

North Carolina 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; 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.

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.

(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.

JSC Formal Advisory Opinions

[FAO 2010-01](#): A judge may enter an *ex parte* order for an attorney to be admitted to practice *pro hac vice*, provided all parties receive notice of the motion as required by law and have an opportunity to object

[FAO 2010-08](#): Within the context of a civil proceeding, a judge may not ethically enter an *ex parte* order under HIPAA for the production of medical records by a records custodian, unless an *ex parte* procedure is expressly authorized by statutory or case law. An order is not considered to have been issued *ex parte* if it is entered with the consent of all parties, or all parties are provided proper notice and have an opportunity to be heard.

Rules of Professional Conduct

Rule 3.3 Candor Toward the Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(d) In an *ex parte* proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

Comment

[2] This Rule sets forth the special duties of lawyers as officers of the court to avoid conduct that undermines the integrity of the adjudicative process. A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client, however, is qualified by the advocate's duty of candor to the tribunal. Consequently, although a lawyer in an adjudicative proceeding is not required to present an impartial exposition of the law or to vouch for the evidence submitted in a cause, the lawyer must not allow the tribunal to be misled by false statements of material fact or law or evidence that the lawyer knows to be false.

Ex Parte Proceedings

[15] Ordinarily, an advocate has the limited responsibility of presenting one side of the matters that a tribunal should consider in reaching a decision; the conflicting position is expected to be presented by the opposing party. However, in any *ex parte* proceeding, such as an application for a temporary restraining order, there is no balance of presentation by opposing advocates. The object of an *ex parte* proceeding is nevertheless to yield a substantially just result. The judge has an affirmative responsibility to accord the absent party just consideration. The lawyer for the represented party has the correlative duty to make disclosures of material facts known to the lawyer and that the lawyer reasonably believes are necessary to an informed decision.

Rule 3.5 Impartiality and Decorum of the Tribunal

(a) A lawyer shall not:

(3) communicate *ex parte* with a judge or other official **except**:

(A) in the course of official proceedings;

(B) in writing, if a copy of the writing is furnished simultaneously to the opposing party;

- (C) orally, upon adequate notice to opposing party; or
- (D) as otherwise permitted by law;

Comment

[1] Many forms of improper influence upon a tribunal are proscribed by criminal law. Others are specified in the North Carolina Code of Judicial Conduct, with which an advocate should be familiar. A lawyer is required to avoid contributing to a violation of provisions. This rule also prohibits gifts of substantial value to judges or other officials of a tribunal and stating or implying an ability to influence improperly a public official.

[8] All litigants and lawyers should have access to tribunals on an equal basis. Generally, in adversary proceedings, a lawyer should not communicate with a judge relative to a matter pending before, or which is to be brought before, a tribunal over which the judge presides in circumstances which might have the effect or give the appearance of granting undue advantage to one party. For example, a lawyer should not communicate with a tribunal by a writing unless a copy thereof is promptly delivered to opposing counsel or to the adverse party if unrepresented. Ordinarily, an oral communication by a lawyer with a judge or hearing officer should be made only upon adequate notice to opposing counsel or, if there is none, to the opposing party. A lawyer should not condone or lend himself or herself to private importunities by another with a judge or hearing officer on behalf of the lawyer or the client.

[RPC 237](#). A lawyer may not communicate with the judge before whom a proceeding is pending to request an *ex parte* order unless opposing counsel is given adequate notice or unless authorized by law.

[97 Formal Ethics Opinion 3](#). A lawyer may engage in an *ex parte* communication with a judge regarding a scheduling or administrative matter only if necessitated by the administration of justice or exigent circumstances and diligent efforts to notify opposing counsel have failed.

[97 Formal Ethics Opinion 5](#). A lawyer must provide the opposing counsel with a copy of a proposed order at the same time that the lawyer submits the proposed order to the judge in an *ex parte* communication.

[98 Formal Ethics Opinion 12](#). Opinion sets forth the disclosures a lawyer must make to the judge prior to engaging in an *ex parte* communication.

[98 Formal Ethics Opinion 13](#). Opinion restricts informal written communications with a judge or judicial official relative to a pending matter.

