

NORTH CAROLINA JUDICIAL STANDARDS COMMISSION
MATERIALS FOR NEW JUDGES
2018

1. Welcome Letter from Judge Wanda G. Bryant, Chair, North Carolina Judicial Standards Commission
2. North Carolina Code of Judicial Conduct
3. Tips for New Judges
4. Tips on the Use of Official Letterhead
5. Political Conduct Guidance for Judges
6. Selected Formal Advisory Opinions
7. Canon 6 Report Form
8. Commission Statutory Authority
9. Commission Annual Report 2017



State of North Carolina Judicial Standards Commission

JUDGE WANDA G. BRYANT, CHAIR
JUDGE R. STUART ALBRIGHT
JUDGE SHERRI W. ELLIOTT
CRESSWELL D. ELMORE
JUDGE JAMES H. FAISON, III
FORREST A. FERRELL
JUDGE JEFFERY B. FOSTER
GRADY H. HAWKINS
TALECE Y. HUNTER
WILLIAM H. JONES, JR.
DEAN JORDAN
ALLISON MULLINS
LONNIE M. PLAYER, JR.

P. O. Box 1122
Raleigh, NC 27602
(919) 831-3630

CAROLYN A. DUBAY
EXECUTIVE DIRECTOR

JAMESON M. MARKS
COMMISSION COUNSEL

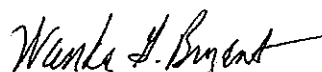
November 14, 2018

Dear New Judges of the General Court of Justice:

As Chair of the North Carolina Judicial Standards Commission, I congratulate you on your recent election or appointment to judicial office in the State of North Carolina. The Judicial Standards Commission is charged with the important task of investigating allegations of judicial misconduct or disability against judges and justices of the North Carolina Court of General Justice and commissioners and deputy commissioners of the North Carolina Industrial Commission. Each year, the Judicial Standards Commission considers over 300 complaints, and each one is carefully reviewed with an eye towards maintaining the highest ethical standards of our state's judicial officers and ensuring fairness to both the complainant and the judge. In addition to these duties, the Commission staff is available to you to answer questions on how the Code of Judicial Conduct applies in situations you are confronting in your new role as judges.

The Commission and its staff remain ever mindful of the importance of the faithful execution of the Commission's mission. The work of the Commission is critical to maintaining public trust and confidence in the judiciary. The existence and authority of an independent commission to investigate and recommend discipline in cases of judicial misconduct is also a central component of any civil society committed to the rule of law. The Commission and staff are fully aware of the tremendous responsibility that is entrusted to us. We are proud to discharge these duties and to continue to serve as a resource for education and outreach on the importance of judicial ethics. It remains an honor and a privilege to serve as the Chair of the Judicial Standards Commission, and on behalf of the Commission and its staff, I welcome you to the North Carolina judicial family.

Sincerely,


Wanda G. Bryant
Chair

THE NORTH CAROLINA CODE OF JUDICIAL CONDUCT

As Adopted by Order of the Supreme Court of North Carolina on January 31, 2006 and Amended by Order of the Supreme Court of North Carolina on November 6, 2015

Preamble

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. 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, or willful misconduct in office, or otherwise as grounds for disciplinary proceedings pursuant to Article 30 of Chapter 7A of the General Statutes of North Carolina. No other code or proposed code of judicial conduct shall be relied upon in the interpretation and application of this Code of Judicial Conduct.

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.

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 except as permitted by this Code; nor should the judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge may, based on personal knowledge, serve as a personal reference or provide a letter of recommendation. A judge should not testify voluntarily as a character witness.

C. A judge should not hold membership in any organization that practices unlawful discrimination on the basis of race, gender, religion or national origin.

Canon 3

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

The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply.

A. Adjudicative responsibilities.

(1) A judge should be faithful to the law and maintain professional competence in it. A judge should be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge should maintain order and decorum in proceedings before the judge.

(3) A judge should be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in the judge's official capacity, and should require similar conduct of lawyers, and of the judge's staff, court officials and others subject to the judge's direction and control.

(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, and, except as authorized by law, neither knowingly initiate nor knowingly consider ex parte or other communications concerning a pending proceeding. A judge, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge.

(5) A judge should dispose promptly of the business of the court.

(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; from addressing or discussing previously issued judicial decisions when serving as faculty or otherwise participating in educational courses or programs; or from addressing educational, religious, charitable, fraternal, political, or civic organizations.

(7) A judge should exercise discretion with regard to permitting broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during civil or criminal sessions of court or recesses between sessions, pursuant to the provisions of Rule 15 of the General Rules of Practice for the Superior and District Courts.

B. Administrative responsibilities.

(1) A judge should diligently discharge the judge's administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

(2) 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.

(3) A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware.

(4) A judge should not make unnecessary appointments. A judge should exercise the judge's power of appointment only on the basis of merit, avoiding nepotism and favoritism. A judge should not approve compensation of appointees beyond the fair value of services rendered.

C. Disqualification.

(1) On motion of any party, a judge should disqualify himself/herself in a proceeding in which the judge's impartiality may reasonably be questioned, including but not limited to instances where:

(a) The judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceedings;

(b) The judge served as lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(c) The judge knows that he/she, individually or as a fiduciary, or the judge's spouse or minor child residing in the judge's household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(d) The judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) Is acting as a lawyer in the proceeding;

(iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) Is to the judge's knowledge likely to be a material witness in the proceeding.

(2) A judge should inform himself/herself about the judge's personal and fiduciary financial interests, and make a reasonable effort to inform himself/herself about the personal financial interests of the judge's spouse and minor children residing in the judge's household.

(3) For the purposes of this section:

(a) The degree of relationship is calculated according to the civil law system;

(b) "Fiduciary" includes such relationships as executor, administrator, trustee and guardian;

(c) "Financial interest" means ownership of a substantial legal or equitable interest (i.e., an interest that would be significantly affected in value by the outcome of the subject legal proceeding), or a relationship as director or other active participant in the affairs of a party, except that:

(i) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

(ii) an office in an educational, cultural, historical, religious, charitable, fraternal or civic organization is not a "financial interest" in securities held by the organization.

D. Remittal of disqualification.

Nothing in this Canon shall preclude a judge from disqualifying himself/herself from participating in any proceeding upon his the judge's own initiative. Also, a judge potentially disqualified by the terms of Canon 3C may, instead of withdrawing from the proceeding, disclose on the record the basis of the judge's potential disqualification. If, based on such disclosure, the parties and lawyers, on behalf of their clients and independently of the judge's participation, all agree in writing that the judge's basis for potential disqualification is immaterial or insubstantial, the judge is no longer disqualified, and may participate in the proceeding. The agreement, signed by all lawyers, shall be incorporated in the record of the proceeding. For purposes of this section, pro se parties shall be considered lawyers.

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 speak, write, lecture, teach, participate in cultural or historical activities, or otherwise engage in activities concerning the economic, educational, legal, or governmental system, or the administration of justice.

B. A judge may appear at a public hearing before an executive or legislative body or official with respect to activities permitted under Canon 4A or other provision of this Code, and the judge may otherwise consult with an executive or legislative body or official.

C. A judge may serve as a member, officer or director of an organization or governmental agency concerning the activities described in Canon 4A, and may participate in its management and investment decisions. A judge may not actively assist such an organization in raising funds but may be listed as a contributor on a fund-raising invitation. A judge may make recommendations to public and private fund-granting agencies regarding activities or projects undertaken by such an organization.

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.

A. **Avocational activities.** A judge may write, lecture, teach, and speak on legal or non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not substantially interfere with the performance of the judge's judicial duties.

B. **Civic and charitable activities.** A judge may participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of the judge's judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal or civic organization subject to the following limitations.

(1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge.

(2) A judge may be listed as an officer, director or trustee of any cultural, educational, historical, religious, charitable, fraternal or civic organization. A judge may not actively assist such an organization in raising funds but may be listed as a contributor on a fund-raising invitation.

(3) A judge may serve on the board of directors or board of trustees of such an organization even though the board has the responsibility for approving investment decisions.

C. Financial activities.

(1) A judge should refrain from financial and business dealings that reflect adversely on the judge's impartiality, interfere with the proper performance of the judge's judicial duties, exploit the judge's judicial position or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which the judge serves.

(2) Subject to the requirements of subsection (1), a judge may hold and manage the judge's own personal investments or those of the judge's spouse, children, or parents, including real estate investments, and may engage in other remunerative activity not otherwise inconsistent with the provisions of this Code but should not serve as an officer, director or manager of any business.

(3) A judge should manage his/her investments and other financial interests to minimize the number of cases in which the judge is disqualified.

(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; books supplied by publishers on a complimentary basis for official or academic use; or an invitation to the judge and 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;

(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; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;

(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.

(5) For the purposes of this section "member of the judge's family residing in the judge's household " means any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household.

(6) A judge is not required by this Code to disclose his/her income, debts or investments, except as provided in this Canon and Canons 3 and 6.

(7) Information acquired by a judge in the judge's judicial capacity should not be used or disclosed by the judge in financial dealings or for any other purpose not related to the judge's judicial duties.

D. Fiduciary activities. A judge should not serve as the executor, administrator, trustee, guardian or other fiduciary, except for the estate, trust or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of the judge's judicial duties. "Member of the judge's family" includes a spouse, child, grandchild, parent, grandparent or any other relative of the judge by blood or marriage. As a family fiduciary a judge is subject to the following restrictions:

(1) A judge should not serve if it is likely that as a fiduciary the judge will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust or ward becomes involved in adversarial proceedings in the court on which the judge serves or one under its appellate jurisdiction.

(2) While acting as a fiduciary a judge is subject to the same restrictions on financial activities that apply to the judge in his/her personal capacity.

E. Arbitration. A judge should not act as an arbitrator or mediator. However, an emergency justice or judge of the Appellate Division designated as such pursuant to Article 6 of Chapter 7A of the General Statutes of North Carolina, and an Emergency Judge of the District Court or Superior Court commissioned as such pursuant to Article 8 of Chapter 7A of the General Statutes of North Carolina may serve as an arbitrator or mediator when such service does not conflict with or interfere with the justice's or judge's judicial service in emergency status. A judge of the Appellate Division may participate in any dispute resolution program conducted at the Court of Appeals and authorized by the Supreme Court.

F. Practice of law. A judge should not practice law.

G. Extra-judicial appointments. A judge should not accept appointment to a committee, commission, or other body concerned with issues of fact or policy on matters other than those relating to cultural or historical matters, the economic, educational, legal or governmental system, or the administration of justice. A judge may represent his/her country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities.

Canon 6

A judge should regularly file reports of compensation received for quasi-judicial and extra-judicial activities.

A judge may receive compensation, honoraria and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this Code, subject to the following restrictions:

A. Compensation and honoraria. Compensation and honoraria should not exceed a reasonable amount.

B. Expense reimbursement. Expense reimbursement should be limited to the actual cost of travel, food and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse. Any payment in excess of such an amount is compensation.

C. Public reports. A judge shall report the name and nature of any source or activity from which the judge received more than \$2,000 in income during the calendar year for which the report is filed. Any required report shall be made annually and filed as a public document as follows: The members of the Supreme Court shall file such reports with the Clerk of the Supreme Court; the members of the Court of Appeals shall file such reports with the Clerk of the Court of Appeals; and each Superior Court Judge, regular, special, and emergency, and each District Court Judge, shall file such report with the Clerk of the Superior Court of the county in which the judge resides. For each calendar year, such report shall be filed, absent good cause shown, not later than May 15th of the following year.

Canon 7

A judge may engage in political activity consistent with the judge's 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 "candidate" is a person actively and publicly seeking election to judicial office. A person becomes a candidate for judicial office as soon as the person 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 "candidate" has the same meaning when applied to a judge seeking election to a non-judicial office.

(2) To "solicit " 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 "endorse " 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 that person's 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/herself, 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;

(2) if a judge 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/herself as a member of a political party and make financial contributions to a political party or organization; provided, however, that he/she may not personally make financial contributions or loans to any individual seeking election to office (other than himself/herself) 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/her 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 the judge should 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;

(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/herself) 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/her 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.

Limitation of Proceedings

Disciplinary proceedings to redress alleged violations of Canon 7 of this Code must be commenced within three months of the act or omission allegedly giving rise to the violation. Disciplinary proceedings to redress alleged violations of all other provisions of this Code must be commenced within three years of the act or omission allegedly giving rise to the violation; provided, however, that disciplinary proceedings may be instituted at any time against a judge convicted of a felony during the judge's tenure in judicial office.

Scope and Effective Date of Compliance

The provisions of Canon 7 of this Code shall apply to judges and candidates for judicial office. The other provisions of this Code shall become effective as to a judge upon the administration of the judge's oath to the office of judge; provided, however, that it shall be permissible for a newly installed judge to facilitate or assist in the transfer of the judge's prior duties as legal counsel but the judge may not be compensated therefor.



JUDICIAL STANDARDS COMMISSION
STATE OF NORTH CAROLINA

TIPS FOR NEW JUDGES
November 2016

Congratulations on your recent election or appointment as a judge of General Court of Justice of the State of North Carolina. Over the next few months, you will be transitioning from the practice of law to your new role with the judiciary. There will be many issues for you to address, areas of the law to learn, and changes that will take place in your life. The following answers to FAQs are offered to advise and assist you with some basic ethical guidance during this process with a focus on issues typically confronted by new judges. This list is not exhaustive of the ethical issues that may arise, and serves only to highlight the most common questions from new judges. In addition, unless otherwise noted, please note that these answers are not “formal” opinions of the Commission, and are provided for general guidance only. Ethics advice is very fact specific, and for answers to specific questions, the staff of the Judicial Standards Commission is available to provide a confidential informal advisory opinion. The office number is (919) 831-3630, or you may also email questions to:

Executive Director Carolyn Dubay, carolyn.a.dubay@coa.nccourts.org or
Commission Counsel Jameson Marks, jameson.m.marks@coa.nccourts.org.

The Code of Judicial Conduct and the Judicial Standards Commission Generally

The North Carolina Code of Judicial Conduct was first adopted by the North Carolina Supreme Court in 1973, and has been amended from time to time over the past decades. The most recent version was adopted in 2006, with a minor amendment in 2015. A full copy of the current version of the Code of Judicial Conduct is provided with your orientation materials and is also available on the Commission’s website. The Code of Judicial Conduct is comprised of seven Canons and applies to a judge’s conduct on and off the bench, and for actions taken in both the judge’s official and personal capacity. All of the Code’s provisions focus on maintaining three core principles indispensable to public confidence in our courts: integrity, impartiality and independence.

The North Carolina Judicial Standards Commission enforces the Code of Judicial Conduct against judges of the General Court of Justice. In 2011, the General Assembly added the offices of commissioner and deputy commissioner of the North Carolina Industrial Commission to those offices under the jurisdiction of the North Carolina Judicial Standards Commission. Complaints and proceedings against judges are confidential under state law and only become public if the Supreme Court determines that discipline is appropriate.

FAQs: Winding Down Law Practice

Q: When do you become subject to the Code of Judicial Conduct?

The Code applies to a new judge upon the administration of the judge's oath of office.

Q: May you still receive payment from your office or file fee applications and accept payment for court-appointed work?

Yes. Canon 5F prohibits judges from practicing law and you may not provide any legal services, paid or pro bono, after you take the oath of judicial office. However, you are entitled to collect fees earned before that time, including contingent fees and payment for court-appointed work. In addition, the Code's Note on Scope and Effective Date of Compliance provides, *inter alia*, that "it shall be permissible for a newly installed judge to facilitate or assist in the transfer of the judge's prior duties as legal counsel but the judge may not be compensated therefor." Thus, even if you are assisting with the transfer of your cases, you may not be compensated for work performed after becoming a judge.

Q: Do you have to complete winding down your law practice before taking your oath of office?

No. The Commission understands that some aspects of closing down a practice take more than a few months. There is not any specific date by which you must wind down your former practice, but you should take action to ensure that your matters are wrapped up within a reasonable amount of time. So long as you are taking reasonable steps to facilitate the immediate wind down of your law practice, and/or dissolution of the firm, and that the actual dissolution takes place within a reasonable time, the Commission would likely recognize your best efforts at compliance with the Code.

Q: Can you sell your practice / office space to an attorney in your district?

Yes. A judge may advertise the sale of their former practice, and/or business assets (furniture, etc.), but should not mention his or her judicial title in the advertisement. If your practice/property is bought by another attorney, you would need to disclose that transaction if the lawyer(s) appeared before you. Typically, we recommend disclosing such a relationship for at least 6 months after the transaction has been completed.

Q: Can you rent or lease office space to an attorney in your district?

Yes, but Canon 5C(1) cautions judges against engaging in financial or business dealings with lawyers or persons likely to come before the court on which the judge serves. At the same time, the Commission acknowledges the realities of real estate markets and that the most likely lessees of law office space are going to be lawyers. If an attorney rents or leases your office space, you would need to disqualify yourself from proceedings in which your tenant appears before you. The duty to disqualify would be ongoing for the duration of the business relationship (lease/rental) and for a 6 month period after the relationship ends. To avoid disqualification, you could carefully follow the requirements for remittal of the conflict under Canon 3D. For

specific advice on renting office space to local attorneys and the disqualification issues that may arise, you are encouraged to contact the Commission staff.

Q: May I place my LLC/PLLC on inactive status and remain a manager while I'm a judge?

No. In Formal Advisory Opinion (FAO) 2009-01, the Commission concluded that a judge who organized a PLLC for his solo practice, which required him to serve as both member and manager, was prohibited from maintaining status as a manager even if the PLLC was inactive. The Commission strictly construed the prohibition found in Canon 5C(2) on judges serving as officers or other leaders in business entities.

Q: May I refer my clients to other attorneys?

Yes. You may recommend other attorneys to your former clients. When doing so, please remember that under Canon 2B, a judge should not lend the prestige of the judicial office to advance the private interests of others. To that end, and to avoid the appearance that you are steering clients to a particular attorney who would benefit from the prestige of your reference, the Commission recommends that you provide former clients with the names of several attorneys they may contact, and these attorneys should not be informed of your referral unless absolutely necessary.

