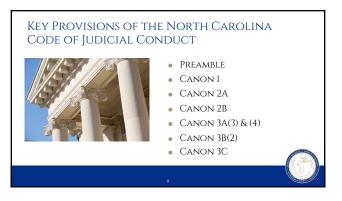




# FALLOUT FROM THE KOZINSKI SCANDAL: REPORT OF THE FEDERAL JUDICIARY WORKPLACE CONDUCT WORKING GROUP JUNE 1, 2018 • Victims and Witnesses Are Fearful to Report the Inappropriate Behavior of Judges or Other Judicial Employees: "The most significant challenge for accountability, however, arises from the reluctance of victims to report misconduct [to disciplinary and HR offices]." • Judges have ethical duties under the Code of Conduct to ensure that their own behavior and the behavior of their staff is at all times civil, respectful and professional: "Of the inappropriate behavior that does occur [in the judiciary], incivility, disrespect or crude behavior are more common than sexual harassment." "An important first step is vigilance on the part of judges themselves. Under the Code of Conduct for United States Judges, judges have a responsibility to promote appropriate behavior in the workplace, and that responsibility should extend beyond one's own chambers."



# NC SUPREME COURT DISCIPLINARY DECISIONS In re Daisy, 359 N.C. 622 (2005) In re Hayes, 356 N.C. 389 (2002) In re Kivett, 309 N.C. 635 (1983) In re Wartin, 302 N.C. 299 (1981) DAILY NEWS La your Market of the Wartin of the William Resident Price in Responsible your price and severe in the last price of the William Resident Price in Responsible your price and severe in the last price of the William Resident Price in Responsible your price and severe in the last price of the Resident Price in Resident Price in Resident Resident Price in Resident Re

## NC Supreme Court Disciplinary Decisions

- Judge Daisy CENSURED on agreement after he resigned and sought mental health
  counseling. The Chief Judge reported him to the Commission because the female JA and
  a paralegal, who had been subjected to "unwanted, uninvited, and inappropriate
  conduct," were afraid to come forward.
- Judge Kivett REMOVED from office. The Supreme Court specifically noted that it was
  not relevant whether this was private or public conduct, but instead focus must be on the
  nature of the conduct, the frequency of the occurrences, and "the impact which
  knowledge of the conduct would likely have on the community."
- Judge Martin REMOVED from office. Judge Martin "attempted on several occasions by innuendos or directly, to obtain sexual favors from two female defendants. Such conduct, in our view, constitutes 'willful misconduct in office' warranting removal."

# PROHIBITED SEXUAL MISCONDUCT

"THE PLACE OF JUSTICE IS A HALLOWED PLACE": SIR FRANCIS BACON (OF JUDICATURE 1612)

- Sexual Advances or Inappropriate Conduct of a Sexual or Abusive Nature Towards Co-Workers and Court Staff
- Sexual Relationships with Attorneys Appearing Before the Judge
- Sexual Relationships with Litigants or Witnesses

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- Sexual Activity in the Courthouse (Including Viewing Pornography on State Equipment or in the Courthouse)
- Criminal Conviction for Sexual Misconduct



# ETHICAL DUTIES IN ENSURING YOUR STAFF IS PROFESSIONAL, CIVIL AND RESPECTFUL

### Canon 3A(3):

A judge should be patient, dignified and courteous . . . [to all] 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."

# Canon 3B(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.



# **KEY TAKEAWAYS:**

- Make sure you comply with both LEGAL AND ETHICAL obligations in handling personnel issues and maintaining a professional working environment: EVEN IF YOUR CONDUCT IS NOT UNLAWFUL, AND EVEN IF CONSENT IS PRESENT IN SEXUAL ENCOUNTERS, DISCIPLINE MAY BE APPROPRIATE
- Make sure YOUR STAFF/EMPLOYEES understand their legal and ethical obligations regarding professionalism in the workplace
- Be **VIGILANT** in setting the highest standards of professionalism, civility and respect:
  - Everyone will be nice to you, laugh at your jokes, and smile when they are around you, so do not assume everyone is comfortable with your comments or behavior

  - Adopt a zero tolerance oplicy for unprofessional behavior by your staff
    Be a role model—your standards of behavior will set the tone for the courthouse s
  - Understand, and willingly accept, that with the power and prestige of your position come many restrictions on your professional and personal behavior



