



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: 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 1

Canon 2A

Canon 2B

Canon 2C

Canon 4

Canon 4A

Canon 4C



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)

ver 1.1



JUDICIAL STANDARDS COMMISSION
STATE OF NORTH CAROLINA

FORMAL ADVISORY OPINION: 2014-03

August 8, 2014

BACKGROUND:

Judges have recently been presented with requests to complete a Nonimmigrant Status Certification Form I-918 Supplement B (I-918B), a document from the federal office of the U.S. Citizenship and Immigration Services (USCIS) within the Department of Homeland Security. It appears that federal law provides temporary immigration benefits to aliens who are victims of certain qualifying criminal activity. This often allows these victims to remain available as witnesses for the prosecution of that activity, or potentially other related activity.

This federal document is used to certify that certain individuals who have submitted a Form I-918 Petition for Nonimmigrant Status are victims of qualifying criminal activity and are, have been, or are likely to be helpful in the investigation or prosecution of that qualifying activity. The instructions the I-918B define “helpful” as assisting law enforcement authorities in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim. USCIS has recently begun to contact judges to collect and maintain “Certifying Official” information; i.e. the names of individuals authorized to sign the I-918B on behalf of law enforcement agencies.

The instructions for the I-918B advise that a judge’s decision to provide certification is entirely discretionary and that the judge is under no legal obligation to complete a I-918B for any particular alien, but that without a completed I-918B the alien crime victim will be ineligible for “U Nonimmigrant Status”, a preferential status under the law. The I-918B may also be filled out by prosecutors, traditional law enforcement officers, and other agencies that have criminal investigative jurisdiction in their respective areas of practice, such as child protective services, the Equal Employment Opportunity Commission, the Department of Labor, and others.

QUESTION:

- Should judges complete a document to certify that individuals submitting I-918B are victims of certain qualifying criminal activity and are, have been, or are likely to be helpful in the investigation or prosecution of that qualifying activity?
- Should judges register with the USIC office of the Department of Homeland Security that they are a “Certifying Official” authorized to sign a I-918B on behalf of law enforcement agencies?
- If a judge has already completed a I-918B, certifying his or her assessment of an individual as a victim of a qualifying criminal offense and the individual’s helpfulness in assisting in the investigation or prosecution of a criminal matter, what are the judge’s obligations in any future matter concerning adjudication of that individual?

COMMISSION CONCLUSION:

The Judicial Standards Commission determined that judges should not execute I-918B forms, certifying the likelihood that an alien victim of criminal activity is, has been, or will be helpful in the investigation or prosecution of that activity. As a judge should not execute one of these forms, a judge should not provide information for a federal “Certifying Official” registry.

Where a judge has executed a I-918B certifying the helpfulness or potential helpfulness of an alien victim in the prosecution of a crime, that judge should disqualify himself or herself from any criminal matters involving that victim.

DISCUSSION:

The Commission first reasoned that certification by a judge as to the potential "helpfulness" of a witness to the prosecution of a criminal matter would seem to violate the North Carolina Code of Judicial Conduct's prohibition on a judge providing voluntary character testimony, under Canon 2B. A judge should not make personal recommendations to a federal agency predicting how useful a victim or witness might or might not be to a future prosecution. Such assessments are, in essence, the endorsement of the victim’s honesty, reliability, potential for cooperation and other character traits.

Secondly, the Commission finds that, by the language used in the I-918B and its instructions, the form clearly solicits information more appropriately provided by law enforcement or prosecutors. A judge sits in the role of an impartial arbiter and is responsible for the adjudication, not the prosecution, of criminal matters. A judge is not a representative of the prosecutorial team and should not collude with law enforcement or prosecutors in evaluating the helpfulness of potential witnesses in a case. A judge’s determination as to the credibility of victims should be formed through the hearing and trial process, and not be determined prior to adjudication. Such active involvement in securing witnesses for the prosecution and predetermining their helpfulness puts the judge in an inappropriate role that could reasonably suggest bias, or the appearance of bias, on

the part of the judge in potential violation of Canon 2A and Canon 3 which require a judge to act to promote public confidence in the impartiality of his or her office.

Canon 3 also proscribes, under subsection 3A(6) that 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...” While Canon 3A(6) permits a judge to make public statements in the course of official duties, the I-918B essentially asks that a judge forecast the helpfulness of a potential witness. To do so would be improper.

In recognition of cases where a judge has already executed a I-918B, the judge is thereafter obligated to disclose that certification of the helpfulness of the victim and, upon motion of any party, disqualify himself or herself from any further involvement in that matter and any matter in which the judge’s certification as to the victim’s helpfulness would present a reasonable question as to the judge’s impartiality in the matter.