FAQs: Conflicts of Interest

Q: Is there a general rule for when you need to recuse from hearing certain cases?

Disqualification and recusal questions are both common and complicated, and always turn on the unique facts of each situation. Generally speaking, however, Canon 3C requires that a judge must recuse where he or she has a personal connection to the case that reasonably could affect the judge's decision on the merits. These conflicts include familial or other personal connections to the people involved in the case (the parties, the lawyers, the witnesses, the jurors), personal knowledge of the facts learned outside your role as the presiding judge, previous involvement in the matter as a lawyer, or a direct financial interest in the outcome of the case. Canon 3C not only identifies the specific grounds for mandatory disqualification, but also states the general provision that disqualification is required where the judge's impartiality in deciding the case "may reasonably be questioned." At the same time, judges have a duty to hear and decide the cases before them, and disqualification should only occur when warranted by the facts of the particular case. Because of the fact specific nature of disqualification questions, you may also contact Commission staff for advice.

Q: If you're coming to the bench from the District Attorney's or Public Defender's Offices, can you hear cases in criminal court?

No. Pursuant to FAO 2009-02, a new judge who was formerly employed as an assistant district attorney must disqualify himself or herself from presiding over criminal district court cases where the judge: (1) was involved in the matter's investigation or prosecution, (2) has personal knowledge of disputed evidentiary facts, or (3) when the judge believes he/she cannot be impartial. See also FAO 2009-07 (relating to defense counsel). Generally, the Commission

also advised in FAO 2009-002 that the best practice is for judges to follow a “Six Month Rule” whereby newly installed judges, for a minimum of 6 months after taking judicial office, refrain from presiding over any adjudicatory proceeding wherein an attorney associated with the judge’s prior employer provides legal representation to a party in the proceeding. Specific circumstances may necessitate a deviation from the ‘Six Month Rule.’

Q: What if any obligations do you have when a family member appears before you?

Disqualification of the judge is required in matters in which a spouse or child living within the judge’s household represents a litigant, contributes to the preparation of the matter for hearing, or has a financial interest in the outcome of the matter. In 2015, the Commission issued FAO 2015-03 to guide judges through disqualification based on familial connections, including when a family member’s employer appears before you, and what to do in cases involving more distant family relationships.

Q: Do I have to disqualify if someone complains about me to the Judicial Standards Commission?

Generally no. To avoid judge shopping by filing unwarranted complaints, the Commission in FAO 2014-02 explained that disqualification would only be required if the judge has been notified of the initiation of a formal investigation, received a private letter of caution, or has been served with a statement of charges. Of course, circumstances could exist where the judge has developed a demonstrated and actual bias against a litigant for filing a complaint, and these facts may warrant disqualification.

FAQs: Charitable, Civic and Bar-Related Activities

Q: I serve on the board of a local non-profit. Do I have to step down now that I’m a judge?

It depends. Generally speaking, judges may continue to engage in a wide range of charitable and civic activities pursuant to Canons 4 and 5. Canon 4C specifically allow judges to serve in a quasi-judicial capacity as an officer or board member of an organization or governmental agency relating to the legal, economic, educational or governmental system, or those that relate to the administration of justice. Similarly, Canon 5B permits judges to serve as an officer or board member of educational, religious, charitable, fraternal or other civic organizations. The caveats for service on such boards are as follows: (1) the judge is strictly prohibited from assisting the organization with fundraising, which includes prohibitions on being listed as a host or sponsor of a fundraising event (see FAO 2013-02); (2) the judge should not provide legal advice to the organization (Canon 5F); (3) the service should not interfere with the judge’s official duties (Canon 5B); (4) association with the organization should not reflect adversely on the judge’s impartiality (Canon 5B); and (5) the organization should not be one that regularly appears before you as a judge (Canon 5B).

Q: Can I continue to be involved with my local bar association?

Yes. In FAO 2014-01, the Commission opined that “a judge may maintain membership in a

voluntary bar association so long as the organization promotes the bar in general and the legal profession as a whole, and is not essentially a law-related special interest group which promotes issues pertaining to the representation of a particular group of clients, such as criminal defendants, personal injury plaintiffs, criminal prosecution, insurance defense” or other similarly interest-focused advocacy groups.

Q: Can I fill out a Certificate of Moral Character for the Board of Law Examiners for someone I know who is taking the bar?

Yes. Normally, a judge may not voluntarily provide character evidence regarding an individual, as per Canon 2B. In an exception to this rule, the Commission found in FAO 2007-03 that it would be appropriate for judges to complete the North Carolina Board of Law Examiner’s Certificate of Moral Character on behalf of an applicant seeking admission to practice law in North Carolina.

FAQs: Business and Financial Activities

Q: Now that you’re a judge, what sort of involvement may you have in businesses?

The relevant portion of Canon 5C(2) states judges “... should not serve as an officer, director or manager of any business.” This language precludes judges from serving in an official capacity for any business concern. The Code also does not contain any exception for a wholly owned or closely held family business.

Q: May you still manage your family’s financial interests?

Yes. Canon 5C(2) provides that “a judge may hold and manage the judge’s own personal investments or those of the judge’s spouse, children, or parents, including real estate investments, and may engage in other remunerative activity not otherwise inconsistent with the provisions of this Code but should not serve as an officer, director or manager of any business.”

FAQs: Gift and Income Reporting Requirements

Q: What is the Canon 6 financial disclosure and do you have to fill it out?

Judges are required to file annual gift and income reports by May 15 each year on forms provided by the Commission. These reports must identify: (1) sources of income over \$2,000 received during the prior calendar year (examples: rental income, teaching compensation) and (2) certain gifts you received where the value exceeds \$500. Reports from superior and district court judges are to be filed with the Clerk of Superior Court of the county in which the judge resides. If your term begins in 2017, you do not need to file until 2018. Contact Commission staff for advice on what income and gifts must be reported. Please note that this form is entirely distinct from the required Statement of Economic Interest (SEI) forms required to be filed each year by the State Ethics Commission.



JUDICIAL STANDARDS COMMISSION
STATE OF NORTH CAROLINA

TIPS ON THE USE OF OFFICIAL LETTERHEAD
April 2017

This tip sheet addresses (1) the use of official letterhead generally and (2) the more specific use of official letterhead in recommendation letters for individuals (either for jobs, school admission, awards, etc.).

I. Use of Official Letterhead Generally

The North Carolina Code of Judicial Conduct does not provide any specific rules relating to the use of official letterhead, although Canon 2B does generally warn that a “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” Particular concern over the use of official letterhead arises when a judge uses official letterhead in personal affairs (such as personal business or family matters, campaigns, etc.) or when a judge uses official letterhead to influence a decision-maker on issues that have no relation to the judge’s official or professional activities or the administration of justice. Building on these prohibitions, the advice (formal and informal) from the Judicial Standards Commission regarding the use of official letterhead generally falls into a few common scenarios:

- (1) providing recommendations or serving as personal references for *individuals the judge knows* – official letterhead is generally permitted for recommendations based on the judge’s observations of the individual made in the scope of the judge’s official duties and professional judicial activities; personal stationery should be used for recommendations based on knowledge formed and maintained outside the judicial role
- (2) providing thank you notes or letters of *appreciation/commendation* – official letterhead is generally permitted when it is done as a civic matter, such as a sign of appreciation for outstanding civic conduct in the community, congratulations on a professional achievement relating to the legal profession, thanks for attending events related to the administration of justice, and the like (in these circumstances in particular, since the letter is not to be used in any

decision-making or to confer any benefit, the risk of misuse of the prestige of the office is minimized)

(3) providing recommendations to grant-making organizations to fund *specific programs* – official letterhead is permitted when the recommendation is offered to demonstrate specific benefits of the program to the judge’s court (in the case of the Chief Justice, to the courts generally)

(4) providing *information to government officials*, such as communications with legislators, recommendations to the Governor’s office on judicial appointees, references and letters to the State Bar for admissions or other official business, communications with other state agencies/offices that interact with the courts and so forth – official letterhead is appropriate when providing information to official bodies related to the administration of justice or other legal or governmental functions

II. Use of Official Letterhead for Recommendations of Individuals for Jobs, Awards, School Admission, Etc.

Canon 2B provides that “A judge may, based on personal knowledge, serve as a personal reference or provide a letter of recommendation.” The use of official letterhead to provide a letter of recommendation generally turns on whether the judge’s personal knowledge of the individual’s skills and capabilities arises from the course of the judge’s judicial activities (official or professional) or whether the personal knowledge stems from the judge’s personal life or professional activities before becoming a judge. Thus, to justify the use of official letterhead, there must be some direct correlation between the judge’s professional duties/activities as a judge and the basis for the recommendation.

Formal Advisory Opinion (FAO) 2007-02 addressed generally when a judge may issue letters of recommendation and provided some basic guidance on when official letterhead is appropriate. In FAO 2007-02, the Commission took a restrictive view on the use official letterhead for writing references or recommendations, reflecting the view embodied in the ABA Model Code of Judicial Conduct before it was amended in 2007.¹ Pursuant to FAO 2007-02, the general rule is that since recommendations are personal in nature, they should be written on personal stationery (although the judge may reference his or her judicial office to give context to the relationship to or observations of the individual). In some circumstances, a judge should not even mention his or her judicial office (i.e., where it is not relevant to the relationship with the individual or recommendation and where it would only serve to use the judicial office to influence the decision-maker). FAO 2007-02 did identify one circumstance when official letterhead could be used for recommendations – where a state agency or official requests a judge’s input in an official capacity.

¹ In 2007, the ABA amended the Model Code of Judicial Conduct to add new comments to clarify that in the context of providing recommendations, previous strict limits on the use of judicial letterhead should be relaxed and that a judge may use official letterhead for recommendations if the judge indicates that it is a personal recommendation (i.e., not made on behalf of the court) and there is no reasonable likelihood that the use of the letterhead would reasonably be perceived as an attempt to exert pressure on the recipient by reason of the judicial office. Per an article by Cindy Gray of the Center for Judicial Ethics at the National Center for State Courts, as of 2015, 18 states had adopted the new comment to the model rule on the use of official letterhead.

Since 2007, however, the Commission staff has clarified in numerous informal opinions that there are many other situations where official letterhead may be used in written recommendations. The *general rule* that has emerged is that *so long as the recommendation or reference is based upon personal knowledge obtained within the scope of a judge's official duties, then official stationery may be used*. The term knowledge gained "within the scope of a judge's official duties" has typically meant that the judge knows the person through exercising his or her official duties in the courthouse or through other professional activities related directly to the judicial role (such as work with official commissions, task forces or bar associations). As such, official letterhead is appropriate when referencing individuals (1) who have worked under the judge's supervision and control or with whom the judge has day to day contact through his or her official duties (i.e. courtroom clerks, probation officers, judicial administrative staff, etc.) or (2) who have worked directly with the judge during the exercise of the judge's quasi-judicial professional activities that are permitted under Canon 4 (activities related to the administration of justice, etc.). If the judge's personal knowledge of the individual arose only from non-judicial extracurricular community or avocational activities (as permitted under Canon 5) or through purely personal or family relationships, then the judge can still make the recommendation, but should use personal stationery. When using personal stationery, the recommendation should only reference the judge's title and position if it is relevant to explain the basis for the recommendation.

The following is a summary of appropriate use of official letterhead when making recommendations on behalf of someone the judge knows:

- Recommendations to the Governor or federal officials regarding judicial appointments
- Recommendations on behalf of judicial employees with whom the judge works on a regular basis (law clerks, judicial assistants, etc.) – can be recommendations for jobs, school admissions, scholarships, awards, etc.
- Recommendations on behalf of attorneys when the recommendation is based on the judge's observations and knowledge of the attorney's abilities because the attorney has appeared before the judge or where the attorney has worked with the judge in some official capacity (such as serving on commissions or committees together where the judge is serving as in his or her capacity as a judge) (this would not extend to situations where the judge and the attorney serve on committees and boards arising from purely avocational or civic engagement unrelated to the administration of justice)
- Nominations of individuals for professional recognition or awards relating to the administration of justice (so long as the knowledge of that individual's achievements is gained through the judge's role as a judge)
- Other written communications with federal, state or local officials or agencies when offered in your official capacity (such as where the agency requires letters from judges, e.g., State Bar admissions letters, State Bar specialization questionnaires, recommendations for JAG Corps, DA's offices, PD's offices, etc.)

Based on past advice, personal stationery should be used whenever the judge's knowledge of the individual arises from connections and relationships formed outside the judicial role (such as

through family, friends, community and religious activities and prior employment). For example purposes, personal stationery should be used in the following situations:

- Recommendations for former colleagues and employees from the judge's time before becoming a judge
- Letters to the NC Parole Commission or other criminal justice agencies regarding specific inmates where the letter is based on knowledge the judge gained prior to becoming a judge or in a personal capacity
- Letters written on behalf of attorneys who are close, personal friends who do not appear before or interact with the judge in the judge's official capacity
- Letters written as part of a judge's service on a civic/charitable board



JUDICIAL STANDARDS COMMISSION
STATE OF NORTH CAROLINA

MEMORANDUM

TO: Members of the North Carolina Judiciary

FROM: Judge Wanda G. Bryant, Chair of the Judicial Standards Commission

DATE: 29 March 2018

RE: Political Conduct and the Code of Judicial Conduct

With the new filing period for judicial candidates still months away, the Commission has already begun to receive many questions from judges and judicial candidates as they must nevertheless prepare for election this fall. To assist you with compliance with the Code of Judicial Conduct, this memorandum addresses the specific prohibitions in the Code, as well as provides guidance on the most common questions. For specific questions, a judge or judicial candidate should contact the Commission for an informal advisory opinion by calling (919) 831-3630 or emailing Carolyn Dubay, cad@coa.nccourts.org or Jameson Marks, jmm@coa.nccourts.org.

This memorandum addresses the following issues:

1. Overview of the Code of Judicial Conduct as it Relates to Political Conduct
2. Soliciting Funds for Your Campaign or a Joint Judicial Campaign
3. Other Do's and Don'ts for Your Campaign
4. Assisting Other Candidates or Political Organizations
5. Disqualification Issues Relating to Campaign Conduct
6. Resign to Run Requirement
7. Campaign Misconduct By Candidates Who Are Not Judges

1. OVERVIEW OF THE CODE OF JUDICIAL CONDUCT AS IT RELATES TO POLITICAL CONDUCT

Canon 7 of the Code of Judicial Conduct governs political conduct and applies to judges and judicial candidates. The term “judge” also includes emergency judges and retired judges subject to recall, as well as commissioners and deputy commissioners of the North Carolina Industrial Commission. Family members are not bound by the restrictions in Canon 7 and may engage in personal political activities.

While each of these topics is treated in more detail in this memorandum, generally speaking, judges and judicial candidates **MAY NOT**:

- *Contribute* to any individual candidate or campaign committee;
- *Solicit* campaign funds or contributions for any candidate or political party/organization;
- *Endorse* any candidates for elected office (unless the judge is also a candidate);
- *Misrepresent* the judge’s identity or qualifications for office.

On the other hand, judges and judicial candidates **MAY**:

- *Identify* with a political party;
- *Contribute* to a political party/organization;
- *Attend and speak* at political events and campaign fundraisers for other candidates;
- *Be listed in publicity* for a political event or fundraiser (but not as a host or sponsor);
- *Personally solicit* contributions to his or her campaign or a joint judicial campaign.

Beyond Canon 7, campaign and political conduct of judges also implicates the following provisions of the Code: Canon 1 (duty to maintain the integrity and independence of the judiciary); Canon 2 (duty to avoid impropriety in all activities); Canon 3A (duty to remain “unswayed by partisan interests” and prohibition on comments about pending cases); Canon 3C (disqualification rules). As always, a judge’s core duties are to consistently ensure the integrity, impartiality and independence of the judiciary.

2. SOLICITING FUNDS FOR YOUR CAMPAIGN OR A JOINT JUDICIAL CAMPAIGN

Under Canon 7B(4), a judge may *personally solicit* campaign funds and request public support for his or her own campaign. A judge may also manage and serve as treasurer of his or her own campaign, or form a campaign committee to solicit and manage the expenditure of campaign funds (see below on use of court staff as campaign volunteers). Judges should also contact the North Carolina State Board of Elections for advice on reporting requirements and carefully review applicable campaign finance and election regulations.

Although a judge may personally solicit campaign contributions, past advice from the Commission has identified some specific limitations on campaign solicitations based on the broader requirements of Canons 1, 2 and 3. As such, a judge **MAY NOT**:

- personally solicit campaign contributions and public support directly from specific parties and attorneys presently appearing before the judge;

- solicit any contributions, personally or otherwise, within the courthouse or while discharging official duties;
- use state resources for campaign purposes (this includes state computers, copiers, telephones, official email, official letterhead, or other state property).

Personally soliciting campaign contributions from parties while appearing before the judge is especially egregious because such conduct creates a public appearance tantamount to *quid pro quo* corruption and misuses state property for personal reasons, all in violation of Canons 1, 2A and 3A(1). The term “presently appearing before the judge” is to be read to clearly include those litigants and attorneys appearing before a judge in a courtroom. It is not to be read so broadly as to include attorneys or parties who may have a matter pending within the jurisdiction of the judge’s court but who currently have no hearings or appearances scheduled before that judge. Even when litigants or attorneys are not presently appearing before a judge, however, it is still improper to solicit them within the courthouse or during any functions associated with the judge’s official job duties.

Canon 7B(3) specifically allows a judge who is a candidate to conduct a “joint judicial campaign” with another judicial candidate. The term “joint judicial campaign” is not defined in the Code of Judicial Conduct. Past informal advisory opinions make it clear, however, that this rule is a narrow exception to the general rule that a judge may not contribute to other candidates for elected office. The exception for joint judicial campaigns is intended to allow joint campaign activity, such as joint events, shared campaign mailings, and the sharing of incidental judicial campaign costs, such as travel. The Commission advises that in order to participate in a joint judicial campaign, all participants must be active candidates for judicial office and currently engaged in campaign activity. Any shared expenses must be for the mutual benefit of all participants within the joint judicial campaign. Again, candidates should be mindful of any applicable reporting requirements under state election law and ensure that any joint judicial campaign activity is appropriately reported to the State Board of Elections.

