

POLITICAL CONDUCT & JUDICIAL ETHICS

- ▶ District Court Judges Summer Conference 2022
- ▶ Judge Chris Dillon, Chair
- ▶ Barbara Jackson, Executive Director
- ▶ NC Judicial Standards Commission

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CORE VALUES TO KEEP IN MIND

"A frequent recurrence to *fundamental principles* is absolutely necessary to preserve the *blessings of liberty*." NC Constitution, Article 1, Section 35.

- ▶ **Independence** –
"The legislative, executive, and supreme judicial powers of the State government shall be **forever separate and distinct** from each other." NC Const., Art. 1, Sec. 6.
- ▶ **Impartiality** –
"All courts shall be open . . . and right and justice shall be administered **without favor, denial, or delay**." NC Const., Art. I, Sec. 16.
- ▶ **Integrity** –
"The General Assembly shall prescribe a procedure . . . for the censure and removal of a Justice or Judge of the General Court of Justice for wilful misconduct in office, wilful and persistent failure to perform his duties, habitual intemperance, conviction of a crime involving moral turpitude, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute." NC Const., Art. IV, Sec. 17(2).

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KEY ETHICAL CONSIDERATIONS IN POLITICAL CONDUCT

- ▶ Canon 7 of the Code of Judicial Conduct governs political conduct specifically, but you **CONTINUE** to be bound by:
 - ▶ Canon 1: you must "**personally observe**" standards of conduct that reflect the **integrity and independence** of the judiciary
 - ▶ Canon 2: you must "**avoid impropriety**" in ALL of your activities and conduct yourself "at all times" in a way that promotes **public confidence in the integrity and impartiality of the judiciary**
 - ▶ Canon 3A: when discharging your judicial duties, you must be "**unswayed by partisan interests**, public clamor, or fear of criticism"
 - ▶ Canon 3C: disqualification is appropriate where your **impartiality could reasonably be questioned**

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BIG ISSUES IN CAMPAIGN CONDUCT

- ▶ Campaign Finance
 - ▶ Soliciting or making contributions to **your own or other campaigns** or political organizations
- ▶ Endorsing Other Candidates
- ▶ Disqualification Issues Relating to Campaign Conduct
- ▶ Running for Non-Judicial Office
- ▶ Campaign Materials
 - ▶ Flyers & Ads
 - ▶ Websites
 - ▶ Social Media
- ▶ Answering Questions
 - ▶ Surveys
 - ▶ Debates
 - ▶ Media Interviews

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GENERAL PRINCIPLE GOVERNING POLITICAL CONDUCT

NC	Other States
1973-2003: "A judge should refrain from political activity inappropriate to his judicial office."	States Following a Variation of the 1972 ABA Model Code Language: AL, IL, LA, MI, NY, TX "A judge should refrain from political activity inappropriate to his judicial office."
2003-present: "A judge may engage in political activity consistent with the judge's status as a public official."	States Following a Variation of the 2007 ABA Model Code Language: IN, KS, MO, NM, OH, PA, TN "A judge or candidate for judicial office shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary."

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LEADERSHIP IN POLITICAL PARTIES/ORGANIZATIONS

NC	Other States
1973: a judge or a judicial candidate should not "act as a leader or hold any office in a political organization."	1972, 1990 and 2007 ABA Model Code all provide that a judge or judicial candidate should not "act as a leader or hold any office in a political organization."
1976: added "For example, he may not attend a political convention on any level as a delegate; nor may he preside or serve as an officer at any precinct meeting, convention, or other political convocation . . ."	States Following 1972/1990/2007 Rule: IN, IL, KS, LA, MI, MO, NM, NY, OH, PA, TN
1997: simplified the language: a judge cannot "act as a leader or hold any office in a political organization. For example, he may not attend a political convention on any level as a delegate; nor may he preside or serve as an officer."	Note: KS allows lawyers seeking appointment to judicial office to retain an office in a political organization while under consideration and prior to becoming a judge.
2003-present: restriction removed.	No clear rule: AL, TX (no fundraising, investment advice, no endorsements; often will not hold this position because public sees judge as face of party endorsements – Canon 4)