References:

North Carolina Code of Judicial Conduct

Canon 1

Canon 2A

Canon 2B

Canon 3A

Canon 3C

Instructions for Form I-918 Supplement B, “U Nonimmigrant Status” Certification (1/15/13)

Form I-918 Supplement B, “U Nonimmigrant Status” Certification (1/15/13)



JUDICIAL STANDARDS COMMISSION
STATE OF NORTH CAROLINA

MEMORANDUM

TO: Members of the North Carolina Judiciary

FROM: Commission Chairperson – Judge Wanda G. Bryant

DATE: October 13, 2014

In the months since the distribution of our March 24, 2014 memorandum concerning political conduct under the North Carolina Code of Judicial Conduct, the Commission and its staff have been presented with several frequently asked questions that may be relevant to you and your courthouse as we conclude the 2014 election cycle. The following information is offered as a supplement to the March 24, 2014 memorandum, and both documents are intended to advise you as to the applicability of the Code of Judicial Conduct to campaign issues.

Campaign Advertising and Political Speech

Issue: What is appropriate content for a judge's judicial campaign materials? What is an appropriate response to unfair campaign communications?

There is no bright-line answer to this inquiry and each situation will depend upon the specific facts and circumstances of the campaign speech in question. The Commission has received numerous inquiries and some complaints regarding the content of judicial campaign material. Canon 7A, rewritten in the wake of Republican Party of Minnesota v. White, 536 U.S. 765 (2002), provides a safe harbor of permissible political conduct. It affirms “the right of judicial candidates to engage in constitutionally protected political activity.” Therefore, it is the opinion of the Commission that judges and judicial candidates have broad latitude in the content of their political advertising, even though the Commission encourages a higher aspirational standard regarding campaign conduct. There are a few noteworthy limitations to this latitude.

A judge or a candidate should not intentionally or knowingly misrepresent his/her identification or qualifications. (*Canon 7C(3)*)

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. (*Canon 3A(6)*)

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 1*)

A judge should avoid impropriety in all the judge's activities. 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. (*Canon 2A*).

Of note, the canons no longer include any express prohibition on “pledges and promises” nor do they *expressly* prohibit the intentional or knowing misrepresentation of an opponent's qualifications. While this allows for greater freedom of speech and political expression, a judge should remember his or her continuing obligations under Canon 1 and Canon 2A. 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 legal dispute would violate these canons. Further, an intentional and knowingly false representation of an opponent, though not expressly prohibited, would still seem to violate a judge's obligations to observe appropriate standards of conduct and to conduct himself/herself in a manner that promotes public confidence in the integrity of the judiciary.

Campaign Solicitations and Contributions to Others

Issue: May a judge solicit campaign contributions and public support from parties and attorneys presently appearing before the judge? May a judge solicit campaign contributions and public support from parties and attorneys in the court house, if those parties and attorneys are not presently appearing before the judge?

It should go without saying that the answer to both is a clear “No!” Such conduct would be in violation of Canons 1, 2A, and 3A(1). Such conduct creates a public appearance tantamount to *quid pro quo* corruption.

The term “presently appearing before the judge” is to be read to clearly include those litigants and attorneys appearing before a judge in a court room. It is not to be read so broadly as to include attorneys or parties who may still have a matter within the jurisdiction of a judge 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 court house. It is improper for a judge to be engaging in political activity on state-time and on state-

property. This includes making private fundraising calls within the judge's chambers during the workday or using a state computer or telephone for this purpose.

This year the Commission has received multiple calls about improper solicitation of litigants and attorneys, and in many of these cases the matter had first been referred to the North Carolina State Board of Elections. There is an open line of communication between the NCSBE and the Commission regarding campaign-related misconduct. All judges should carefully review applicable campaign and election regulations, and guide their campaign and financial reporting activities accordingly.

Issue: May a judge give to a political party, political organization, or an organization that is supporting a specific candidate or limited group of candidates?

A judge or candidate may make financial contributions to a political party or organization, provided that he/she may not make financial contributions or loans to any individual seeking election to office (other than himself/herself), except as part of a joint judicial committee. (*Canon 7B(3)*)

While a judge may contribute to a political party, or a political organization, a judge should not make such a contribution if that contribution would be a "pass through" to a specific candidate or group of candidates. To allow otherwise would create a loop-hole allowing easy circumvention of the clear intent of the canon.