3. OTHER DO’S AND DON’TS FOR YOUR CAMPAIGN

Court Personnel as Campaign Staff: Under Canons 1, 2 and 3B(2), a judge has a duty to ensure public confidence in the independence of the judiciary and that judicial decision-making is “unswayed by partisan interests.” For this reason, a judge must maintain a strict separation of any campaign activities from his or her official duties. In that regard, a judge **MAY NOT:**

- require his or her staff or other court employees to work on campaign related activities (although court personnel may volunteer to help after work or on personal time);
- request, encourage or allow public officials/employees subject to the judge's direction or control to engage in campaign activity while at their public employment.

Towards these ends, Senior Resident Superior Court Judges and Chief District Court Judges are encouraged to remind other public officials who work in our courthouses, including Magistrates, Clerks of Superior Court and other court personnel, that they may not engage in any political conduct in the courthouse environs, and particularly during court sessions. This includes wearing

or displaying campaign paraphernalia. Such political activity in the courthouse diminishes the dignity and appearance of impartiality of the administration of justice. Consistent guidance is provided by the AOC General Counsel's office to Clerks of Court and Assistant and Deputy Clerks. See

http://juno.nccourts.org/sites/default/files/Legal%20Memos/memo_election_activity_20180213.pdf.

Appropriate Campaign Ads and Materials: The Commission has received numerous inquiries and some complaints regarding the content of judicial campaign material. While judges and judicial candidates have broad latitude in the content of their campaign advertising, judges continue to be bound by Canons 1, 2 and 3 and 7C, which together require that all campaign materials are dignified, not intentionally misleading, and do not diminish public confidence in the integrity, impartiality and independence of the judiciary. Types of assertions or statements in campaign materials that can violate these rules include the following:

- Campaign materials that suggest a judge's bias or predisposition for or against certain litigants, or that would create a reasonable suggestion that a judge would show favor toward a particular side in a legal dispute;
- An intentional and knowingly false representation about an opponent;
- Posting or distributing campaign signs and literature in the courthouse or any other place where the judge is holding court or conducting official business;
- Language or images in campaign ads that are undignified, profane or offensive;
- Language suggesting the judge has previously been elected when he or she was appointed; e.g., do not use the language "re-elect" if you have never been elected; you may use the word "keep" or "elect" where appropriate;
- Language using the title "Judge" before the candidate's name if the candidate is not a sitting judge.

Use of Photos of the Judge Robed and in the Courtroom: Campaign photographs/videos may be taken of a judge in his or her courtroom and wearing his or her robe. However, such photographs/videos should only be taken when the courtroom is otherwise not in use and should not be taken while the judge is presiding in court. The Commission also advises against using any photographs or video from an actual session of court for political purposes. Any use of photographs of a judge in a robe or in a courtroom should be appropriate and tasteful in order to promote continued respect for the decorum of the judicial office and the courthouse. Courtrooms and courthouses must also be available for such use by all judicial candidates and cannot be limited solely to incumbent judges, although non-judges may not appear in robes.

Use of State Seal on Campaign Literature: The use of the state seal, or any court seal, is not expressly prohibited under the Code of Judicial Conduct and may be appropriate to use in certain circumstances. However, in order to prevent confusion and to avoid the appearance of misuse of state property, any such materials bearing a seal or indicia of your office should include a clear and visible statement that the materials are not printed or mailed at government expense. The perception that government resources are being used for campaign purposes undermines public

faith and confidence in the integrity and impartiality of the judiciary. It is the responsibility of the judge to take reasonable steps to prevent such confusion.

Use of Official Email and State Computers for Campaign Conduct: A judge should not use any court resources, equipment or supplies for campaign conduct. This prohibition includes use of a state email account or state computer for campaign purposes. Just as a judge should not use state resources for his or her own political purposes, a judge should facilitate the compliance of other judges and court officials with this standard. Where possible a judge should not send campaign emails to other judicial officials at their state email addresses. However, the Commission acknowledges that sometimes campaigns rely on mass email communications sent to large distribution lists, such as the list of all licensed attorneys sold by the State Bar, or membership lists of certain bar groups. Where a judge has listed his or her state email address as a contact address for that group's purposes, a judicial candidate may inadvertently send materials to that address. Such incidents would not be viewed as misconduct, however candidates should be cautioned that political mail sent to a state email address may not be well-received by the recipient.

Social Media Use in Campaigns: Campaign communications disseminated through social media are subject to the same standards as other written communications. In other words, the statements should be truthful, dignified and professional and not undermine public confidence in the integrity, impartiality and independence of the courts. As a best practice, judges and judicial candidates should also monitor comments on social media by followers and connections and remove offensive or profane comments on the judge's public campaign page. Although the Commission has never concluded that a connection to a person on social media alone is sufficient to justify disqualification, public and open communications and discussions on social media with followers/connections could later result in a motion for disqualification if that follower/connection appears before you and thus should be avoided.

Answering Questions in Surveys/Debates/Media Interviews: Judicial candidates are often asked to respond to surveys from special interest groups and to participate in media interviews and judicial debates. Generally, a judge should not respond to any question in a manner that undermines public confidence in the integrity, independence and impartiality of the judiciary or conveys the impression that the judge favors a particular group. The judge should also refrain from discussing the merits of any pending federal or state cases if the case implicates North Carolina law or the case or controversy arose in North Carolina (Canon 3A(6)).

Although the United States Supreme Court ruled in *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002), that judicial candidates cannot be absolutely restricted from expressing their views on disputed issues of law or policy, any such comments should continue to be made in a professional and civil manner and with due regard to ensuring public confidence in the impartiality and fairness of our courts. For example, a judge or judicial candidate should not state or forecast how he or she would rule in a particular case that is currently pending as such statements suggest pre-determination of issues to be presented in court and would undermine the appearance of fairness and impartiality.

Positions on Pending Legislation v. Pending Cases: Canon 3A(6) prohibits judges from publicly commenting on the merits of pending state and federal cases arising under North Carolina law or

dealing with a case or controversy arising in North Carolina. As such, judges in all campaign statements should avoid such comments. On the other hand, Canon 4B allows judges to appear before public bodies to comment on issues affecting the administration of justice or the legal, economic, educational, or governmental system. The Commission has interpreted this provision as allowing judges to make comments on the impact of pending legislation on the administration of justice. As in any public statements, however, such comments should be dignified and professional, and should not suggest bias or lack of impartiality of the judge in cases that would normally come before him or her.

4. ASSISTING OTHER CANDIDATES OR POLITICAL ORGANIZATIONS

Canon 7 sets forth the parameters of the permissible political activity of judges in order to maintain public confidence in the impartiality and independence of the judiciary. Canon 7 respects the First Amendment rights of judges who are required to engage in the political process as candidates for judicial office. At the same time, Canon 7 more strictly limits the political conduct of judges when they are trying to assist other candidates or political organizations. The primary restrictions in Canon 7 as to other candidates and political parties relate to endorsements, contributions, and assistance with fundraising.

Identifying with a Political Party: Regardless of whether judicial elections are partisan or non-partisan, and regardless of whether a judge is currently a candidate for judicial office, a judge may identify with and join a political party. See Canon 7B(3).

Attending and Speaking at Political Events: A judge may “attend, preside over, and speak at any political party gathering, meeting or other convocation,” including fundraisers for other candidates and political parties, and may also be listed or noted as a speaker within any publicity relating to such an event. See Canon 7B(1). Because attendance at a candidate’s campaign event or fundraiser is explicitly permitted and may be noted in the event publicity, mere attendance and the notation of it in the event publicity will not be construed as an endorsement of that candidate. If the event is a fundraiser, however, the event publicity should not list a judge as a host or sponsor (see below on solicitations and fundraising). In addition, if a judge is a speaker at the event, he or she should be careful not to (1) solicit contributions/financial support from the audience for the organization or a candidate or (2) endorse a candidate unless the judge is eligible to endorse candidates. More information on soliciting and endorsing is provided below. Finally, if the event is ticketed, the judge must be careful to ensure that the ticket proceeds are not considered prohibited “campaign contributions” (see below on contributions).

Endorsing Other Candidates: Judges are generally prohibited from endorsing other candidates for elected office unless the judge is also a candidate for judicial office. Canon 7B(2), 7C(2). A judge who is entitled to endorse may do so regardless of whether he/she has any election opposition. Because emergency judges and retired judges subject to recall are not elected, they may not endorse other candidates. Special superior court judges, who are appointed, also may not endorse unless they become a candidate for an elected judicial office. A judge can become a “candidate” for judicial office in one of four ways: (1) making a public declaration of candidacy; (2) declaring or filing as a candidate with the appropriate election authority; (3) authorizing solicitation or acceptance of contributions or public support; or (4) sending a letter of intent to the

Chair of the Judicial Standards Commission. Canon 7A(1). As a best practice, the Commission would prefer a judge who intends to become a candidate to send a letter of intent to the office of the Judicial Standards Commission indicating the year in which the judge will be facing election and the office for which the judge will be campaigning. Please do not email letters of intent – we prefer that they be mailed to the Commission’s office.

The definition of “endorse” is “to knowingly and expressly request, 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 that person’s efforts to be elected to public office.” Canon 7A(3). The Commission has not treated recommendations to the Governor for judicial appointments as “endorsements.” On the other hand, in past informal advice, the Commission has found that if a judge personally and publicly invites people to a reception for a candidate, the invitation constitutes a public endorsement and request for public support of that candidate.

Soliciting Funds for Candidates or Political Parties/Organizations: Judges and judicial candidates may not solicit funds for a “political party, organization, or an individual (other than himself/herself) seeking election to office, by specifically asking for such contributions in person, by telephone, by electronic media, or by signing a letter” Canon 7C(1). Judges who are candidates may of course raise money for their own campaigns and for joint judicial campaigns as permitted in Canon 7B(2). The word “solicit” in the Code is defined very broadly to mean “to directly, knowingly and intentionally make a request, appeal or announcement, public or private, oral or written . . . 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.” Canon 7A(2). Solicitation can occur whether done personally “or through the press, radio, television, telephone, Internet, billboard, or distribution and circulation of printed materials”

Judges should beware of common scenarios that could be considered active assistance in fundraising for other candidates or political parties:

- Avoid being listed as a “host” or “sponsor” of a fundraising event for a political party or candidate. See Formal Advisory Opinion 2010-07.
- Do not sell tickets or ask people to buy tickets to a fundraiser for a candidate, political party or political organization.

Contributing to Political Organizations or Other Campaigns: A judge may make contributions to a political party or organization, but may not “personally make financial contributions or loans to any individual seeking election to any office” Canon 7B(3). This prohibition includes contributions and loans to candidates who are family members of the judge. Please note that while a judge is permitted to make contributions to a “political party or organization” under Canon 7B(3), this does not mean that a judge can bypass the restriction on contributing to candidates by giving the contribution to the candidate’s campaign committee. The North Carolina Supreme Court in *In re Wright*, 313 N.C. 495 (1985) held that a candidate’s campaign committee is not a “political organization” but is the “alter ego of the candidate.”

Judges should be aware of the following common scenarios that can get judges into trouble for improper contributions to candidates:

- *Contributions from a Spouse Made from a Joint Checking Account:* A judge's spouse and other family members are permitted to engage in political activity under Canon 7D. However, if a judge's family member would like to make a financial contribution to an individual's campaign, the judge should make sure the family member does so in a way that makes clear that the contribution comes from the family member and not the judge. If the judge and family member share a joint checking account, the family member should cross out the judge's name on the check to avoid any confusion. The family member may want to confer with the candidate's campaign treasurer as well to make sure the contribution is appropriately attributed to the family member and not the judge.
- *Buying Tickets to Campaign Fundraisers:* If paying to attend a ticketed political fundraiser for a specific candidate or group of candidates, beware that a judge should only contribute the reasonable cost of any food and beverage provided. Paying more than the cost of the food and beverage could be considered a contribution to the campaign and is prohibited. Some judges attend such events and reimburse the host/hostess for the cost of the meal. The Commission advises that the best practice for a judge reimbursing a host for the costs of attending a campaign fundraiser is to make payment directly to the host or caterer of the event, rather than to the candidate's campaign committee. Too often such reimbursements may be inadvertently reported by the committee as "contributions" and therefore appear as violations of the Code, even though they are otherwise allowable expenses. If the event is free to attend and not ticketed, and food is offered as part of the hospitality, a judge is not expected to pay for the cost of the food.
- *Buying Tickets to Other Political Events:* If a judge wishes to attend a ticketed event for a fundraiser for a political party or organization, the restrictions are more relaxed so long as the proceeds of the tickets are not being directed towards a specific candidate. A judge may attend such an event and may purchase tickets to such an event. A judge may also purchase tickets and give them to others. There is no Code provision prohibiting such an expense, especially if the judge is himself/herself a candidate and the tickets are part of the judge's campaign expenses. There is no limitation against a judge receiving extra tickets or other benefits (such as an advertisement in a program) in exchange for a contribution of a certain size. Again, this is limited to political events that are not fundraisers for specific candidates.

5. DISQUALIFICATION ISSUES RELATING TO CAMPAIGN CONDUCT

Canon 3C and 3D govern disqualification and remittal. Generally, a judge should disqualify himself/herself in any proceeding in which the judge's impartiality may be reasonably questioned. If the conflict is immaterial or insubstantial, it may be remitted (or waived) by written consent of the parties entered into the record. Campaigning for judicial office creates four common scenarios involving disqualification. As all disqualification issues are very fact specific, if there are unique circumstances in the judge's case, he or she is welcome to contact Commission staff for an informal advisory opinion on the issue. For all of the scenarios below, the Commission recommends a disqualification period to continue for an additional six months after the election, although a longer period may be recommended depending on the circumstances.

Judge's Own Campaign Staff: A judge who is a candidate should disqualify himself/herself from hearing matters involving his or her campaign manager, treasurer and others who play a significant role in the judge's own campaign regardless of whether a motion is made for disqualification. An alternative would be to strictly follow the remittal of disqualification procedures set forth in Canon 3D. With respect to employers of campaign staff, the Commission generally does not consider conflicts with campaign staff to be imputed to other colleagues or supervisors. Nevertheless, disqualification issues are very fact specific, and disqualification could be required depending on the size of the law office, the involvement of colleagues in the campaign and other factors. Judges and candidates are encouraged to contact the Commission if a disqualification issue arises.

Campaign Opponent & Opponent's Campaign Staff: A judge who is a candidate should disqualify himself/herself from hearing matters involving the judge's campaign opponent regardless of whether a motion is made for disqualification. When an opponent works as an assistant district attorney or assistant public defender, a judge should work with the scheduling judge and elected District Attorney or appointed Public Defender to mitigate possible calendar conflicts that could be created by such disqualification. A judge is not obligated to disqualify himself/herself from hearing matters involving other members of the opponent's law firm (or other public defenders or assistant district attorneys, if the opponent works for one of those institutions) should such a motion be made. There is no presumption of conflict. However, if the judge questions his or her own impartiality toward the individual, or believes that there could be a reasonable perception of bias based on the campaign, the judge may opt to disqualify himself or herself in such a situation.

A judge who is a candidate should also disqualify himself/herself from hearing matters involving his or her opponent's campaign manager, treasurer and others who play a significant role in the opponents campaign regardless of whether a motion is made for disqualification. An alternative would be to strictly follow the remittal of disqualification procedures set forth in Canon 3D.

Campaign Contributors, Endorsers and Supporters: An endorsement or standard campaign contribution standing alone does not create a presumed conflict that would require a judge to disqualify himself or herself from hearing a matter involving the endorser or contributor. If an otherwise unremarkable campaign contribution or public support for a judicial candidate was presumed to create a conflict of interest justifying recusal, the potential for abuse and "judge shopping" – in which attorneys or litigants send token contributions to certain judges or simply publicly endorse the candidate - would impair the effective administration of justice. On the other hand, in *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009), the United States Supreme Court held that there are circumstances when it becomes a due process violation for a judge to preside over a case involving a campaign contributor. The Court adopted an objective standard focusing on the risk of actual bias even if the judge subjectively believes he or she can be fair and impartial in the case.

In response to *Caperton*, the Commission has not adopted a specific contribution amount that would require disqualification if the contributor appears before the judge. Even so, where the size and timing of financial support to a judge creates a reasonable presumption of influence, a judge should disqualify from matters involving that contributor. In determining whether it is reasonable

to presume a conflict of interest from the contribution, a judge should weigh the amount of the contribution relative to other contributors, the range of allowable contributions and the candidate's total budget, the timing of the contribution as it regards proximity in time to any past or pending legal action, and whether an individual is responsible for raising funds above and beyond those personally given to the judge, such as when someone organizes and hosts a fundraiser for the judge, especially if those efforts result in a significant amount of the judge's total campaign contributions.

Disqualification Based on Campaign Statements: Judges should be mindful that whenever they make public statements, whether in the campaign context or otherwise, there is a potential that those statements can be used as a basis for a disqualification motion if the statements show a bias in a particular case or towards a particular class of litigants. In all campaign statements, therefore, judges should use the same caution and professionalism as they would in other contexts to ensure continued public confidence in the impartiality, integrity and independence of the courts, and to avoid reasonable questions as to the judge's impartiality in the cases over which he or she presides.

6. RESIGN TO RUN REQUIREMENT

Although Canon 7B(5) permits judges to become a candidate in a primary or a general election for a judicial office, a judge is required to resign his or her position to run for election to a "non-judicial office." The Code does not define "non-judicial office" but the Commission has issued two formal advisory opinions on the issue.

- *Clerk of Court:* See Formal Advisory Opinion 2009-05 (a judge is not required to resign his or her position as a judge prior to becoming a candidate for Clerk of Court).
- *District Attorney:* See Formal Advisory Opinion 2017-01 (a judge must resign his or her position prior to becoming a candidate for District Attorney).