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ENDORISING OTHER CANDIDATES

What is the definition of endorse?	When can judges endorse other candidates for elected office?	Who cannot endorse?
<ul style="list-style-type: none"> Canon 7A(3): very broad definition that includes any express request that asks other persons to support a specific individual "to be elected to public office" The definition does not encompass recommendations for appointed positions 	<ul style="list-style-type: none"> Only JUDICIAL CANDIDATES may endorse – you become a candidate through: <ul style="list-style-type: none"> Publicly declaring your intention to run Filing with the election commission Authorizing or accepting contributions to your campaign, or Best Practice: letter of intention mailed to the Chair of the Judicial Standards Commission – please be sure to identify the year and seat you will seek 	<ul style="list-style-type: none"> Any judge who cannot stand for election in the next election cycle Emergency judges, retired Judges subject to recall Judges reaching the statutory age limit for elected judicial office Special superior court judges who are not candidates for an elected judicial position

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Endorsements of Judicial and Non-Judicial Candidates <small>*Indicates no express rule but implied from language of Code</small>		
Judicial Candidates May Endorse NON-JUDICIAL CANDIDATES	Endorsements of JUDICIAL CANDIDATES permitted	All endorsements prohibited at all times
Judicial candidate can endorse ANY CANDIDATE in the SAME ELECTION:	Judicial candidate can endorse JUDICIAL CANDIDATES in the SAME ELECTION:	LA
IL	2007 ABA Model Code	MO
IN	KS	NM
	PA	NY
	TN	OH
Judicial candidate can endorse anyone at ANY TIME:	Judges do not need to be a candidate to endorse other judicial candidates:	TX but there is opinion from Court of Review to change definition of endorsement; involved CJ Hecht
NC	MI	
AL*		

ENDORSEMENTS

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- You **may** contribute to:
 - Political parties or organizations
 - Your own campaign
 - A joint campaign you have formed with another judicial candidate
- You **may NOT** contribute to:
 - Individual candidates (even your own family members)
 - Campaign committees for individual candidates
- Your spouse/family members: **MAY** contribute to campaigns
 - BEWARE!** the joint checking account problem – you must make sure your name is crossed out and that the candidate or campaign treasurer does not identify you as a contributor

CANON 7'S RESTRICTIONS ON CONTRIBUTIONS

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- The Code restricts political fundraising by judges:
 - Under Canon 7, you may **NOT** solicit funds on behalf of a **political party, organization or an individual candidate** "by specifically asking for such contributions in person, by telephone, by electronic media, or by signing a letter"
- Your ability to solicit funds for your campaign (or a joint campaign) is a **NARROW EXCEPTION** to these rules
 - You **MAY personally solicit** contributions to your campaign (or joint campaign) and serve as your treasurer or form a campaign committee to do so
 - DO NOT** solicit contributions in the courthouse or during the performance of official judicial duties, and **NEVER** solicit from parties appearing before you
 - NOTE:** many state codes of judicial conduct prohibit personal solicitations by judges and this type of restriction was found to be constitutional in *Williams-Yulee v. Florida Bar* (US Supreme Court 2015)

RESTRICTIONS ON SOLICITING CONTRIBUTIONS

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Permitted At Any Time	Permitted Subject to Limitations	Prohibited At All Times
NC	KS* (within Campaign Window)	2007 ABA Model Code
	MO* (not as to persons "likely to appear before the judge"; no in person, but written requests permitted; not permitted in courthouse)	IL ("strongly discouraged")
	OH (only to large audiences; mass letters/communications)	IN
	TX (within Campaign Window and subject to statutory TN caps)	LA
		MI
		NM
		NY
		PA
		TN

*KS and MO appellate judges/justices are appointed and stand for retention; rule applies only to local courts that have opted for partisan elections.

PERSONAL SOLICITATION OF CONTRIBUTIONS

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CONTRIBUTIONS TO POLITICAL PARTIES

Contributions to Political Parties <small>*Indicates no express rule but implied from Code language</small>		
Permitted Any Time	Permitted Only During Campaign Window	Prohibited At All Times
AL*	2007 ABA Model Code	NY
IL	LA	
IN	PA	
KS		
MI		
MO		
NM		
NC		
OH (subject to limits)		
TN		
TX*		

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Contributions to Candidates <small>*Indicates no express rule but implied from Code language</small>		
Permitted Any Time	Permitted During Campaign Window	Prohibited At All Times
AL* TN TX*	2007 ABA Model Code IN PA	NC (except joint judicial campaign)