The term "joint judicial campaign" is no longer defined within the Code of Judicial Conduct, however past advisory opinions make it clear that this exception to the prohibition against campaign contributions to other elected offices is intended to allow joint campaign activity, such as joint events, shared campaign mailings, and the sharing of incidental campaign costs, such as travel. The Commission advises that, in order to participate in a joint judicial campaign, all participants must be active candidates currently engaged in campaign activity, and any shared expenses must be for the mutual benefit of all participants within the joint judicial campaign. Again, however, 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.

Issue: May a retired judge subject to recall or an emergency judge make a campaign contribution?

No. The prohibition against making contributions or loans to any individual seeking elective office applies to retired, emergency, and recalled judges as well as active judges. Of course, if a judge has retired and seeks no future commission or appointment to serve then he or she is under no such prohibition.

Issue: Though a judge may not give a personal contribution to another candidate, may a judge's political committee give or disburse excess campaign funds to another candidate's committee?

The North Carolina Supreme Court, in the opinion In Re Wright, 313 N.C. 495 (1985), reviewed this specific issue and held that a candidate's campaign committee is not a political organization but is the "alter ego of the candidate." The Court found that allowing a judge's campaign committee to make contributions that were otherwise prohibited by the judge would clearly circumvent and render moot the clear rule established by the Code of Judicial Conduct.

Political Events and Campaign Fundraising Events

Issue: Though a judge may not contribute to a candidate's fundraising event, may a judge attend? May a judge pay for expenses associated with any meal or benefit provided to attendees of the fundraiser?

A judge or candidate may attend, preside over, and speak at any political party gathering, meeting or other convocation, including a fundraising function for himself/herself, another individual or group of individuals seeking election to office. (*Canon 7B(1)*)

Though Canon 7B(3) prohibits a judge or judicial candidate from contributing to another candidate, Canon 7B(1) expressly permits a judge or judicial candidate to attend such functions. Where the benefits provided to attendees of a function are incidental the judge has no obligation to make any payment for attending, but should always obtain the consent of the event's host before attending. Where attendees of the function may receive some benefit, such as a meal, that would otherwise cost the host of the event, the judge may reimburse the host of the event for the reasonable costs of the meal or other benefit.

The Commission advises that the best practice for a judge reimbursing a host for the costs of attending a fundraising event is to make payment directly to the host or caterer of the event, rather than to candidate's political committee. Too often such reimbursements may be reported by the committee as "contributions" and therefore appear as violations of the Code, even though they are otherwise allowable expenses.

Issue: Though a judge may not contribute to a candidate's fundraising event, may a judge appear in any publicity materials related to the event?

A judge or judicial candidate may be listed or noted within any publicity relating to such an event, so long as he/she does not expressly endorse a candidate for a specific office (other than himself/herself if that judge is, in fact, a candidate) or expressly solicit funds from the audience during the event. (*Canon 7B(1)*)

In an interesting quirk of the Code, a judge may be listed in publicity related to another candidate's fundraiser, but if so may not then endorse the candidate at the event. If a judge who is also a candidate attends a fundraiser, but is not mentioned in any publicity for the event, the judge may endorse that candidate in public remarks at the fundraiser. A judge who is not a candidate may attend such an event, and even be listed in publicity for the event, but may not make any endorsement of any candidate, since such a judge is not himself/herself a candidate.

Issue: Regarding political party fundraisers, what, if any, of these activities are permitted? May a judge attend a party fundraiser? Purchase tickets for himself/herself and a spouse? Purchase tickets for others? Purchase a table of eight and/or be featured in the program as a supporter? Sell tickets to others or encourage them to buy their own tickets?

It has been previously discussed that 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.

A judge should not be listed in any materials as a "sponsor" or "host". (*Formal Advisory Opinion 2010-07*)

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. However, the judge must not be listed as a "sponsor" or "host" of the event due to prohibitions against the active assistance of fundraising and the implications these titles have in soliciting others to also give to the organization. However, a judge may be recognized as a contributor to an organization, and so long as a judge is not listed under the specific titles of "sponsor" or "host", the Commission has viewed other terms acknowledging and recognizing the level of the judge's contribution to be permissible, including "Patron", "Friend", "Judicial Contributor" and "Gold/Silver/Bronze Level" givers.

A judge should not solicit funds on behalf of a political party, organization, or individual (other than himself/herself) seeking election. (*Canon 7C*)

Because of this prohibition against solicitation, a judge should not sell tickets to a fundraiser for a political party or political organization.