7. CAMPAIGN MISCONDUCT BY CANDIDATES WHO ARE NOT JUDGES

The Commission frequently receives inquiries concerning alleged misconduct by judicial candidates who are not judges. While all judicial candidates are required to comply with Canon 7 of the North Carolina Code of Judicial Conduct, the Judicial Standards Commission has no authority or jurisdiction over the conduct of attorneys who are not currently judges. Instead, attorneys who are judicial candidates, but not yet judges, are under the jurisdiction of the North Carolina State Bar. Rule of Professional Conduct 8.2(b) requires that a lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct. Therefore, any violations of Canon 7 by judicial candidates who are not judges should be reported to the North Carolina State Bar for appropriate review. A judge has the authority to take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct which the judge may become aware, although this authority should be exercised cautiously if attempting to discipline a campaign opponent. Canon 3B(3). The Commission recommends as a best practice that the judge contact the State Bar for guidance on attorney misconduct issues during a judicial campaign.

CONCLUSION

I hope this information will be of assistance to you. Given the breadth and depth of these rules, and as in any ethics questions, it is always best to get advice based on the specific facts of your situation. The Commission staff is available to assist you with any questions and provide you with informal advisory opinions on your particular questions. For further assistance, please contact the Commission's Executive Director, Carolyn Dubay, cad@coa.nccourts.org or the Commission Counsel Jameson Marks, jmm@coa.nccourts.org. You may also call the Commission at (919) 831-3630. Good luck in your campaigns.



JUDICIAL STANDARDS COMMISSION STATE OF NORTH CAROLINA

FORMAL ADVISORY OPINION: 2017-02

September 13, 2017

QUESTION:

Under what circumstances can delay in convening court sessions rise to the level of a violation of the Code of Judicial Conduct?

CONCLUSION:

A judge has an ethical obligation under Canon 3A(4) to “dispose promptly of the business of the court.” This obligation requires not only promptness in issuing decisions and orders, but punctuality in convening court. In addition, judges have ethical obligations under Canon 1 and Canon 2 to observe personal standards of conduct that ensure public confidence in the integrity, impartiality and independence of the judiciary. Canon 3A(3) further requires a judge to be “courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in the judge’s official capacity.” Finally, Canon 3B(1) provides that a judge should diligently discharge the judge’s administrative responsibilities and maintain professional competence in judicial administration. Repeated or unjustified tardiness of a judge in opening court sessions runs afoul of these ethical rules and can lead to the imposition of judicial discipline. If a recess is required to attend to other official business that must be considered before the court session may proceed, the judge should as a best practice open court on time and communicate either personally or through court staff to those present in the courtroom when court will be reconvened and the reasons for the recess.

DISCUSSION:

Delay is one of the most common complaints of judicial misconduct, whether it arises from excessive grants of continuances, delays in rendering decisions under advisement, lengthy periods of time in issuing written orders, or the judge’s regular tardiness in appearing at scheduled court times. These delays raise the costs of litigation, increase frustration with the judicial system and diminish public confidence in the courts. This concern was recently emphasized in the Final Report of the Public Trust and Confidence Committee of the North Carolina Commission on the

Administration of Law and Justice, which noted as follows: “As stewards of public resources and individual citizens’ time, Judicial Branch officials must strive to operate a court system that facilitates the just, timely, and economical scheduling and disposition of cases.” Final Report, North Carolina Commission of the Administration of Law and Justice, March 2017, at 69.

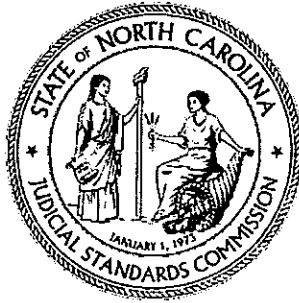
In the specific context of convening court sessions, a judge’s ethical duty under Canon 3A(5) to “dispose promptly of the business of the court” includes the duty to be punctual and open court sessions as scheduled. Tardiness in convening court also calls into question whether a judge is meeting his or her obligation under Canon 3B(1) to “diligently discharge the judge’s administrative duties and maintain professional competence in judicial administration. In addition, Canon 1 and Canon 2A of the Code of Judicial Conduct require judges to observe personal standards of conduct that ensure public confidence in the integrity, impartiality and independence of the judiciary. Canon 3A(3) further requires a judge to be “courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in the judge’s official capacity.” Repeated or unjustified delays in convening court sessions threaten public confidence in the judiciary and display a lack of courtesy towards litigants, lawyers, victims, law enforcement, court personnel and all those who are required to be punctual in arriving to court. A judge’s tardiness also exacerbates wait times associated with calendar calls and increases the costs of litigation for represented litigants. Poor communication about when the judge will arrive and the reasons for the delay heightens frustration among individuals present in the courtroom, many of whom have taken time away from work or traveled long distances to appear at the required time under threat of sanction if late. In these circumstances, when a judge repeatedly or unjustifiably fails to open court on time, the attending frustration impairs public confidence in the courts.

Accordingly, a violation of the Code of Judicial Conduct occurs where a judge engages in repeated or unjustified tardiness in convening court. A judge should open court on time, and if a recess is required to attend to other official business that must be considered before the court session continues, the judge should as a best practice open court on time and communicate either personally or through court staff to those present in the courtroom when court will be reconvened and the reasons for the recess.

References:

Canons 1, 2, 3A and 3B of the North Carolina Code of Judicial Conduct

Final Report, North Carolina Commission of the Administration of Law and Justice (March 2017)



**JUDICIAL STANDARDS COMMISSION
STATE OF NORTH CAROLINA**

FORMAL ADVISORY OPINION: 2017-01

May 15, 2017

QUESTION:

Is a sitting judge required to resign the judge's judicial office before becoming a candidate in a public primary or general election for the office of district attorney?

CONCLUSION:

Yes. Canon 7B(5) of the North Carolina Code of Judicial Conduct provides that 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 non-judicial office." As the office of district attorney is a non-judicial office, resignation is required before becoming a candidate in a public primary or general election for such office.

DISCUSSION:

Canon 7B(5) of the North Carolina Code of Judicial Conduct provides that 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 non-judicial office." This restriction serves the important purpose of furthering the fundamental values of impartiality, independence and integrity that underlie the Code of Judicial Conduct in general. While a judge's impartiality and independence would not be threatened by a campaign for another judicial office that requires the same impartiality and independence, the same cannot be said for running for an elected office that in fact depends on partiality. The Commission finds that it would be particularly concerning if a sitting judge who presides over criminal cases

was simultaneously campaigning for district attorney. Campaigning for prosecutorial office could raise reasonable questions as to the judge's impartiality in cases he or she must adjudicate in accordance with the Code of Judicial Conduct. See, e.g., Canon 2B (a judge "should conduct himself/herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary"); Canon 3 ("A judge should perform the duties of the judge's office impartially and diligently"); Canon 3A(1) ("A judge should be unswayed by partisan interests, public clamor, or fear of criticism"); Canon 3C(1) ("a judge should disqualify himself/herself in a proceeding in which the judge's impartiality may reasonably be questioned.").

With respect to Canon 7B(5) in particular, the Commission in Formal Advisory Opinion No. 2009-05 advised that the office of clerk of superior court is a judicial office of the General Court of Justice as set forth in N.C. Const. Article IV, Section 9 and N.C. Gen. Stat. Chapter 7A, Article 12. In addition, N.C. Gen. Stat. § 7A-40 provides that the "clerk of superior court in the exercise of the judicial power conferred upon him . . . is a judicial officer of the Superior Court Division" As such, resignation of judicial office is not required to seek election as clerk of court. By contrast, the 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" and performs such other duties as authorized pursuant to N.C. Gen. Stat. § 7A-61. While the District Attorney does possess some calendaring authority, see e.g. N.C. Gen. Stat. § 7A-49.4, and is administratively assigned to the North Carolina Administrative Office of the Courts for certain purposes, these facts do not transform the District Attorney as an officer of the court into a judicial officer who exercises judicial power in the State of North Carolina. The District Attorney thus cannot be considered a judicial officer for purposes of Canon 7B(5).

References:

Canons 2B, 3, 3A, 3C and 7B(5) of the North Carolina Code of Judicial Conduct
Formal Advisory Opinion No. 2009-05
N.C. Const. Art. IV, Section 9
N.C. Gen. Stat. Chapter 7A, Art. 12
N.C. Gen. Stat. § 7A-40
N.C. Gen. Stat. § 7A-49.4
N.C. Gen. Stat. § 7A-61



**JUDICIAL STANDARDS COMMISSION
STATE OF NORTH CAROLINA**

FORMAL ADVISORY OPINION: 2016-01

November 18, 2016

QUESTIONS:

The Judicial Standards Commission issues this Formal Advisory Opinion with respect to two questions relating to ethical limits on the conduct of district court judges presiding over certain domestic matters involving self-represented litigants:

- 1) Is it ethically permissible for a judge to question a witness regarding the statutory factors in an uncontested divorce involving only *pro se* parties?
- 2) Is it ethically permissible for a judge to question a witness in a child custody determination involving only *pro se* parties if necessary to allow the judge to consider the relevant statutory factors to determine the best interests of the child?

CONCLUSION:

These questions relate to the limits on a trial judge's discretion to question witnesses during hearings to grant an uncontested divorce or make a child custody determination in cases involving only self-represented (*pro se*) litigants. This opinion does not address what additional ethical duties may apply in cases where only one party is proceeding *pro se* and the other is represented. Rule 614(b) of the North Carolina Rules of Evidence allows judges to engage in such questioning, and provides that the "court may interrogate witnesses, whether called by itself or by a party." The Commission advises that a judge may ethically question witnesses under Rule 614(b) in both uncontested divorce cases and custody determinations involving only *pro se* parties, so long as it is done so (1) in order to render a full and fair decision based on adequate,

reliable and credible evidence (Canon 3A(1) and (4)); (2) the questions and method of questioning are neutral and do not reasonably call into question the integrity or impartiality of the judge (Canon 2A and Canon 3); and (3) in asking the questions, the judge is “patient, dignified and courteous” (Canon 3A(3)). In addition, and as a general matter, use of Rule 614(b) may be beneficial to discharge the judge’s other ethical duties to maintain order and decorum in the courtroom (Canon 3A(2)) and to dispose promptly of the business of the court (Canon 3A(5)).

DISCUSSION:

Under North Carolina law, the trial judge must at times make findings of fact supported by the evidence in child custody determinations and divorce cases. N.C.G.S. Section 50-13.2(a) identifies the relevant factors in custody awards and provides that “[a]n order for custody must include written findings of fact that reflect the consideration of each of these factors and that support the determination of what is in the best interest of the child.” A trial judge also must make certain factual findings in divorce cases under N.C.G.S. Section 50-6 (divorce after separation for one year) and N.C.G.S. Section 50-10 (requiring certain findings by the trial judge). In divorce and custody determinations involving only *pro se* parties, there is the risk that the evidence presented can either be confusing or fail to address each required statutory factor that must be considered by the trial judge. Under these circumstances, therefore, a judge may properly use the Rule 614(b) authority to fulfill his or her obligations under Canon 3A(1), which requires a judge to be faithful to the law, and Canon 3A(4), which requires the judge to accord each litigant a full opportunity to be heard according to law.

Despite the benefits of exercising Rule 614(b) authority to fulfill the judge’s duties under Canon 3A in these circumstances, there are several important limitations on questioning of witnesses in uncontested divorce cases and child custody cases involving only *pro se* parties. First, the judge in an effort to determine necessary facts should not offer legal assistance or advocacy on behalf of any self-represented party in violation of Canon 5F, which prohibits judges from practicing law. Second, the judge should not ask the questions in a manner that creates the appearance of bias in favor of a particular party in violation of Canon 2A and Canon 3, which both require the judge to conduct himself or herself in a manner that promotes impartiality in judicial decision-making. When judges are engaged in questioning of witnesses in these circumstances, therefore, judges must be vigilant in ensuring that the questions are neutral and fair and do not indicate a desire to provide legal assistance to or otherwise benefit a particular party. An explanation to the self-represented litigants as to why the judge must ask such questions is also permissible.

References:

North Carolina Code of Judicial Conduct Canon 1, Canon 2A, Canon 3A(1)-(5), Canon 5F
North Carolina Rule of Evidence 614(b)
N.C.G.S. Section 50-6
N.C.G.S. Section 50-10
N.C.G.S. Section 50-13.2(a)



JUDICIAL STANDARDS COMMISSION
STATE OF NORTH CAROLINA

FORMAL ADVISORY OPINION: 2015-03

November 6, 2015

Note: This opinion supersedes Formal Advisory Opinions 2009-04 & 2010-05.

QUESTION:

Can the Commission clarify its guidance regarding potential conflicts of interest created by family members working in the legal profession, specifically:

- What are the ethical obligations of a judge in a matter where a family member appears as counsel before the judge?
- What are the ethical obligations of a judge in a matter where a law firm or attorney employing a family member appears as counsel before the judge?
- Do these obligations change based upon the degree of relationship between the judge and the family member?

CONCLUSION:

The unique facts and circumstances of a specific situation should always be examined and evaluated under the applicable provisions of the North Carolina Code of Judicial Conduct. However, the following general advice should apply in most instances:

Family Members

A judge has a duty to disclose familial relationships. Disqualification of the judge is required in matters in which a spouse or child living within the judge's household represents a litigant or has contributed to the preparation of the matter for hearing.

A judge has a duty to disclose the familial relationship and should also recuse himself or herself from hearing a matter in which a close relative, other than a spouse or child living within the judge's household, represents a litigant or has contributed to the preparation of the matter for hearing. However, if the close relative has no direct financial benefit from the outcome of the case,

then the recusal may be remitted by the written consent of all counsel and parties involved using the process described in Canon 3D.

A judge has no duty to disclose more distant familial relationships to those who may appear before him or her in court or to tender a recusal based solely upon a distant familial relationship. Such a relationship is not presumed to form a reasonable basis for recusal unless it is shown that the judge has a personal bias or prejudice concerning the distant relative, personal knowledge concerning the matter, or a financial interest that could be substantially affected by the matter. The judge should disclose the relationship and offer his or her recusal if he or she believes the relationship impacts his or her impartiality in the matter.

Co-workers and Employers of Family

When an attorney appears before the judge, who is known by the judge to be a co-worker or employer of a member of a judge's household or of a judge's close relative, the judge has a duty to disclose the attorney's professional relationship to his or her family member and then to make a two-part inquiry, as set out below. There is no obligation to disclose or inquire further into the relationship between an attorney and a judge's more distant family member.

After making a disclosure, the judge should first determine whether the family member stands to benefit directly from a favorable outcome in the matter, and should then determine whether the family member performed any work contributing to the preparation of the matter for hearing. If either part of the inquiry results in a positive response then the judge should offer his or her recusal. However, this recusal may be remitted by the written consent of all counsel and parties involved per the process described in Canon 3D. If both questions are answered in the negative then the family member's relationship to the attorney does not form a reasonable basis for recusal.

Appointment of Family Members

A judge should not make an appointment of a member of the judge's household or a close relative. When a decision upon the appointment or re-appointment of a family member is required by statute, a judge should refer or delegate such questions of appointment of a close relative to other judges if possible.

Please note - this formal advisory opinion supersedes the advice of Formal Advisory Opinion 2009-04 and Formal Advisory Opinion 2010-05.

DISCUSSION & ANALYSIS:

The Judicial Standards Commission determined that the ethical obligations of a judge differ based upon the degree of relationship between the judge and the family member, where a judge's ethical duties to disclose potential conflicts and to recuse from a matter is limited to "close relatives," or those within the third degree of relationship to the judge. However a judge has a heightened ethical obligation to disclose conflicts or recuse from matters involving a spouse or child living within the judge's household.

For purposes of clarity, a close relative, is any family member within the third degree of relationship. This includes a parent, child, grandparent, grandchild, great grandparent, great

grandchild, sibling, uncle, niece, or nephew. A member of a judge's household is a spouse or child living within the judge's domicile.

Canon 1 advises that a judge should uphold the integrity and independence of the judiciary and personally observe appropriate standards of conduct to ensure that the integrity and independence of the judiciary shall be preserved. Canon 2A advises that a judge should conduct himself/herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. These canons direct a judge to avoid situations where his or her impartiality might reasonably be questioned. The appearance of any family member in a matter before a judge may lead someone to question a judge's impartiality in that matter, and therefore a judge should act with care before proceeding on any such matter, making inquiry into reasonable perceptions of bias and any real conflicts of interest that may exist.

Canon 2A also advises that a judge should not knowingly initiate or consider *ex parte* or "other communications" concerning a pending proceeding. In this context, the canon is referring to improper communications, typically outside of court and off of the record of a hearing, that might be improperly introduced or used to influence the judge's opinion.

Canon 3C(1) of the Code of Judicial Conduct reads, inter alia, "[O]n motion of any party, a judge should disqualify himself/herself in any proceeding in which the judge's impartiality may reasonably be questioned..." Canon 2B of the Code provides, inter alia, that a judge should not allow the judge's family, social, or other relationships to influence the judge's conduct or judgment, nor allow others to convey the impression that they are in a special position to influence the judge.

Canon 3C(1)(c) identifies conflicts of interest created when the judge knows that he or she, or the judge's spouse or minor child residing within the judge's home, has a financial interest in the subject matter in controversy, or is a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding. Canon 3C(1)(d) identifies potential conflicts where a person within the third degree of familial relationship to the judge is a party to a proceeding, or an officer, director, or trustee of a party; is acting as a lawyer in the proceeding; is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding; or is to the judge's knowledge likely to be a material witness in the proceeding.

Canon 3D reads:

"Nothing in this Canon shall preclude a judge from disqualifying himself/herself from participating in any proceeding upon the judge's own initiative. Also, a judge potentially disqualified by the terms of Canon 3C may, instead of withdrawing from the proceeding, disclose on the record the basis of the judge's potential disqualification. If, based on such disclosure, the parties and lawyers, on behalf of their clients and independently of the judge's participation, all agree in writing that the judge's basis for potential disqualification is immaterial or insubstantial, the judge is no longer disqualified, and may participate in the proceeding. The agreement, signed by all lawyers, shall be incorporated in the record of the proceeding. For purposes of this section, pro se parties shall be considered lawyers."