CONTRIBUTIONS TO CANDIDATES FOR ELECTED OFFICE

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- Attending political events and fundraisers
 - YOU MAY:**
 - attend political events and fundraisers
 - be listed as a speaker in the publicity for the event
 - endorse other candidates while at the event, BUT ONLY IF YOU ARE A CANDIDATE YOURSELF
 - buy and share tickets – but BEWARE tickets for fundraisers for individual candidates – see below
 - YOU MAY NOT:**
 - pay more than the actual cost of the meal if you are attending a fundraising event for an individual campaign – anything over that cost may be considered an improper campaign contribution
 - be listed as “host” or “sponsor” for any fundraising events, but you CAN be listed as a contributor, patron, friend or like name that does not suggest that you are leading the fundraising efforts

OTHER POLITICAL CONDUCT ISSUES

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Purchase Tickets to Political Party Events/Gatherings <small>*Indicates no express rule but implied from Code language</small>		
Permitted Any Time	Permitted During Campaign Window	Prohibited At All Times
AL* IL IN KS LA MI* MO* NC* OH TN TX*	2007 ABA Model Code PA	NY (can pay up to meal cost)

PURCHASING TICKETS TO POLITICAL PARTY EVENTS

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Purchase Tickets to Campaign Events for Candidates <small>*Indicates no express rule but implied from Code language</small>		
Permitted Any Time	Permitted During Campaign Window	Prohibited At All Times
AL* KS NM OH TN* TX*	2007 ABA Model Code IN PA	IL LA MI* MO* NC* NY (can pay up to meal cost)

PURCHASING TICKETS TO CAMPAIGN EVENTS FOR CANDIDATES

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NC

1972: a judge should not “make speeches for a political organization or candidate or publicly endorse a candidate for public office” but while campaigning, candidates can attend political events and “speak to such gatherings on his own behalf when he is a candidate for election or re-election.”

1976: added that a judge may “attend a predict meeting, convention or other political convocation provided he does not violate any other canon. Restrictions on endorsements, speeches on behalf of political parties, solicitation of contributions for others.”

1997: clarified that a judicial candidate while campaigning could “attend any political party meeting” no change to restrictions on speaking.

2003: removed all restrictions on attending and speaking at political events including fundraisers and provided that the judge could be listed on the publicity as a speaker, maintained restriction giving speeches that were endorsements or solicitation of money for others.

2010: technical clarification that judge could endorse while speaking at political events if otherwise permitted to do so.

Other States

Judges at any time may not make “speeches on behalf of a political organization”.

IL, IN, KS, LA, MI, MO, NM, NY, OH, PA, TN

When a candidate, a judge may speak to political gatherings on his or her own behalf and if allowed in the state, make appropriate endorsements of others:

IL, IN, LA, MI, NM, NY, PA, TN

K3 variation: When a candidate, a judge may “speak on behalf of his or own candidacy or against any opponents’ candidacies”

No rule: AL, TX

ATTENDING AND SPEAKING AT POLITICAL EVENTS

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DISQUALIFICATION ISSUES

Campaign staff and volunteers

- Disqualify from cases involving your campaign manager, treasurer and others who play a “significant role” in your campaign and for at least six months after the election
- The parties may **remit** this conflict through written agreement (Canon 3D)
- Conflict **generally is not imputed** to law firms employing campaign staff

Opponents

- Disqualify from cases where your opponent is appearing and for at least six months after the election if you win
- Same rules for campaign staff of your opponent as apply to your own campaign staff (conflict may be remitted, applies for six months after election, generally not imputed to employer of the individual unless facts show basis for conflict)

Contributors/Donors – no set amount that requires disqualification

- Generally **do NOT disqualify UNLESS** you know the donor has made an **unusually large donation** (or has **hosted an event** that led to significant contributions), the donation is large and occurred **while a case is pending before you**, or if the contribution is coupled with other facts that would call into question your impartiality

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RUNNING FOR NON-JUDICIAL OFFICE

- ▶ Canon 7B(5) - a judge must "design 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"
- ▶ Clerk of Court is a "judicial office" so a judge does NOT need to resign to run
 - **Formal Advisory Opinion No. 2009-05:** office of clerk of superior court is a judicial office of the General Court of Justice because the North Carolina Constitution and General Statutes require clerks of superior court to exercise certain judicial functions and explicitly refer to clerks of superior court as "judicial officers."
- ▶ District Attorney is a "non-judicial office" and a judge **MUST RESIGN** to run
 - **Formal Advisory Opinion No. 2017-01:** 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."

