 3 year statute of limitations (3 months for political conduct)
- ▶ Differs in various ways from the ABA Model Code

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)

PREAMBLE: GOALS OF THE CODE

“An independent and honorable judiciary is indispensable to justice in our society, and to this end and in furtherance thereof, this Code of Judicial Conduct is hereby established.”

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.

Key Points:

- General provisions that apply to a judge's conduct **on AND off the bench**
- Your actions reflect on the judiciary as a whole and can threaten public confidence in the courts

Canon 2:

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

- **Key Points:** Violations of Canon 2 generally involve:
- 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
 - **NOTE:** Canon 2B *permits* judges to write letters of recommendation, subject to certain guidelines

Canon 3:

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

Key Points:

- 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."

Canon 3A: Adjudicative Duties

► **Key Points:** Judges must always strive to:

- Be “**faithful to the law**” by study, competence and correct application of legal standards and rules
- Ensure everyone has a **full right to be heard**
- **Decide cases independently**, not swayed by “partisan interests, public clamor or fear of criticism”
- **Maintain respect and order** in the courtroom, including your own duty to be “**patient, dignified and courteous**” to everyone
- Avoid **ex parte communications**, **delay** in issuing orders, **public comments** on pending cases

Canon 3B: Administrative Duties

► **Key Points:**

- Be professional, courteous and collegial with your judicial colleagues and court staff!
- Pay attention to best practices in judicial administration, including case management
- Make sure court staff are also professional, courteous and collegial to each other and members of the public – they should “observe the standards of fidelity and diligence” that you do
- No favoritism or nepotism in making appointments
- Inherent authority to discipline attorneys

Canons 3C & 3D: Disqualification & Remittal



Key Points:

- You have a *duty* to hear and decide cases assigned to you – it is what the taxpayers pay you to do
- But, you **MUST** disqualify yourself from hearing cases where you have a conflict of interest, or where your “impartiality may reasonably be questioned”
- You **CAN** and **SHOULD** disqualify on your own initiative if you know of potential conflicts
- You can, in limited circumstances, seek **REMITTAL** (waiver) of the conflict

Constitutional Issues in Disqualification Decisions

► Protection of due process rights of litigants:

- **Caperton v. Massey Coal (2009)**: failure to disqualify in cases involving large campaign contributions from a party can amount to a due process violation
- **Williams v. Pennsylvania (2016)**: Chief Justice of Pennsylvania who was a former DA violated due process rights of accused when he failed to recuse himself based on his earlier role in the case, even if administrative in nature and even if his vote in the case was not dispositive in the en banc decision

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

Key points:

- Most judges are active in their communities and in non-profit organizations, and this is a good thing!
- The Code distinguishes between activities as a judge (Canon 4) and those undertaken in your personal capacity (Canon 5)
- 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

Canon 5C-5G: Regulating Financial Activities, Gifts and Outside Income

Things You Can Do:

- Manage your own personal investments and those for immediate family members
- Be a fiduciary for family members
- Earn outside income in certain circumstances, but it may need to be disclosed annually
- Accept most gifts, although some may have to be disclosed annually

Things You Can't Do:

- Have a leadership role in a for-profit entity, including LLC
- Practice law or provide legal advice to ANYONE- even on a pro bono basis or for family members
- Accept gifts from parties
- Be a mediator or arbitrator, UNLESS you are a retired emergency judge

Canon 6: Outside Income & Annual Reporting

Key Points:

- Each year by **May 15**, you **MUST FILE** with the appropriate Clerk of Court your Annual Gift and Income (Canon 6) Report
 - Describe sources of income in excess of \$2000 (e.g., compensation for teaching, rental income)
 - Gifts in excess of \$500 (unless from family members or for personal occasions)
 - This is **NOT THE SAME** as the required SEI form to be filed with the State Ethics Commission each year
- Canon 6 also addresses **expense reimbursement** – if you receive reimbursement for attending an event that is **MORE THAN THE ACTUAL COST**, it can be considered compensation and is reportable if more than \$2000 in excess of costs

CANON 7: POLITICAL CONDUCT



▶ **You MAY:**

- ▶ Identify yourself as a member of a political party
- ▶ Contribute to political PARTIES (not candidates)
- ▶ Serve as a political party delegate or political party leader or officer
- ▶ Attend, preside over and speak at political party meetings & conventions, campaign events including fundraisers for individual candidates
- ▶ Your spouse and other family members are permitted to engage in political activity, but be careful that their conduct is not attributed to you!

CANON 7: POLITICAL CONDUCT - PROHIBITED ACTIVITIES



- ▶ **DO NOT Endorse** other candidates UNLESS you are also a candidate
- ▶ **DO NOT Contribute** to individual campaigns **directly or indirectly**
 - ▶ Your spouse CAN, but avoid sending checks from JOINT CHECKING ACCOUNTS!
- ▶ **DO NOT Solicit Donations or Engage in Fundraising** for other candidates, politicians or political organizations, either directly or indirectly
- ▶ **DO NOT Misrepresent** your own qualifications, and as a general rule consistent with Canons 1 and 2, the qualifications of other candidates

What Happens If A Complaint is Filed Against You?

- ▶ Review of complaints by a designated Panel
 - Most complaints are dismissed, but some warrant a "preliminary investigation" to get more details about the case or issues – you still are **not notified**
 - More serious and potentially meritorious complaints warrant a "formal investigation" – if so, you receive a certified letter notifying you of the investigation
- ▶ At any stage of the review and/or investigation, the assigned Panel can dismiss the complaint and issue a private letter of caution
- ▶ After a formal investigation, the Panel can dismiss the complaint or authorize a statement of charges

What Happens if a Statement of Charges is Filed?

- ▶ A disciplinary recommendation proceeding is commenced by the filing of a statement of charges
- ▶ It is a confidential proceeding, and remains so unless the Supreme Court imposes discipline
- ▶ You are entitled to answer, engage in discovery, and defend yourself (with or without counsel) at a hearing before a DIFFERENT PANEL than the investigative panel
- ▶ At the conclusion of the hearing, the hearing Panel will either dismiss the charges or issue a RECOMMENDATION OF PUBLIC DISCIPLINE to the Supreme Court, and you may request a hearing and file briefs before the Court during its review

What Ethics Assistance Can I Receive from the Commission?

- ▶ **Formal Advisory Opinions**
 - Issued by the Commission as a whole and posted on our website and published in the Appellate Reporter
 - Lengthy process of research, review and approval (6-8 months)
- ▶ **Informal Advisory Opinions**
 - Commission staff receives calls and emails from judges around the state with questions needing a quick answer

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"I think, deep down, maybe I'm holding myself in contempt."

THANK YOU AND GOOD LUCK!
CALL US WITH QUESTIONS!