Family Members

The Commission finds that Canon 3 provides basic guidance on the matters of disqualification regarding the involvement of family members before the judge. However, the language of Canons 1 and 2 are also significant and should also be applied in this situation.

When a judge's relative lives within the judge's household, there is a reasonable presumption that the judge and relative are in regular contact and communication. It may also be presumed that there is some financial dependence or financial interdependence between them, or at least that the economic gain of one may have a meaningful impact on the other.

Such presumptions may not necessarily be made where a relative does not live with the judge, is financially independent of the judge, and may not even be in regular communication with the judge. Thus, this greater potential for conflicts when a judge lives with the close relative means that a judge should always disqualify from these matters; however where a judge's close relative lives independently, the potential for these conflicts is reduced and the presumed conflicts may be waived pursuant to the remittal process.

The Code of Judicial Conduct identifies a blood relationship within the third degree as a reasonable basis for a presuming a conflict. A judge's personal relationship with more distant relatives may be so close as to create a potential bias, but in such a situation the conflict will not be presumed and requires a showing of more evidence of bias than simply blood and biology.

Employers and Co-workers of Family Members

The Judicial Standards Commission previously issued two Formal Advisory Opinions (2009-04 & 2010-05) addressing the obligations of a judge regarding conflicts of interest arising from the employment of a family member. However, because the facts of these two previous opinions are notably distinguishable, the opinions provide advice that can be viewed as contradictory.

The Commission previously advised, in Formal Advisory Opinion 2009-04 that "[c]learly one could reasonably question the impartiality of a judge when a member of the judge's family is in an employer/employee relationship with an attorney and said attorney appears in a contested matter before the judge." However, the Commission also advised in Formal Advisory Opinion 2010-05 that when a judge's relative is employed as an assistant district attorney, the judge is not required to disqualify himself/herself from matters involving the District Attorney or other attorneys from the District Attorney's staff, so long as the judge's relative had no involvement in the matter and does not appear before the judge, specifically stating that "[u]pon confirmation that the judge's son/daughter has not been involved in the matter, the judge's impartiality [to hear matters involving other attorney co-workers of the judge's child] could not reasonably be questioned."

Significant in distinguishing one scenario from the other is that in the first opinion, the family member was the judge's spouse and shared a household and bank account with the judge, and the identified conflict was imputed to the spouse's direct supervisor, with hiring and firing authority of the judge's spouse. In the second scenario, the family member was an adult child living independently of the judge, and the question of disqualification seemed to concern numerous co-workers of the child, rather than a direct supervisor. Without such distinctions articulated in the earlier opinions, however, the Commission's advice requires additional clarity.

The Commission identifies the important distinction between family members who are part of a judge's household from other family members considered to be "close relatives" but who are otherwise living independently of the judge. The Commission further relies upon the conditions for disqualification provided for in Canon 3C.

Thus, in the context of conflicts of interest that may be created when an attorney employing the family member of a judge appears before that judge, the Commission reconsiders its previously stated position that "[c]learly one could reasonably question the impartiality of a judge when a member of the judge's family is in an employer/employee relationship with an attorney and said attorney appears in a contested matter before the judge" as overbroad. Instead, it would refocus the inquiry beyond whether a family member is simply employed by such an attorney, onto questions of whether the family member contributed to the preparation of the matter before the judge or whether the family member has a financial interest in the matter.

The Commission reiterates that the facts and circumstances of each specific situation should always be examined before evaluating whether or not conduct is proper under the North Carolina Code of Judicial Conduct. To that end, the Commission recognizes that there may be potential misconduct aggravated by clear conflicts or mitigated by necessity. Other factors to weigh in evaluating whether any action is reasonable or poses a potential conflict of interest when a co-worker or employer of a family member appears before the judge may include the size of the firm employing the family member, any direct supervisory relationship between an attorney and the family member, any financial or ownership interest that the family member might have in work done by other attorneys in the firm, and perhaps, the size of the legal community within the judicial district.

APPOINTMENT OF FAMILY MEMBERS

Regarding questions of the appointment of family members, or those connected to family, the Commission turns to Canon 3B(4) and Canon 2A. Canon 3B(4) states that a judge should exercise the power of appointment only on the basis of merit, avoiding nepotism and favoritism. While acknowledging that, in reality, most appointments and assignments of counsel are made by other courtroom officials, many simply moving down a list of qualified applicants, who then present the appointment to the judge for ratification or approval, there is nonetheless the potential for damaging accusations of nepotism where a judge's signature is applied to an order appointing a relative to work that would profit a family member. As Canon 2A advises, in relevant part, that a judge should conduct himself/herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary we have advised that judges avoid signing such orders and that such appointments should be reviewed and approved by another judge.

As this formal opinion supersedes any pervious formal or informal opinion adopted by the Commission on this subject, any judge who has acted in conformity with a previous formal or informal opinion inconsistent with this formal opinion will be deemed to have acted in good faith and any conduct by a judge undertaken in reliance upon any previous informal advice by the Commission on this subject shall not be held to be misconduct.

References:

North Carolina Code of Judicial Conduct

Canon 1

Canon 2A

Canon 2B

Canon 3C

Canon 3D

Formal Advisory Opinion 2009-04 (Now superseded)

Formal Advisory Opinion 2010-05 (Now superseded)

NC Rules of Professional Conduct 1.7

NC 2005 Formal Ethics Opinion I (North Carolina State Bar)

Rules of the North Carolina Judicial Standards Commission, Rule 8 (2014)

In re: Pedestrian Walkway Failure, 173 N.C. App. 237 (2005)



JUDICIAL STANDARDS COMMISSION
STATE OF NORTH CAROLINA

FORMAL ADVISORY OPINION: 2015-02

November 9, 2015

QUESTION:

May a judge require that a criminal defendant proceed without the assistance of all counsel based upon a waiver of appointed counsel only?

CONCLUSION:

Except in situations where the defendant's actions amount to a forfeiture of the right to counsel, a judge may not require a criminal defendant entitled to counsel to proceed without the assistance of counsel based on a waiver of appointed counsel only. It is the judge's responsibility to clarify the scope of any waiver.

DISCUSSION:

An investigation into alleged judicial misconduct by the Commission revealed an alarming practice common among some district court judges to "treat a waiver as a waiver" and, as a regular policy, treat an indigent criminal defendant's election to waive appointed counsel as a waiver of the defendant's right to assistance of any counsel – appointed or privately retained. The Commission distinguishes this inappropriate waiver procedure – a common practice described by courtroom personnel as standard operating procedure for the treatment of indigent criminal defendants who waive their rights to appointed counsel – from scenarios where a waiver form is misread or where there is an honest error of law. This inappropriate waiver procedure is not proper and is in violation of the North Carolina Code of Judicial Conduct.

A defendant's rights to the assistance of counsel and to confront witnesses are guaranteed by the Sixth and Fourteenth Amendments to the Constitution of the United States and by sections 19 and 23 of Article I of the Constitution of North Carolina. While this right may be waived or forfeited by a defendant, it may not willfully and knowingly be abridged or unfairly denied.

Statements of a desire not to be represented by court-appointed counsel are often coupled with an expressed intent to hire one's own attorney. Given the fundamental nature of the right to counsel,

a judge has a legal and ethical obligation not to presume that there has been a waiver of all counsel by anything less than an express indication of such an intention.

The practice of a judge “treating a waiver as a waiver” and willfully and purposefully failing to distinguish a defendant’s election to waive appointed counsel from a waiver of the defendant’s right to any assistance of counsel violates a judge’s duty under the Code of Judicial Conduct to afford to every person who is legally interested in a proceeding, or the person’s lawyer, full right to be heard according to the law (Canon 3A(4)).

“The waiver of counsel like the waiver of all constitutional rights, must be knowing and voluntary, and the record must show that the defendant ... understood the consequences of his waiver, and that, in waiving his right, he was voluntarily exercising his own free will.” State v. McCrowre, 312 N.C. 478, 481 (N.C. 1984). The United States Supreme Court and the North Carolina Supreme Court have provided guidance for the appropriate way to take a waiver and direct that a judge should make adequate inquiry into whether waiver is proper before accepting it. Superior court judges are guided by a statute expressly directing such inquiries. North Carolina General Statute § 15A-1242, which requires that in order for a Superior Court judge to accept a waiver of the right to the assistance of counsel the judge must make a thorough inquiry and satisfy himself that a defendant has (1) been clearly advised of his or her right to the assistance of counsel, including the right to the assignment of counsel when so entitled; (2) that he or she understands and appreciates the consequences of this decision; and (3) that he or she comprehends the nature of the charges and proceedings and the range of permissible punishments. The North Carolina Administrative Office of the Courts has referred District Court judges and magistrates to this same statutory language as the steps necessary to take a valid waiver.

The Code requires that a judge respect and comply with the law (Canon 2A), be faithful to the law, and maintain professional competence in the law (Canon 3A(1)). When a judge takes a waiver of the right to counsel without making any inquiry whatsoever as to whether a waiver is made knowingly and voluntarily, this suggests a lack of faithfulness to the law, and a failure to maintain professional competence in it. Moreover, intentionally treating a waiver of the right to court appointed counsel as a waiver of the right to any and all counsel, especially where a criminal defendant has expressed a desire to retain private legal counsel, is a clear and willful violation of a criminal defendant’s state and federal constitutional rights to the assistance of counsel and a violation of the defendant’s rights to due process, as articulated by our state’s appellate courts. Such conduct cannot be seen as anything less than a violation of Canons 2A and Canon 3A(1).

The Commission recognizes that there are instances in which a criminal defendant may forfeit the right to counsel, through a defendant’s own misconduct of intentional and unreasonable delay and other unacceptable actions. Nothing in this opinion should be interpreted to imply that a judge’s reasonable declaration of a defendant’s forfeiture of the right to counsel will be considered misconduct. Nor should anything in this opinion be read to imply that the Code of Judicial Conduct requires any extension of the rights of a defendant to the assistance of counsel beyond existing law.

References:

North Carolina Code of Judicial Conduct

Canon 2A

Canon 3A(1)

Canon 3A(4)

United States Constitution, Amendment VI

United States Constitution, Amendment XIV

North Carolina Constitution, Article I, Sections 19 and 23

N.C.G.S. § 15A-1242

AOC Waiver of Counsel Form, AOC-CR-227

State v. McCrowre, 312 N.C. 478 (1984)

State v. Hyatt, 132 N.C. App. 697 (1999)

State v. Seymore, 214 N.C. App. 547 (2011)

State v. Ramirez, 220 N.C. App. 150 (2012)

AOC Memorandum, "Appointment and Waiver of Counsel before Magistrates – S.L. 2015-247", Sep 29, 2015



JUDICIAL STANDARDS COMMISSION
STATE OF NORTH CAROLINA

FORMAL ADVISORY OPINION: 2014-02

April 11, 2014

QUESTION:

Is a judge required to disqualify from matters wherein a party moves for the disqualification of the judge based upon the fact that the party has filed a complaint about the judge with the Judicial Standards Commission?

COMMISSION CONCLUSION:

The mere filing of a complaint with the Judicial Standards Commission, nothing else appearing, does not establish a reasonable basis upon which one may reasonably question the subject judge's impartiality in proceedings involving the complainant.

DISCUSSION:

Canon 3C(1) together with subsection (a) of the Code of Judicial Conduct reads, "[O]n motion of any party, a judge should disqualify himself/herself in a proceeding in which the judge's impartiality may reasonably be questioned, including but not limited to instances where: (a) The judge has a personal bias or prejudice concerning a party ..." Canon 3D provides that "nothing in this Canon shall preclude a judge from disqualifying himself/herself from participating in any proceeding upon the judge's own initiative." A judge should always disqualify when the judge questions his/her own ability to remain impartial.

The Commission recognizes the likely abuse of the judicial process which would arise should a party be permitted to "judge shop" by way of motions to disqualify a judge based upon the mere filing with the Commission of a complaint against the judge. The Commission further notices that the majority of complaints it receives arise from civil litigants and criminal defendants who disagree with a judge's decision and attribute the judgment to ethical misconduct without supporting evidence.

The Commission further advises that should a judge be notified of the initiation of a formal investigation, receive a private letter of caution, or be served with a statement of charges initiating

disciplinary proceedings as the result of a complaint, the judge should disqualify from all matters involving the complainant.

The Commission distinguishes the scenario presented within this opinion from the situation underlying the case of *In re Braswell*, 358 N.C. 721 (2004), which held that a judge is disqualified from hearing a case when one of the parties has a pending lawsuit against the judge. The Commission notices that in the *Braswell* case, one of the parties had a pre-existing civil lawsuit filed against the judge in a matter unrelated to matter in which the judge was presiding and then asked the judge to recuse. Where a pre-existing conflict, such as a civil law suit, exists prior to a litigant's appearance before the judge, a reasonable appearance of bias or conflict of interest may arise. Similarly, a pre-existing complaint filed with the Judicial Standards Commission arising from another matter which results in discipline being taken against the judge could also create a reasonable appearance of bias or conflict of interest that might require recusal. However, the Commission concludes that any new lawsuit, or complaint, arising solely to complain about the adjudication of the present matter, and then used as the sole justification for disqualification or recusal, could be viewed as obstructive, dilatory, and purposed to thwart the administration of justice. In such situations, recusal should not be required under the Code of Judicial Conduct, unless the judge is notified of the initiation of a formal investigation, receives a private letter of caution, or is served with a statement of charges initiating disciplinary proceedings as the result of the complaint.

References:

North Carolina Code of Judicial Conduct
North Carolina Judicial Standards Commission Annual Reports
Canon 3C(1)(a)
Canon 3D
In re Braswell, 358 N.C. 721 (2004)



JUDICIAL STANDARDS COMMISSION
STATE OF NORTH CAROLINA

FORMAL ADVISORY OPINION: 2014-01

January 10, 2014

QUESTION:

May a judge maintain membership in voluntary bar associations?

COMMISSION CONCLUSION:

The Judicial Standards Commission determined that a judge may maintain membership in a voluntary bar association so long as the organization promotes the bar in general and the legal profession as a whole, and is not essentially a law-related special interest group which promotes issues pertaining to the representation of a particular group of clients, such as criminal defendants, personal injury plaintiffs, criminal prosecution, insurance defense, etc..

DISCUSSION:

The Commission reasoned that membership in voluntary bar associations which promote the legal system and the administration of justice is to be encouraged, provided membership in such organizations does not call into question the judge's integrity, independence, and impartiality, which are the foundational principles of the judicial branch of government. While judges may attend seminars and conferences sponsored by voluntary bar associations, the Commission concluded that membership in organizations which primarily advocate for a particular group of clients, is inconsistent with judicial impartiality.

The Commission further reasoned that membership in gender, ethnic, and cultural based bar associations is permitted, so long as the entity does not practice unlawful discrimination.

References:

North Carolina Code of Judicial Conduct
Canon I
Canon 2A
Canon 2B
Canon 2C

Canon 4
Canon 4A
Canon 4C



JUDICIAL STANDARDS COMMISSION
STATE OF NORTH CAROLINA

FORMAL ADVISORY OPINION: 2013-02

November 8, 2013

QUESTION:

May a judge participate in fund-raising activities on behalf of civic, charitable and other organizations as described in Canons 4 and 5 of the Code of Judicial Conduct, if the activities do not involve the direct solicitation of funds, goods, volunteer service, membership, etc.?

COMMISSION CONCLUSION:

While a judge may not solicit contributions of funds, goods, services, etc. on behalf of the types of organizations identified in Canons 4 and 5 of the Code of Judicial Conduct, nor solicit dues paying memberships for such entities, a judge may participate in activities related to fund-raising which do not utilize the esteem of the judge's office to further the interests of the entity, present an element of coercion, interfere with the performance of the judge's judicial duties, nor reflect adversely upon the judge's independence, integrity, and impartiality.

DISCUSSION:

The Commission recognized the tension which exists where members of a publicly elected judiciary, who hold leadership roles in their local communities, and take a personal interest in numerous civic and charitable activities, are encouraged to engage in civic and charitable activities, including service as officers and directors of provider organizations, but such activities and service are restricted in that a judge "may not actively assist such an organization in raising funds" as found in Canons 4C and 5B(2) of the Code, and "should not lend the prestige of the judge's office to advance the private interest of others" as prescribed in Canon 2B of the Code. As in all matters, a judge's participation in civic and charitable activity may not call into question the independence, integrity and impartiality of the judge or the judiciary as a whole, in compliance with Canons 1 and 2A of the Code.

The Commission reasoned that a judge may participate in charitable and civic fund-raising activity which does not involve any solicitation of funds, goods, volunteer service, membership, etc., provided:

- The judge's participation is not publicized and his or her identity is not noted;
- The judge's participation is not likely to encourage others to participate (i.e. in an attempt to curry favor with the judge), nor reasonably be perceived as coercive by others (i.e. participation for fear of offending the judge);
- The judge's participation does not cast reasonable doubt on his or her ability to perform judicial duties impartially.

In all things, a judge should seek to avoid impropriety and should consider how his or her actions will be reasonably perceived by others. Participation in charitable and fund-raising activities should be tasteful and observe appropriate community standards.

References:

North Carolina Code of Judicial Conduct

Canon 1

Canon 2A

Canon 2B

Canon 4A

Canon 4C

Canon 5A

Canon 5B



JUDICIAL STANDARDS COMMISSION
STATE OF NORTH CAROLINA

FORMAL ADVISORY OPINION: 2010-07

July 9, 2010

QUESTION:

May a judge sponsor or consent to being listed as a sponsor of a fund raising event?

COMMISSION CONCLUSION:

The Judicial Standards Commission reasoned that a judge may not sponsor nor consent to being listed as a “sponsor” or “host” of a fund raising event for any organization or individual, other than the judge’s own judicial election campaign or a joint judicial election campaign in which the judge participates.