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- ▶ **Apply core values of impartiality, integrity and independence** when preparing, reviewing and approving your campaign materials.
 - Partisan elections do not mean we have partisan justice – duty to protect independence and impartiality of the courts even during a campaign – Canons 1, 2 & 3
 - False or misleading campaign ads or accusations about your opponent show a lack of integrity – Canon 7 (e.g., do not state "re-elect" if you have never been elected)
 - Undignified or offensive ads raise questions about your integrity and impartiality – Canons 1, 2 and 3
 - Statements that would suggest bias or lack of impartiality in certain cases or towards certain litigants threaten public confidence in the impartiality of the courts – Canons 1, 2 and 3C
 - Avoid comments about the merits of any pending cases – Canon 3A(4)
 - Monitor your social media pages for inappropriate content and comments

CAMPAIGN MATERIALS - GENERALLY

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AND MORE CAMPAIGN MATERIALS – GENERALLY

- ▶ **DO NOT** use court or state equipment, computers, stationery, email, etc. to conduct campaign business
 - Do not use state owned equipment to print or disseminate campaign materials
 - Do not use official court stationery to send political messages or ads
- ▶ **DO NOT** require court staff and employees to help your campaign, and only allow volunteer work **AFTER BUSINESS HOURS**
- ▶ **DO NOT** engage in campaign conduct while on the job
 - Do not engage in campaigning while at work
 - Do not wear (or allow staff to wear) campaign buttons and other indicia of campaign conduct at work or post literature in the courthouse
- ▶ **YOU MAY**
 - Use court or state seal in personal stationery and campaign materials **SO LONG AS** conspicuously noted that it was not printed at state expense
 - Have photographs taken in your robes in the courtroom **SO LONG AS** they are not taken during actual proceedings or while courtroom is in use (your opponent may use the courtroom too, but not in robes unless a judge)

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WHO JUDGES THE JUDGES?

- ▶ "Any jerk with a law degree can become a judge and as a former judge, I'm ~~in no way~~ ^{in no way} There is no guarantee that a person elevated to the bench will be a good/wise/thoughtful/tempered judge, no matter his or her predictable proclamations to be all those things. In fact, some turn out to be the opposite. There is no amount of look-good-on-paperism that translates to decent jurist, though there certainly are criteria that provide a decent foundation to hedge the bet."
- ▶ Dayvid Figler 28 May 2019
- ▶ <https://thenevadaindependent.com/article/who-judges-the-judges>

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- ▶ **Surveys**
 - Special interest groups may send you surveys, and you **MAY** respond
 - **BE CAREFUL** not to make statements that would undermine your impartiality or convey the impression that they can influence you
- ▶ **Debates**
 - Be dignified, respectful and civil
 - Avoid comments on pending cases and other statements that might later be used to call into question your impartiality or integrity
- ▶ **Media interviews**
 - Same rules as above
 - Avoid interviews about cases, even those pending in other courts
- ▶ **Positions on Proposed Legislation Affecting the Courts**
 - Canon 4 specifically allows judges to speak on matters affecting the administration of justice, including consulting with executive and legislative branch officials on these issues
 - Beware making comments on the legislation if the constitutionality or legality of the legislation, if passed, could end up in litigation before your court

ANSWERING QUESTIONS

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WHEN YOUR OPPONENT IS NOT . . .

. . . a sitting judge bound by the Code of Judicial Conduct.

- ▶ The Code provides that "[t]he provisions of Canon 7 of this Code shall apply to judges and candidates for judicial office."
- ▶ Rule 8.2 of the NC Rules of Professional Conduct:
 - (a) **A lawyer shall not make a statement** that the lawyer knows to be **false or with reckless** disregard as to its truth or falsity concerning the qualifications or integrity of a judge, or other adjudicatory officer or of a candidate for election or appointment to judicial office.
 - (b) A lawyer who is a candidate for judicial office shall comply with the **applicable provisions** of the Code of Judicial Conduct.

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QUESTIONS, CONCERNS, COMMENTS?

- ▶ Call us for informal, confidential advice: (919) 831-3630
- ▶ Or email us your questions:
 - ▶ Barbara Jackson,
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