Use of the Courtroom or Trappings and Indicia of Judicial Office

Issue: May a judge have photos taken in his or her court room, wearing his or her judicial robe, for use in campaign materials? May a judge have photos or video taken of him or her presiding in court?

The specific conduct of the judge and the use of his or her robe and the court room are subject to Canons 1A and 2A of the Code which provide that the judge's conduct should ensure the preservation of the integrity, independence, and impartiality of the judiciary. Therefore any use thereof should be appropriate, tasteful, and not a misuse of public property.

The Commission advises that campaign photographs may be taken of a judge in his or her courtroom, and wearing his or her robe. However, such pictures should only be taken when the courtroom is otherwise not in use and not during hours when the judge is assigned to court.

Further, court rooms must be available for such use by all judicial candidates and such access cannot be limited solely to incumbent judges.

The Commission would advise against using any photography or video from an actual session of court, where a judge is conducting state business, for political purposes.

Issue: May a judge use, for campaign purposes, stationary, cards, and similar materials bearing the state seal and other indicia of their office, so long as it is paid for privately, and not by the state?

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 impropriety, 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 and it is the responsibility of the judge to take reasonable steps to prevent such confusion.

Issue: May a judge use a state email address to send campaign emails? May a judge send campaign emails to other judicial officials at their state email addresses?

A judge should not use court resources, such as a state email account or state computer, for campaign purposes. To use public resources for personal political purposes would violate Canons 1, 2A, and 2B of the Code.

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 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.

Disqualification Issues

Issue: When should a judge disqualify from hearing matters connected to a campaign opponent? To associates of an opponent? To supporters of campaign staff an opponent? What about a judge's own staff or supporters?

A judge should disqualify himself/herself in a proceeding in which the judge's impartiality may be reasonably questioned. (*Canon 3C*)

Campaign Opponent & Opponent's Legal Associations - A judge who is a candidate should disqualify himself/herself from hearing matters involving the judge's campaign opponent regardless of whether or not a motion is made for disqualification. An alternative would be to strictly follow the remittal of disqualification procedures set forth in Canon 3D.

When an opponent works as an assistant district attorney, a judge should work with the scheduling judge and elected District Attorney 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.

Campaign Staff - A judge who is a candidate should disqualify himself/herself from hearing matters involving a campaign manager, treasurer and others who play a significant role in an opponent's campaign or in the judge's own campaign regardless of whether or not 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 and Fundraisers - A campaign contribution or endorsement, alone, does not create a presumed conflict that would require a judge to disqualify himself or herself from hearing a matter involving the contributor or endorser.

If an otherwise unremarkable campaign contribution 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 in order to force their disqualification in certain matters – would impair the effective administration of justice. But 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 a reasonable conflict of interest exists, 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.

Conduct by Magistrates and Other Court Personnel

It would be helpful if all Senior Resident Superior Court Judges and Chief District Court Judges will meet with other public officials who work in our courthouses, including Clerks of Superior Court, and remind them again that political conduct on their part, or on the part of their staff, in

the courthouse environs, particularly during court sessions, diminishes the dignity and appearance of impartiality of the administration of justice.

Please do not use or permit staff to use State or other public resources in connection with campaign activities and do not permit staff or public employees to wear or display campaign paraphernalia or otherwise participate in campaign activities during working hours (unless, of course, the employee is on personal leave), whether or not in the courthouse. A judge may not require his/her staff to engage in campaign related activities.

Further, you may find that magistrates in your district may need a reminder that they are subject to the Code of Judicial Conduct and Canon 7. We have encountered many who seem to be unaware that their own political conduct is restricted by the Code. Unless a magistrate is a candidate for a judicial office, he or she is subject to the same restrictions as a judge who is not a judicial candidate, and restricted under the Code from making political endorsements. Even if a magistrate is a candidate, he or she would be prohibited from making any political contributions under the Code.

Conduct by Non-incumbent Judicial Candidates

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 judges¹. 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 attorneys should be reported to the North Carolina State Bar, and not the Judicial Standards Commission, for appropriate review. Pursuant to Canon 3B(3) a judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct which the judge may become aware.

I hope this information will be of assistance to you, however should you have any specific questions, please do not hesitate to contact the Commission's Executive Director, Chris Heagarty, or Commission Counsel Jameson Marks, at 919-831-3630, or by email at jch@coa.nccourts.org and jmm@coa.nccourts.org.

¹ The Commission's statutory authority extends to District Court Judges, Superior Court Judges, Court of Appeals Judges, Supreme Court Justices, Industrial Commissioners, Deputy Industrial Commissioners, Emergency Judges and Retired Judges Subject to Recall.