DISCUSSION:

Canon 2B of the Code of Judicial Conduct prohibits a judge from lending the prestige of the judge’s office to advance the private interests of others. Canons 4C and 5B(2) both prohibit a judge from active assistance in raising funds for quasi-judicial and non-judicial organizations, but allow a judge to be listed as a contributor on an invitation to a fund raising event. Canon 7C(1) of the Code prohibits a judge from soliciting funds for a political party, organization or individual seeking election to office, except as permitted by Canons 7B(2) and 7B(4) which allow for solicitation of donations for a judge’s own judicial election campaign or a joint judicial election campaign in which the judge participates.

While a judge may make a donation to and attend a fund-raising event, the Commission considers “active assistance ... in raising funds” to include being listed as a “sponsor” or “host” of an event. Although the terms “sponsor” and “host” may be titles assigned to contributors who donate within an arbitrary monetary range, the Commission is of the opinion that the use of the terms contain connotations of being something more than a mere contributor. Those who “sponsor” or “host” an event publicly associate themselves with and promote the event or cause in an effort to encourage others to do likewise, thereby rendering such conduct inappropriate for a judicial official.

References:

North Carolina Code of Judicial Conduct
Canon 2B
Canon 4C
Canon 5B(2)
Canon 7B(2)
Canon 7C(1)



JUDICIAL STANDARDS COMMISSION
STATE OF NORTH CAROLINA

FORMAL ADVISORY OPINION: 2009-07

September 24, 2009

QUESTION:

While in private practice, a judge represented Mr. X in a criminal trial which resulted in a conviction of first-degree murder and the pronouncement of a sentence of death. Mr. X is now awaiting execution and is a party, along with four other inmates, to litigation pending before the Court, which involves the legality of the execution protocol. The proceeding in question is an appeal from an order dismissing the petitioners' petition for judicial review of the decision on the legality of the execution protocol.

The specific inquiry is whether the judge's prior representation of Mr. X requires the judge's disqualification in the present case, and, if so, whether such disqualification may be waived by the parties. In addition the judge inquired as to whether the judge would be able to participate in the decision as to the other four petitioners if they submitted briefs and arguments separately from Mr. X's brief and argument.

COMMISSION CONCLUSION:

The Judicial Standards Commission determined that, upon motion of a party pursuant to Canon 3C of the Code of Judicial Conduct or upon the judge's own motion pursuant to Canon 3D of the Code, the judge should disqualify from participating in the current matter before the Court.

As an alternative to disqualification on the judge's own motion pursuant to Canon 3D, the judge may disclose on the record the basis of the potential disqualification. If the parties and their attorneys, independent of any request or participation by the judge, agree in writing that the basis for the judge's potential disqualification is immaterial or insubstantial, the judge may participate in the matter.

Finally, because the issues involving each of the five petitioners appear to be identical and a decision as to any one of them would control the outcome of the appeals of each of the others, the severance of Mr. X's appeal from those of the remaining petitioners would have no effect on the judge's disqualification.

DISCUSSION:

The inquiry implicates the following provisions of the Code of Judicial Conduct: Canon 2B, "a judge shall not allow the judge's . . . relationships to influence the judge's judicial conduct or judgment . . ." and Canon 3C(1), "a judge should disqualify himself/herself in a proceeding in which the judge's impartiality may reasonably be questioned..." particularly subsections (a) and (b). Initially, the Commission recognizes that the issues involved in the criminal matter in which the

judge represented Mr. X, and those involved in the action currently before the Court, are not precisely the same. Regardless, the Commission is of the opinion that due to the former attorney-client relationship which existed between the judge and Mr. X, coupled with the nature of the prior representation, the judge's participation in the current proceeding before the Court could provide reasonable grounds to question the judge's impartiality and create the appearance of impropriety.

Reference:

North Carolina Code of Judicial Conduct

Canon 2B

Canon 3C(1)(a)

Canon 3C(1)(b)

Canon 3D



JUDICIAL STANDARDS COMMISSION
STATE OF NORTH CAROLINA

FORMAL ADVISORY OPINION: 2009-02

June 11, 2009

QUESTION:

Is a newly installed judge required to disqualify from criminal cases prosecuted by the District Attorney's office where the judge was formerly employed?

Initially this inquiry addressed a very specific circumstance regarding a judge who was employed as an Assistant District Attorney (ADA) immediately prior to the judge's election to the District Court Bench. Employment responsibilities during the final 18 to 24 months of employment as an ADA were essentially limited to prosecuting criminal cases in superior court. In the normal course of work, ADA's prosecuting in district court rarely, if ever, shared information about matters with ADA's prosecuting in superior court, unless a matter was appealed following a conviction in district court.

COMMISSION CONCLUSION:

The Judicial Standards Commission determined it to be appropriate for a judge who was formerly employed as an assistant district attorney to preside over criminal district court cases prosecuted by the District Attorney's office, provided the judge disqualifies from hearing any matter wherein the judge 1) was involved in the matter's investigation or prosecution, 2) has personal knowledge of disputed evidentiary facts, or 3) when the judge believes he/she cannot be impartial.

The Commission advises the best practice is for judges to follow a "Six Month Rule" whereby newly installed judges, for a minimum of 6 months after taking judicial office, refrain from presiding over any adjudicatory proceeding wherein an attorney associated with the judge's prior employer provides legal representation to a party in the proceeding. Specific circumstances may necessitate a deviation for the "Six Month Rule". However, judges should always disqualify in the three instances delineated above unless all counsel and pro se parties waive the potential disqualification pursuant to the remittal of disqualification procedures set out in Canon 3D of the Code of Judicial Conduct.

DISCUSSION:

Canon 3C(1) of the North Carolina Code of Judicial Conduct provides that, upon motion, judges should disqualify in proceedings in which their impartiality "may reasonably be questioned". Subparagraph (b) provides for disqualification of the judge when "[t]he judge served as lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter". However, the Commission considered relationships between attorneys working in the district attorney's office to be distinguishable from those between attorneys working together in a private law firm. Factors such as the division of duties between attorneys prosecuting in district and superior court, prosecuting attorneys being assigned

to a particular county in a multi-county district, and the sheer volume of cases prosecuted in district criminal court impact the reasonableness standard by which a judge's impartiality must be considered.

References:

North Carolina Code of Judicial Conduct

Canon 3C(1)(b)

Canon 3D

JUDICIAL DEPARTMENT

Note: List only sources or activities from which the income received was more than \$2,000.00 in the calendar year for which this report is made and gifts in excess of \$500.

[illegible]

Typed Name of Judge or Justice

Signature of Judge or Justice

For reporting additional sources and income information, use additional forms.

Chapter 7A. Judicial Department
Subchapter VII. Administrative Matters
Article 30. Judicial Standards Commission

§ 7A-374.1. Purpose.

The purpose of this Article is to provide for the investigation and resolution of inquiries concerning the qualification or conduct of any judge or justice of the General Court of Justice. The procedure for discipline of any judge or justice of the General Court of Justice shall be in accordance with this Article. Nothing in this Article shall affect the impeachment of judges under the North Carolina Constitution, Article IV, Sections 4 and 17. (2006-187, s. 11.)

§ 7A-374.1. Definitions.

Unless the context clearly requires otherwise, the definitions in this section shall apply throughout this Article:

1. "Censure" means a finding by the Supreme Court, based upon a written recommendation by the Commission, that a judge has willfully engaged in misconduct prejudicial to the administration of justice that brings the judicial office into disrepute, but which does not warrant the suspension of the judge from the judge's judicial duties or the removal of the judge from judicial office. A censure may require that the judge follow a corrective course of action. Unless otherwise ordered by the Supreme Court, the judge shall personally appear in the Supreme Court to receive a censure.
2. "Commission" means the North Carolina Judicial Standards Commission.
3. "Incapacity" means any physical, mental, or emotional condition that seriously interferes with the ability of a judge to perform the duties of judicial office.
4. "Investigation" means the gathering of information with respect to alleged misconduct or disability.
5. "Judge" means any justice or judge of the General Court of Justice of North Carolina, including any retired justice or judge who is recalled for service as an emergency judge of any division of the General Court of Justice.
6. "Letter of caution" means a written action of the Commission that cautions a judge not to engage in certain conduct that violates the Code of Judicial Conduct as adopted by the Supreme Court.
7. "Public reprimand" means a written action of the Commission issued upon a finding by the Commission that a judge has violated the Code of Judicial Conduct and has engaged in conduct prejudicial to the administration of justice, but that misconduct is minor and does not warrant a recommendation by the Commission that the judge be disciplined by the Supreme Court. A public reprimand may require that the judge follow a corrective course of action.
8. "Remove" or "removal" means a finding by the Supreme Court, based upon a written recommendation by the Commission, that a judge should be relieved of all duties of the judge's office and disqualified from holding further judicial office.
9. "Suspend" or "suspension" means a finding by the Supreme Court, based upon a written recommendation by the Commission, that a judge should be relieved of the duties of the judge's office for a period of time, and upon conditions, including those regarding treatment and compensation, as may be specified by the Supreme Court. (2006-187, s. 11.)

§ 7A-375. Judicial Standards Commission.

- a. The Judicial Standards Commission shall consist of the following residents of North Carolina: one Court of Appeals judge, two superior court judges, and two district court judges, each appointed by the Chief Justice of the Supreme Court; four members of the State Bar who have actively practiced in the courts of the State for at least 10 years, elected by the State Bar Council; and four citizens who are not judges, active or retired,

nor members of the State Bar, two appointed by the Governor, and two appointed by the General Assembly in accordance with G.S. 120-121, one upon recommendation of the President Pro Tempore of the Senate and one upon recommendation of the Speaker of the House of Representatives. The Court of Appeals judge shall act as chair of the Commission.

- b. The Court of Appeals judge shall serve at the pleasure of the Chief Justice. Terms of other Commission members shall be for six years. No member who has served a full six-year term is eligible for reappointment. If a member ceases to have the qualifications required for the member's appointment, that person ceases to be a member. Vacancies of members, other than those appointed by the General Assembly, are filled in the same manner as the original appointment, for the remainder of the term. Vacancies of members appointed by the General Assembly are filled as provided under G.S. 120-122. Members who are not judges are entitled to per diem and all members are entitled to reimbursement for travel and subsistence expenses at the rate applicable to members of State boards and commissions generally, for each day engaged in official business.
- c. If a member of the Commission who is a judge becomes disabled, or becomes a respondent before the Commission, the Chief Justice shall appoint an alternate member to serve during the period of disability or disqualification. The alternate member shall be from the same division of the General Court of Justice as the judge whose place the alternate member takes. If a member of the Commission who is not a judge becomes disabled, the Governor, if he appointed the disabled member, shall appoint, or the State Bar Council, if it elected the disabled member, shall elect, an alternate member to serve during the period of disability. If a member of the Commission who is not a judge and who was appointed by the General Assembly becomes disabled, an alternate member shall be appointed to serve during the period of disability in the same manner as if there were a vacancy to be filled under G.S. 120-122. In a particular case, if a member becomes disqualified, or is successfully challenged for cause, the member's seat for that case shall be filled by an alternate member selected as provided in this subsection.
- d. A member may serve after expiration of the member's term only to participate until the conclusion of a disciplinary proceeding begun before expiration of the member's term. Such participation shall not prevent the successor from taking office, but the successor may not participate in the proceeding for which the predecessor's term was extended. This subsection shall apply also to any judicial member whose membership on the Commission is automatically terminated by retirement or resignation from judicial office, or expiration of the term of judicial office.
- e. Members of the Commission and its employees are immune from civil suit for all conduct undertaken in the course of their official duties.
- f. The chair of the Commission may employ, if funds are appropriated for that purpose, an executive director, Commission counsel, investigator, and any support staff as may be necessary to assist the Commission in carrying out its duties. With the approval of the Chief Justice, for specific cases, the chair also may employ special counsel or call upon the Attorney General to furnish counsel. In addition, with the approval of the Chief Justice, for specific cases, the chair or executive director also may call upon the Director of the State Bureau of Investigation to furnish an investigator who shall serve under the supervision of the executive director. While performing duties for the Commission, the executive director, counsel, and investigator have authority throughout the State to serve subpoenas or other process issued by the Commission in the same manner and with the same effect as an officer authorized to serve process of the General Court of Justice.
- g. The Commission may adopt, and may amend from time to time, its own rules of procedure for the performance of the duties and responsibilities prescribed by this Article, subject to the approval of the Supreme Court. (1971, c. 590, s. 1; 1973, c. 50; 1975, c. 956, s. 13; 1997-72, s. 1; 2006-187, s. 11.)

§ 7A-376. Grounds for discipline by Commission; censure, suspension, or removal by the Supreme Court.

- a. The Commission, upon a determination that any judge has engaged in conduct that violates the North Carolina Code of Judicial Conduct as adopted by the Supreme Court but that is not of such a nature as would warrant a recommendation of censure, suspension, or removal, may issue to the judge a private letter of caution or may issue to the judge a public reprimand.
- b. Upon recommendation of the Commission, the Supreme Court may censure, suspend, or remove any judge for willful misconduct in office, willful and persistent failure to perform the judge's 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. A judge who is suspended for any of the foregoing reasons shall receive no compensation during the period of that suspension. A judge who is removed for any of the foregoing reasons shall receive no retirement compensation and is disqualified from holding further judicial office.

- c. Upon recommendation of the Commission, the Supreme Court may suspend, for a period of time the Supreme Court deems necessary, any judge for temporary physical or mental incapacity interfering with the performance of the judge's duties, and may remove any judge for physical or mental incapacity interfering with the performance of the judge's duties which is, or is likely to become, permanent. A judge who is suspended for temporary incapacity shall continue to receive compensation during the period of the suspension. A judge removed for mental or physical incapacity is entitled to retirement compensation if the judge has accumulated the years of creditable service required for incapacity or disability retirement under any provision of State law, but he shall not sit as an emergency justice or judge. (1971, c. 590, s. 1; 1979, c. 486, s. 2; 2006-187, s. 11.)

§ 7A-377. Procedures.

- a. Any citizen of the State may file a written complaint with the Commission concerning the qualifications or conduct of any justice or judge of the General Court of Justice, and thereupon the Commission shall make such investigation as it deems necessary. The Commission may also make an investigation on its own motion. The Commission may issue process to compel the attendance of witnesses and the production of evidence, to administer oaths, and to punish for contempt. No justice or judge shall be recommended for censure, suspension, or removal unless he has been given a hearing affording due process of law.
 - (a1) Unless otherwise waived by the justice or judge involved, all papers filed with and proceedings before the Commission, including any investigation that the Commission may make, are confidential, and no person shall disclose information obtained from Commission proceedings or papers filed with or by the Commission, except as provided herein. Those papers are not subject to disclosure under Chapter 132 of the General Statutes.
 - (a2) Information submitted to the Commission or its staff, and testimony given in any proceeding before the Commission, shall be absolutely privileged, and no civil action predicated upon that information or testimony may be instituted against any complainant, witness, or his or her counsel.
 - (a3) If, after an investigation is completed, the Commission concludes that a letter of caution is appropriate, it shall issue to the judge a letter of caution in lieu of any further proceeding in the matter. The issuance of a letter of caution is confidential in accordance with subsection (a1) of this section.
 - (a4) If, after an investigation is completed, the Commission concludes that a public reprimand is appropriate, the judge shall be served with a copy of the proposed reprimand and shall be allowed 20 days within which to accept the reprimand or to reject it and demand, in writing, that disciplinary proceedings be instituted in accordance with subsection (a5) of this section. A public reprimand, when issued by the Commission and accepted by the respondent judge, is not confidential.
 - (a5) If, after an investigation is completed, the Commission concludes that disciplinary proceedings should be instituted, the notice and statement of charges filed by the Commission, along with the answer and all other pleadings, are not confidential. Disciplinary hearings ordered by the Commission are not confidential, and recommendations of the Commission to the Supreme Court, along with the record filed in support of such recommendations are not confidential. Testimony and other evidence presented to the Commission is privileged in any action for defamation. At least five members of the Commission must concur in any recommendation to censure, suspend, or remove any judge. A respondent who is recommended for censure, suspension, or removal is entitled to a copy of the proposed record to be filed with the Supreme Court, and if the respondent has objections to it, to have the record settled by the Commission's chair. The respondent is also entitled to present a brief and to argue the respondent's case, in person and through counsel, to the Supreme Court. A majority of the members of the Supreme Court voting must concur in any order of censure, suspension, or removal. The Supreme Court may approve the recommendation, remand for further proceedings, or reject the recommendation. A justice of the Supreme Court or a member of the Commission who is a judge is disqualified from acting in any case in which he is a respondent.
- b. Repealed by Session Laws 2006-187, s. 11, effective January 1, 2007.

- c. The Commission may issue advisory opinions to judges, in accordance with rules and procedures adopted by the Commission.
- d. The Commission has the same power as a trial court of the General Court of Justice to punish for contempt, or for refusal to obey lawful orders or process issued by the Commission. (1971, c. 590, s. 1; 1973, c. 808; 1989 (Reg. Sess., 1990), c. 995, s. 2; 1997-72, s. 2; 2006-187, s. 11.)

§ 7A-378. Censure, suspension, or removal of justice of Supreme Court.

- a. The recommendation of the Judicial Standards Commission for censure, suspension, or removal of any justice of the Supreme Court for any grounds provided by G.S. 7A-376 shall be made to, and the record filed with, the Court of Appeals, which shall have and shall proceed under the same authority for censure, suspension, or removal of any justice as is granted to the Supreme Court under G.S. 7A-376 and G.S. 7A-377(a) for censure, suspension, or removal of any judge.
- b. The proceeding shall be heard by a panel of the Court of Appeals consisting of the Chief Judge, who shall be the presiding judge of the panel, and six other judges, the senior in service, excluding the judge who is chairman of the Commission. For good cause, a judge may be excused by a majority of the panel. If the Chief Judge is excused, the presiding judge shall be designated by a majority of the panel. The vacancy created by an excused judge shall be filled by the judge of the court who is next senior in service. (1979, c. 486, s. 1; 2006-187, s. 11.)

§§ 7A-379 through 7A-399. Reserved for future codification purposes.

