

JUDICIAL STANDARDS UPDATE: SUMMER 2025

JUDGE JEFF CARPENTER, CHAIR
BRITTANY PINKHAM, EXECUTIVE DIRECTOR
PATRICIA FLOOD, COMMISSION COUNSEL
NORTH CAROLINA JUDICIAL STANDARDS COMMISSION



DISQUALIFICATION: GENERALLY

- N.C.G.S. 15A-1223(b)
- Canon 3C: “A judge should disqualify himself/herself in a proceeding in which the judge’s impartiality may reasonably be questioned...”
- Objective **AND** Subjective Analysis
 - Objective: see Canon 3C(1) for examples
 - Reasonably educated person standard
 - Subjective: ask yourself, “can I be fair/impartial?”
- **Must balance with what you have been elected/appointed to do – hear cases!**



DISQUALIFICATION: WHAT IS THE STANDARD?

- To disqualify a judge, “the burden is upon the party moving for disqualification to [produce] substantial evidence that there exists such a personal bias, prejudice or interest on the part of the judge that he would be unable to rule impartially.” *Lange v. Lange*, 357 N.C. 645, 649 (2003)
- Judges need not recuse themselves “because of ‘unsupported, irrational, or highly tenuous speculation[.]’ . . . To disqualify oneself in such circumstances . . . would allow litigants ‘to exercise a negative veto over the assignment of judges.’” *U.S. v. DeTemple*, 162 F.3d 279, 286-87 (4th Cir. 1998)
- The fact that a judge has not ruled in a party’s favor is not evidence of personal bias, prejudice or interest. “[T]he bias or prejudice which can be urged against a judge must be based upon something other than rulings in the case.” *Berger v. United States*, 255 U.S. 22, 31 (1921)
- “Parties cannot be allowed to create the basis for recusal by their own deliberate actions. To hold otherwise would encourage inappropriate ‘judge shopping.’ It would invite litigants to test the waters with a particular judge and then to take steps to create recusal grounds if the waters proved uncomfortably hot.” *United States v. Owens*, 902 F.2d 1154, 1156 (4th Cir. 1990)



DISQUALIFICATION: TAKEAWAYS

- It is NOT appropriate for judges to recuse to please a party (e.g. get bullied off of a case) or “because it is easier”
- See [FAO 2014-02](#)
- Think of the impact that this may have on others
- Canons 1, 2A, 3A(1) – duty to respect and comply with the law and maintain your professional competence in it; duty to uphold the integrity, impartiality, and public’s confidence in the judiciary
- Canon 3A(5) – duty to promptly dispose of the business of the court
- Canon 3B – administrative duties



DISQUALIFICATION: WHEN DO I NEED ANOTHER JUDGE?

- Rarely. But before deciding, call Judicial Standards.
- [UNC SOG Judges' Benchbook](#)
 - If the allegations made about the judge's bias or other potential disqualification are made with sufficient support to require findings of fact [about the judge], the motion to recuse should be referred to another judge.
 - If a party's motion to recuse is not supported by sufficient evidence to require findings of fact, or if the allegations would not require recusal even if true, a judge need not refer the recusal motion to another judge.
- Considerations:
 - Is the motion sufficient?
 - If yes, would you be required to disqualify under Canon 3C?
 - If yes, do you need to testify or present outside evidence regarding the grounds for your recusal?



PUBLIC COMMENTS

- Canons 1 & 2A: Duty to abide by the law and at all times promote the public's confidence in the integrity and impartiality of the judiciary.
 - **On and off** of the bench
- Canon 3A(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 NC or addressing NC law...
- Canons 4 & 5: a judge may not engage in extrajudicial or quasi-judicial activities that would cast substantial doubt on the judge's impartiality.
- Political Conduct Memo
 - *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002): judicial candidates cannot be absolutely restricted from expressing their views on disputed issues of law or policy.
 - HOWEVER, these comments can cause other issues under the Code (see Canons 1, 2A, and 3C).
 - Canon 3 – judicial responsibilities must at all times be your priority. Frequent disqualification issues?



OTHER CURRENT ISSUES

- [FAO 2017-02](#): Tardiness (real or perceived) to court
- Canon 3A(5): Delays
- Canons 2B, 3A(1), (2), and (5): Know your role as a judge
- Canon 3A(3): Demeanor and inappropriate comments
- Canon 3B: See/hear something, say something





Please don't hesitate to contact us!

Brittany Pinkham, bpm@coa.nccourts.org

(919) 831-3633

www.ncjsc.gov