ANNUAL
REPORT
2017

HON. WANDA G. BRYANT
CHAIR

CAROLYN A. DUBAY
EXECUTIVE DIRECTOR

NORTH CAROLINA
JUDICIAL STANDARDS
COMMISSION



★ ★ ★
IMPARTIALITY INDEPENDENCE INTEGRITY

POST OFFICE BOX 1122
RALEIGH, NORTH CAROLINA 27602
TEL.: (919) 831-3630
FAX: (919) 831-3637

CONTENTS

	<u>PAGE</u>
A Message from the Commission Chair.....	2
Introduction	3
Commission Members	3
Organizational Overview.....	4
Jurisdiction	4
Limits on Commission Actions and Authority.....	4
Procedures	5
Confidentiality.....	6
Advisory Opinions and Educational Programs.....	6
2017 Workload Statistics	8
Review and Investigation of Complaints	8
Nature of Complaints Considered by the Commission.....	9
Five Year Trends in Workload	13
APPENDIX A: Present and Past Members of the Judicial Standards Commission	14

This report provides statistical data of the activities of the Commission in 2017. For further information, please visit the Judicial Standards Commission's website at:

<http://www.nccourts.org/Courts/CRS/Councils/JudicialStandards/Default.asp>

A MESSAGE FROM THE COMMISSION CHAIR

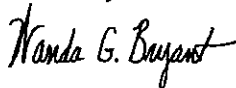
Ladies and Gentlemen:

As Chair of the North Carolina Judicial Standards Commission, I am pleased to present the Commission's 2017 Annual Report. This past year was marked by a number of significant changes to the Commission. In September 2017, we mourned the sudden loss of Judge W. Douglas Parson, who served as a superior court judge member of the Commission from February 10, 2014 until his death on September 24, 2017. At the end of the year, we also bid farewell to the following Commission members who completed their terms: District Court Judge Wayne Michael, Mr. Fred Moody, Mr. Edward Hinson, Mr. Greg Greene and Ms. Lorraine Stephens. We are appreciative of their service and dedication to the work of the Commission. With those large shoes to fill, the Commission welcomed six new members to the Commission to begin six years terms that commenced on January 1, 2018: Superior Court Judge Jeffrey Foster, District Court Judge James Faison, Mr. Lonnie Player, Mr. Andy Penry, Ms. Talece Hunter and Col. Grady Hawkins. We look forward to their contributions and perspectives in the discharge of their duties.

In 2017, the Commission also introduced online complaint filing to make the Commission more accessible to our citizens. With this change, the Commission received 357 complaints of judicial misconduct against judges and justices of the North Carolina Court of General Justice and commissioners and deputy commissioners of the North Carolina Industrial Commission. This marks a significant increase from 2016, when 251 complaints were filed. The Commission staff also continued to diligently address citizen questions, provide education and training for judges and court staff, and review and investigate meritorious complaints. The work remains challenging, important, and above all, necessary to ensure continued public confidence in our courts.

As in past years, we continue to look ahead to the challenges that face the administration of justice in North Carolina. The Commission and its staff remain dedicated in their efforts to promote the core values of a respected, fair and efficient judiciary – impartiality, independence and integrity. It remains an honor and a privilege to serve as Chair of the Judicial Standards Commission.

Sincerely,



Wanda G. Bryant
Judge, North Carolina Court of Appeals
Chair, North Carolina Judicial Standards Commission

INTRODUCTION

The North Carolina Judicial Standards Commission reviews and investigates allegations of misconduct or disability made against judges and justices of the North Carolina General Court of Justice and commissioners and deputy commissioners of the North Carolina Industrial Commission. When there is clear and convincing evidence of judicial misconduct, the Commission makes recommendations to the North Carolina Supreme Court for disciplinary action. The Commission also provides formal and informal advisory opinions to justices, judges, commissioners, and deputy commissioners regarding their ethical obligations under the North Carolina Code of Judicial Conduct. By increasing awareness on the part of both the judiciary, the Industrial Commission, and the public as to the ethical obligations under the Code of Judicial Conduct, the Commission works to protect the integrity of the judicial process and to preserve public confidence in state judicial proceedings.

2017 COMMISSION MEMBERS

There are thirteen members of the Commission, including judges, attorneys and citizens. The Chief Justice of North Carolina appoints a judge of the North Carolina Court of Appeals to serve as Chair of the Commission, who serves at the pleasure of the Chief Justice. The twelve regular members of the Commission each serve one, six year term, and are appointed as follows: two superior court judges and two district court judges appointed by the Chief Justice; four members of the North Carolina State Bar elected by the State Bar Council; and four North Carolina citizens, two appointed by the Governor, one appointed by the Speaker of the North Carolina House of Representatives and one appointed by the President Pro Tempore of the North Carolina Senate. The citizen members of the Commission must not be attorneys or active or retired judges. In 2017, the members of the Commission were as follows:

The Honorable Wanda G. Bryant
Judge of the North Carolina Court of Appeals
Chair of the Judicial Standards Commission

The Honorable W. Douglas Parsons
Judge of the North Carolina Superior Court
Commission Vice-Chair

The Honorable R. Stuart Albright
Judge of the North Carolina Superior Court
Commission Vice-Chair

The Honorable Wayne L. Michael
Judge of the North Carolina District Court

The Honorable Sherri W. Elliott
Judge of the North Carolina District Court

Edward T. Hinson, Jr., Esq.
Member of the North Carolina State Bar

Fred H. Moody Jr., Esq.
Member of the North Carolina State Bar

William H. Jones, Jr., Esq.
Member of the North Carolina State Bar

Forrest Ferrell Esq.
Member of the North Carolina State Bar

Mr. Gregory H. Greene
North Carolina Citizen

Mr. Cresswell Elmore
North Carolina Citizen

Ms. Lorraine Stephens
North Carolina Citizen

Mr. Dean Jordan
North Carolina Citizen

ORGANIZATIONAL OVERVIEW

Jurisdiction

The Judicial Standards Commission was created in 1973 to implement an amendment to Article IV, Section 17 of the North Carolina Constitution authorizing the General Assembly to provide a mechanism for the discipline of judges apart from the impeachment process. The Commission is not involved in the process for the impeachment of judges by the state legislature under the North Carolina Constitution.

Article 30 of Chapter 7A of the General Statutes governs the Commission's authority and prescribes the general procedures for the discipline of any judge or justice of the General Court of Justice. In 2011, the General Assembly amended the Workers' Compensation Act, as provided in Section 97-78.1 of the North Carolina General Statutes, and expanded the Commission's jurisdiction to include allegations of misconduct committed by commissioners and deputy commissioners of the North Carolina Industrial Commission. Presently, the jurisdiction of the Commission extends to over 500 judges, including justices of the North Carolina Supreme Court, judges of the North Carolina Court of Appeals, judges of the North Carolina Superior Courts, judges of the North Carolina District Courts, emergency and recalled judges, as well as the commissioners and deputy commissioners of the North Carolina Industrial Commission.

The Commission has no jurisdiction or authority over the following officials often associated with the judiciary or the judicial process: district attorneys, assistant district attorneys, public defenders, clerks of court, magistrates, administrative law judges, private attorneys, law enforcement officers, or any other court personnel. As a state agency, the Commission also has no jurisdiction or authority over federal judges at any level.

Limits on Commission Action and Authority

The Commission's disciplinary authority extends only to the review and investigation of complaints of judicial misconduct that would violate the North Carolina Code of Judicial Conduct or would otherwise constitute grounds for discipline under North Carolina General Statutes Section 7A-376(b) (willful misconduct in office, willful and persistent failure to perform the judge's 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). The Commission may also investigate allegations that a judge is suffering from a physical or mental incapacity that interferes with the performance of the judge's duties. In appropriate circumstances, and after a full investigation and a hearing, the Commission may recommend disciplinary action to be taken by the North Carolina Supreme Court. Such recommended discipline may include public reprimand, censure, suspension or removal from office. The North Carolina Supreme Court may adopt, modify or reject the Commission's recommendations in whole or in part. In cases where the misconduct does not rise to the level where disciplinary action is to be recommended, the Commission may issue private letters of caution to individuals under inquiry. These private letters of caution are recorded in a judge's permanent disciplinary file, but are confidential and are not public records.

Although the Commission interprets the Code of Judicial Conduct and makes recommendations concerning discipline for violation of its Canons, the Commission itself does not promulgate the Code. That authority rests with the Supreme Court of North Carolina, which adopted the current Code of

Judicial Conduct on January 31, 2006, as amended on November 5, 2015. All orders and amendments with respect to the Code of Judicial Conduct are published in the advance sheets of the North Carolina Reports. The Commission also maintains a copy of the current version of the Code of Judicial Conduct on its website.

Procedures

The Commission's procedures are prescribed generally in Article 30 of Chapter 7A of the North Carolina General Statutes. In addition, as provided in Section 7A-375(g) of the North Carolina General Statutes, the Commission has promulgated additional rules of procedure that govern the initiation and review of complaints before the Commission, as well as the conduct of the Commission's proceedings. The current rules became effective on September 1, 2014, and are available on the Commission's website.

Complaint forms are available on the Commission's website, and they may either be mailed to the Commission or filed electronically through the online form. The Commission does not accept complaints by telephone and citizens may not present complaints in person before the Commission or attend Commission meetings.

The Commission staff reviews each complaint to determine whether the allegations, if true, would be sufficient to establish a violation of the North Carolina Code of Judicial Conduct or would otherwise constitute grounds for discipline or removal by the Supreme Court under Section 7A-376 of the North Carolina General Statutes. If after initial review the allegations are determined to be obviously unfounded or frivolous, the Chair may dismiss the complaint after the appropriate investigative panel of the Commission has had the opportunity to review the complaint and no objection by any member is made to such dismissal after initial review.

Complaints that are unlikely to proceed past initial review typically involve allegations that fall into one of these categories: (1) complaints seeking only reversal or other change to a judge's ruling; (2) complaints seeking only removal of the judge from a particular case; (3) complaints based on the complainant's erroneous understanding of the judicial process or some other error as to jurisdiction or the law; and (4) complaints that are based solely on the claim that the complainant is not subject to the authority of the state's courts or government. Other times, complaints may raise legitimate grievances over an incident, but are dismissed as outside the Commission's authority, such as when: (1) the complaint is against individuals not subject to the Commission's jurisdiction; (2) the alleged conduct took place outside the statute of limitations provided in the Code of Judicial Conduct (three years in most cases); (3) the judge made a clear legal error, but there is insufficient evidence that the error was made in bad faith or as the result of misconduct, or (4) the alleged conduct, though concerning or improper, was not a violation of the Code of Judicial Conduct.

For complaints that are not dismissed after initial review, the investigative panel may request a preliminary investigation to gather more facts relating to the complaint. In the alternative, or after a preliminary investigation is concluded, if the investigative panel considering a complaint finds sufficient credible allegations of serious misconduct, it may order a formal investigation into a complaint. The accused judge is then notified of the Commission's formal investigation and the nature of the allegations of misconduct, and is given an opportunity to respond. Allegations that are most likely to lead to a formal investigation by the Commission include allegations of improper *ex parte* communications between a judge and one of the parties or lawyers in a case, a judge's refusal to

disqualify himself or herself in cases where a clear conflict of interest exists, a judge's use of abusive language towards litigants or counsel, neglect of cases resulting in unjustified delays in entering written orders, the abuse of the judicial office for the personal gain of the judge or other private interests, financial improprieties, and serious personal misconduct by the judge of a criminal nature.

If, after a formal investigation is completed, the Commission finds probable cause to believe that judicial misconduct has occurred, it will initiate disciplinary proceedings by serving a Statement of Charges upon the judge, who will be summoned to appear at a disciplinary hearing before the Commission. In cases where an inquiry is opened or disciplinary proceedings are commenced, the Commission has the authority under Section 7A-377(d) of the North Carolina General Statutes to punish those appearing before the Commission for contempt or for the refusal to obey lawful orders or process issued by the Commission.

At the conclusion of a disciplinary hearing, if the Commission finds that the evidence warrants public discipline of the judge, the Commission will make a recommendation to the Supreme Court as to a specific sanction. If the judge contests that recommendation before the Supreme Court, Commission Counsel may appear before the Supreme Court to represent the Commission as to its recommendation. The Supreme Court may adopt, amend or reject the Commission's recommendation, in whole or in part. Any disciplinary action taken by the Supreme Court against the judge is a matter of public record and such decisions are published not only in official and unofficial case reports, but are also published on the Commission's website.

Confidentiality

While decisions of the Supreme Court to impose discipline are matters of public record, North Carolina General Statutes Section 7A-377 provides that all papers filed with the Commission, and all proceedings before the Commission, are confidential. The confidentiality requirement extends to any investigation that the Commission may make, disciplinary hearings before the Commission, recommendations of the Commission to the Supreme Court and the record filed in support of recommendations to the Supreme Court. The judge, justice, commissioner or deputy commissioner who is the subject of the complaint or proceedings before the Commission may waive the confidentiality requirement. Confidentiality also ceases if the Supreme Court orders disciplinary action against the respondent in question. At that point, the statement of charges, pleadings and recommendations of the Commission to the Supreme Court, as well as the record filed in support of the Commission's recommendations, are no longer considered confidential. In accordance with Commission rules, the Commission may also disclose certain limited information when there is a need to notify another person or agency in order to protect the public or the administration of justice.

Advisory Opinions and Educational Programs

In addition to investigating complaints of judicial misconduct and recommending discipline to the Supreme Court, the Commission also provides an important service to judges, justices and commissioners and deputy commissioners by issuing both formal and informal advisory opinions as to whether certain conduct, if undertaken, would rise to the level of misconduct. The Commission provides formal advisory opinions in response to written requests, and any formal advisory opinions are published on the Commission's website. In 2017, the Commission issued two formal advisory opinions, which are posted on the Commission's website.

Judges, justices, commissioners and deputy commissioners may also seek private, confidential informal advisory opinions from the Commission's Chair, Executive Director and Commission Counsel. Each year, Commission staff responds to between 200 and 300 requests for informal confidential ethics advice.

The Commission Chair and staff also take part in educational programs for judges, attorneys and other interested parties relating to the North Carolina Code of Judicial Conduct and the work of the Commission.

2017 WORKLOAD STATISTICS

Review and Investigation of Complaints

As set forth in Table 1, there were 394 complaints pending before the Commission in 2017. This number includes 357 new complaints received between January 1, 2017 and December 31, 2017, as well as 34 complaints that were pending and carried over from 2016. There were also three (3) complaints from previous years that were reconsidered in 2017 upon the request of the complainant based on new information. A summary of the complaints filed, pending, or re-opened in 2017 is provided in Table 1.

TABLE 1: 2017 WORKLOAD SUMMARY

2017 Total Workload	394
New complaints	357
Complaints carried over from 2016	34
Complaints re-opened/reconsidered	3

As of December 31, 2017, the Commission had taken action on 356 of the 394 pending complaints, with only 38 complaints awaiting initial review by the Commission in 2018. In addition to the 38 complaints awaiting initial review, the Commission also carried over 18 complaints to 2018. These included six (6) complaints subject to an ongoing preliminary investigation, eight (8) complaints subject to an ongoing formal investigation and four (4) disciplinary proceedings awaiting hearing. The Commission's disposition of the 356 complaints considered in 2017 is set forth in Table 2.

TABLE 2: 2017 COMPLAINT DISPOSITION SUMMARY

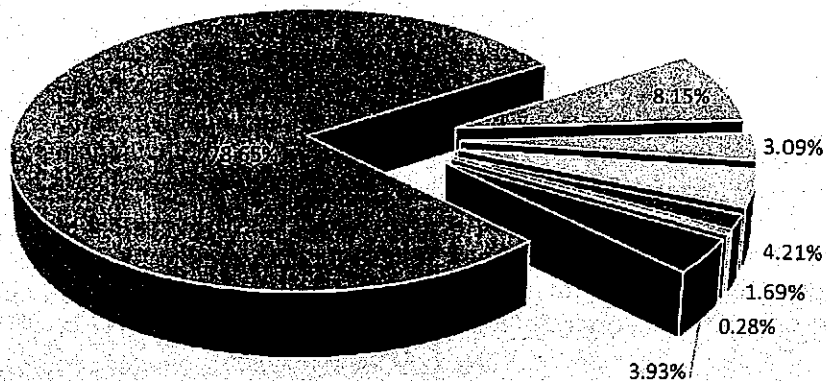
Total Complaints Considered in 2017	356
Dismissed After Initial Review	280
Dismissed After Preliminary Investigation	29
Dismissed After Formal Investigation	11
Dismissed with Letter of Caution	15
Statements of Charges Authorized	6
Disciplinary Proceeding Dismissed	1
Investigation Ongoing	14

Of the six disciplinary proceedings authorized in 2017, two (2) cases were heard before the Commission in 2017 and resulted in the filing of recommendations of public discipline with the North Carolina Supreme Court. Those two matters remain pending in the North Carolina Supreme Court with decisions expected in 2018. Four (4) cases are awaiting a hearing before the Commission in 2018. In 2017, the North Carolina Supreme Court issued a public reprimand in *In re LaBarre*, 369 N.C. 538 (2017) based on a Commission recommendation filed in 2016. The opinion is available on the Commission's website. One disciplinary proceeding initiated in 2016 was dismissed pursuant to a stipulated agreement with the Commission in 2017.

By the percentages, and as set forth in Table 3, of the 356 complaints considered in 2017, 78.65% were dismissed after initial review, 8.15% were dismissed after preliminary investigation, 3.09% were dismissed after formal investigation, 4.21% were dismissed with a private letter of caution, 1.69% of the complaints resulted in the initiation of disciplinary proceedings, and 3.93% remained subject to ongoing investigations. One statement of charges from a previous year was dismissed in 2017 pursuant to a stipulated agreement. This single case statistically was only .28% of the dispositions.

TABLE 3: 2017 DISPOSITION SUMMARY BY PERCENTAGE

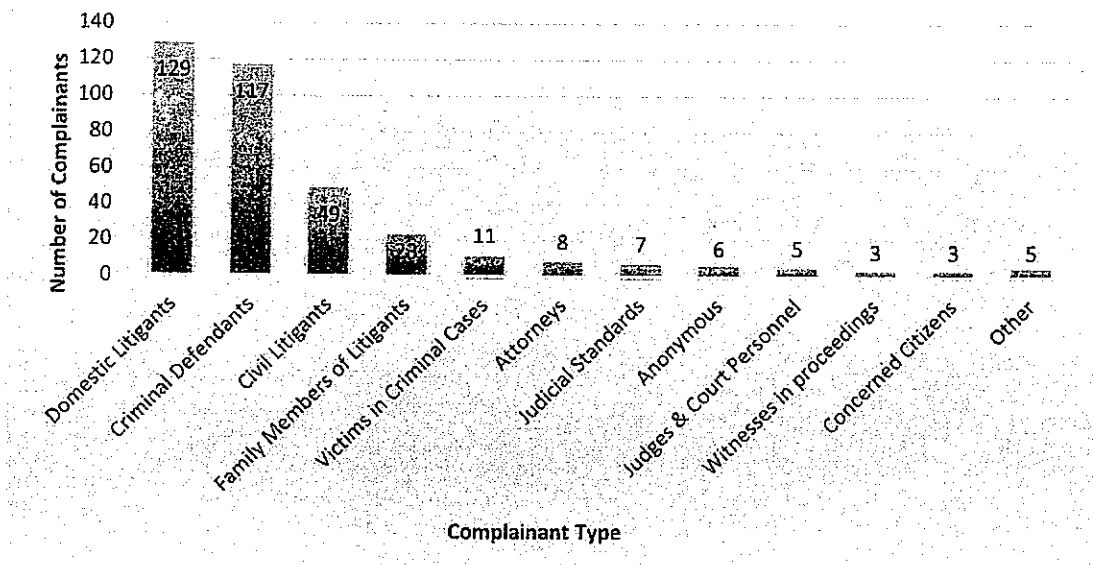
- 78.65% Dismissed after Initial Review
- 8.15% Dismissed after Preliminary Investigation
- 3.09% Dismissed after Formal Investigation
- 4.21% Dismissed after Letter of Caution
- 1.69% Statements of Charges Authorized
- .28% Statements of Charges Dismissed
- 3.93% Ongoing Investigations



Nature of Complaints Considered by the Commission

Written complaints are received from citizens (most of whom are involved in criminal or civil proceedings before the judge in question), attorneys, judges (either as self-reports or reports from other judges and court staff), and occasionally anonymous complainants. The Commission will also at times initiate a complaint on its own motion on the discovery of credible information of potential misconduct (such as through reports in the media). There were 366 different complainants in the 357 new complaints filed in 2017 (note that some complaints have multiple complainants). Table 4 identifies the categories of complainants who filed complaints with the Commission in 2017.

TABLE 4: CATEGORIES OF COMPLAINANTS



Most complaints arose out of courtroom proceedings in front of trial judges of the General Court of Justice (superior court and district court judges). A single complaint may also allege misconduct by multiple judges. Overall in 2017, and as set forth in Table 5, 268 complaints were directed at district court judges, 123 complaints were directed at superior court judges, 19 complaints were directed at judges of the Court of Appeals, 15 complaints were directed at justices of Supreme Court, and 3 complaints were directed at deputy commissioners of the Industrial Commission. There were no complaints filed against commissioners of the Industrial Commission in 2017.

TABLE 5: TARGETS OF COMPLAINTS: JUDGES AND COMMISSIONERS

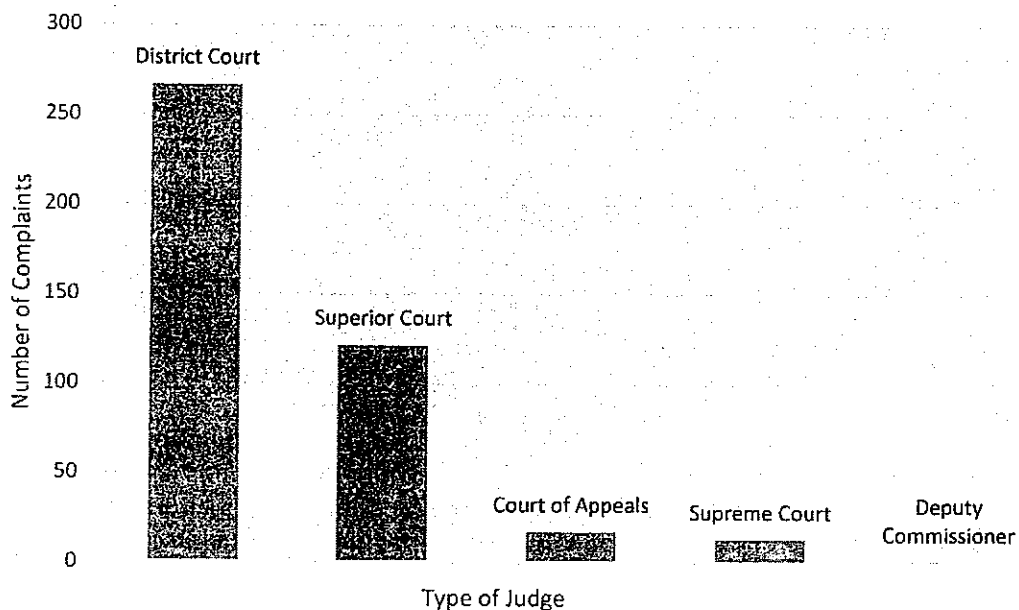


TABLE 6: COMPLAINTS AGAINST DISTRICT COURT JUDGES

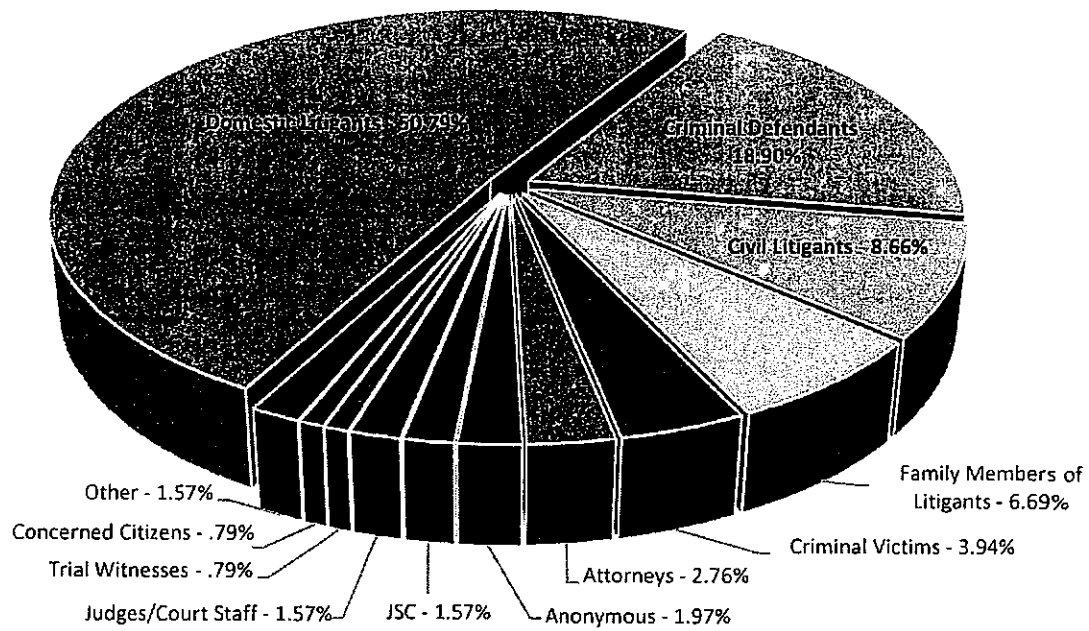
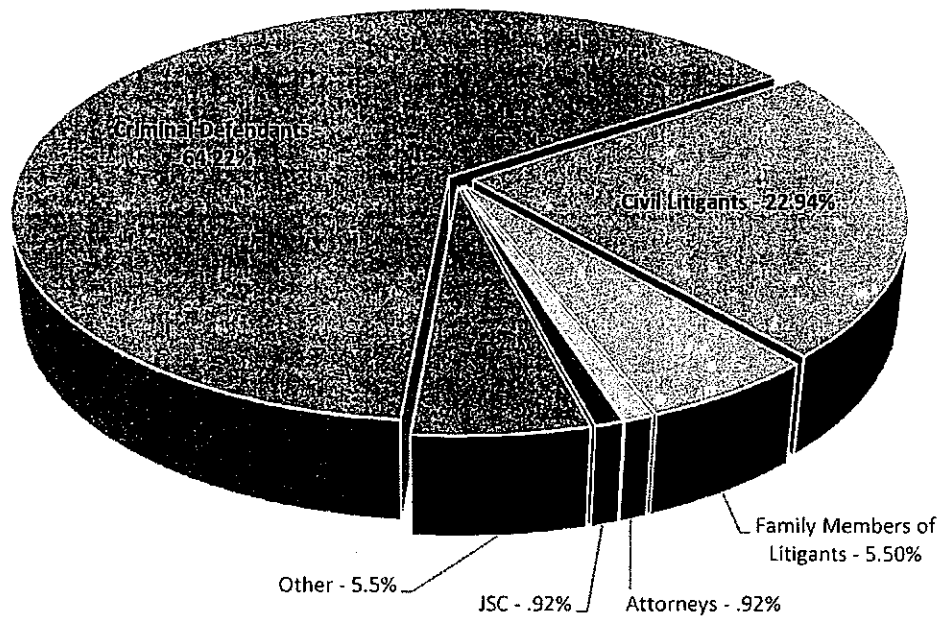
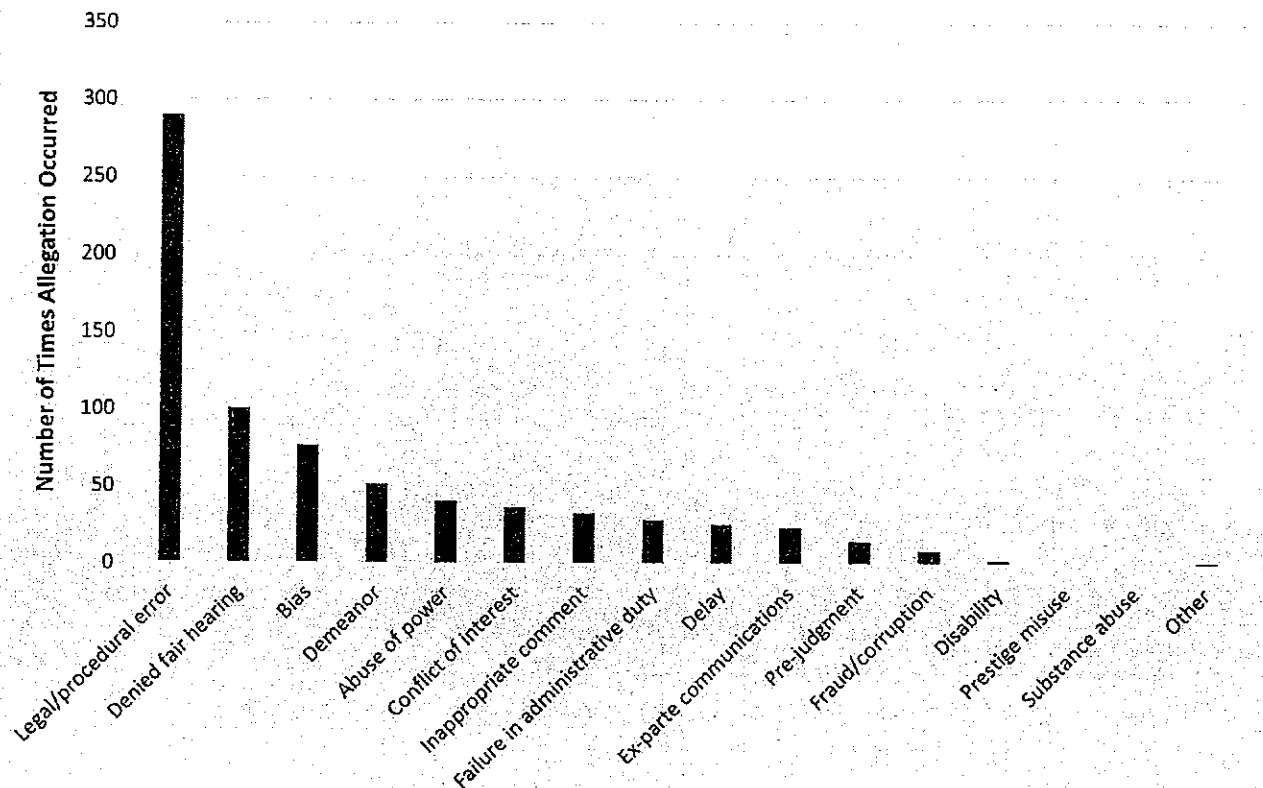


TABLE 7: COMPLAINTS AGAINST SUPERIOR COURT JUDGES



The complaints considered in 2017 alleged various forms of judicial misconduct. By far, the most common complaint was that a judge or deputy commissioner committed some form of legal error in rendering a decision in a case. General allegations of bias or the denial of a fair hearing were also common complaints, and were often coupled with claims of legal error. The data below indicates the number of times a particular allegation appeared in a complaint in 2017 (note that a single complaint may raise multiple allegations).

TABLE 8: TYPES OF ALLEGATIONS OF JUDICIAL MISCONDUCT



Five Year Trends in Workload

The Commission's workload remained fairly consistent until 2017, when the introduction of electronic filing led to a large increase in the number of complaints received from the previous year. As indicated on Table 7, however, the number of hearings conducted and recommendations for public discipline remained fairly consistent since the Commission's authority to issue a public reprimand was revoked in 2013. Because the Commission no longer has this authority, there has been a relative increase in the number of statements of charges filed since 2013 as this is the only authorized procedure for public discipline of a judicial officer subject to the Code of Judicial Conduct.

TABLE 9: FIVE YEAR TRENDS

	2017	2016	2015	2014	2013
Complaints Pending at Year Start	34	39	50	28	57
New Complaints Filed	357	251	227	250	235
Complaints Pending at Year End ¹	56	34	39	50	28
Dismissed Without Formal Investigation ²	309	236	217	204	239
Formal Investigations Ordered	28	15	16	29	25
Dismissed After Formal Investigation	11	8	12	14	17
Private Letters of Caution Issued	15	10	7	7	8
Public Reprimands by Commission ³	N/A	N/A	N/A	N/A	1
Statements of Charges Authorized	6	2	3	3	1
Charges Withdrawn or Dismissed	1 ⁴	0	1	1	1
Disciplinary Hearings	2	2	2	2	0
Recommendations for Public Discipline	2	2	1	1	0

¹Includes new complaints awaiting initial review, existing complaints under investigation and disciplinary proceedings awaiting hearings.

²Includes all complaints dismissed on initial review or after preliminary investigation.

³The Commission's statutory authority to issue public reprimands was revoked in 2013.

⁴This action related to a statement of charges issued in 2016.

APPENDIX A

PAST AND PRESENT MEMBERS OF THE JUDICIAL STANDARDS COMMISSION

Judges Appointed by the Chief Justice:

Court of Appeals

Hon. Walter E. Brock
Hon. Edward B. Clark
Hon. Gerald Arnold
Hon. Clifton E. Johnson
Hon. Sidney S. Eagles, Jr.
Hon. Jack L. Cozort
Hon. John B. Lewis, Jr.
Hon. John C. Martin
Hon. Wanda G. Bryant*

Superior Court

Hon. George M. Fountain
Hon. W. Douglas Albright
Hon. James M. Long
Hon. Robert D. Lewis
Hon. Marvin K. Gray
Hon. James L. Baker, Jr.
Hon. Richard D. Boner
Hon. Paul L. Jones
Hon. Tanya T. Wallace
Hon. Cy A. Grant
Hon. W. Douglas Parsons*
Hon. R. Stuart Albright*

District Court

Hon. E. D. Kuykendall, Jr.
Hon. C. Walter Allen
Hon. L. T. Hammond, Jr.
Hon. W. S. Harris, Jr.
Hon. A. Elizabeth Keever
Hon. Joyce A. Hamilton
Hon. Tanya T. Wallace
Hon. Rebecca B. Knight
Hon. Alexander Lyerly
Hon. Rebecca Blackmore
Hon. Wayne L. Michael *
Hon. Sherri W. Elliott*

Attorneys Elected by the State Bar Council:

Mr. Emerson T. Sanders
Mr. Harold K. Bennett
Mr. Robert G. Sanders
Mr. Jerome B. Clark, Jr.
Mr. E. K. Powe
Mr. Rivers D. Johnson, Jr.
Mr. Louis J. Fisher, Jr.
Mr. William K. Davis
Mr. Z. Creighton Brinson
Mr. Charles M. Davis
Mr. Ronald Barbee
Mr. William O. King
Mr. Steven Michael
Mr. Dudley Humphrey
Mr. L.P. Hornthal, Jr.
Mr. Edward T. Hinson, Jr.*
Mr. William H. Jones, Jr. *
Mr. Fred H. Moody, Jr.*
Mr. Forrest Ferrell *

Citizens Appointed by the Governor:

Mr. Marvin B. Koonce, Jr.
Mrs. George L. Hundley
Ms. N. Susan Whittington
Mrs. Veatrice C. Davis
Ms. Pamela S. Gaither
Mr. Albert E. Partridge, Jr.
Mrs. Margaret H. Almond
Mr. Melvin C. Swann, Jr.
Mr. Roland W. Leary
Mr. James L. Mebane
Hon. T. Ray Warren
Mrs. Linda Brown Douglas
Hon.. Arthur B. Schools, Jr.
Ms. Lorraine Stephens *
Mr. Cresswell Elmore*

Citizens Appointed by the General Assembly:

Hon. Todd W. Tilley
Mr. R. Wayne Troutman
Mr. James P. Testa
Mr. Gregory H. Greene*
Mr. Dean Jordan*

*Denotes current member