[2001 Formal Ethics Opinion 15](#). Opinion rules that a lawyer may not communicate *ex parte* with a judge in reliance upon the communication being "permitted by law" unless there is a statute or case law specifically and clearly authorizing such communications or proper notice is given to the adverse party or counsel. (Note: Judicial Standards Commission does not consider communications made *ex parte* pursuant to G.S. 15A-534.1 to be improper.)

[2003 Formal Ethics Opinion 17](#). An attorney may only provide a judge with additional authority post-hearing if the communication is permitted by the rules of the tribunal and a copy of the writing is furnished simultaneously to opposing counsel.

Excerpted provisions and comments from the Rules of Professional Conduct and summaries of Ethics Opinions are the property of the North Carolina State Bar.

North Carolina Supreme Court Opinions

In re Crutchfield [289 N.C. 597, 223 S.E.2d 822 \(1975\)](#)

Censure

Without holding a hearing or conducting any inquiry, granted limited driving privileges to individual who was arrested and charged with DUI, who refused to take a breathalyzer, and who had not yet been tried for the offense.

Without holding a hearing or conducting any inquiry, granted limited driving privileges to individual who was arrested and charged with DUI, who refused to take a breathalyzer, and who was tried (and found guilty) by another judge for the offense.

In re Edens [290 N.C. 299, 226 S.E.2d 5 \(1976\)](#)

Censure

After individual was charged with DUI, accepted guilty plea which was not taken in open court in the presence of defendant, ADA and prosecuting officer; plea was taken without prior notice to ADA; judgments were signed by Judge while court was not in session; judgments were signed without prior notice to ADA.

In re Stuhl [292 N.C. 379, 233 S.E.2d 562 \(1977\)](#)

Censure

On several occasions, the judge personally entered guilty verdicts and PJC against defendants, who were not present in court nor represented by an attorney. Judge paid the court fees in the names of the defendants, without their knowledge.

In re Nowell [293 N.C. 235, 237 S.E.2d 246 \(1977\)](#)

Censure

Prior to opening of criminal session, disposed of two cases without notice to the prosecuting attorney for the State and in his absence. In each case, the defendant was charged with a violation of the motor vehicle law and, as to each, the judge ordered the clerk to enter a PJC.

In re Hardy [294 N.C. 90, 240 S.E.2d 367 \(1978\)](#)

Censure

Struck a previously entered guilty verdict in a motor vehicle case and entered a not guilty judgment while court was not in session, without prosecutor's knowledge or consent, and without the presence of either defendant or prosecutor.

Dismissed case of defendant charged with violation of motor vehicle law not in open court, and without knowledge or consent of prosecutor.

Entered similar judgments in two other cases, while court was not in session and without knowledge or consent of the prosecutor. Judge also wrote letter to another judge, requesting an entry of Prayer for Judgment in a separate criminal action.

In re Martin [295 N.C. 291, 245 S.E.2d 766 \(1978\)](#)

Censure

Signed an order for delivery of personal property without notice to the opposing party or his counsel and without giving the opposing party or his counsel an opportunity to be heard.

Held a hearing in a civil case an hour after notice of the hearing was given to defendant's counsel and entered judgment for plaintiff in the absence of defendant or his counsel.

In re Peoples [296 N.C. 109, 250 S.E.2d 890 \(1978\)](#)

Censure

Consistently and improperly precluded the district attorney from participating in the disposition of cases on which he was entitled to be heard on behalf of the State, and removed the disposition of cases from public view in open court by transacting the court's business in secrecy.

Dismissed three criminal cases without a trial, in the absence of the defendant, without knowledge of the district attorney, and on a day when the cases were not calendared for trial.

In re Kivett [309 N.C. 635, 309 S.E.2d 422 \(1983\)](#)

Censure and Removal

Telephoned the DA on behalf of a friend who had been charged with rape and attempted to discuss the matter with the DA.

Signed an order eliminating "consent to search" and "house arrest" conditions of a probation judgment without notice to the DA, defendant's probation officer or counsel at a time when the judge was not assigned to hold court in the county.

Attempted to prohibit the convening of a grand jury which was to consider an indictment against the judge by telephoning another superior court judge and asking such judge to issue a restraining order to prevent the grand jury from convening.

In re Hair [324 N.C. 324, 377 S.E.2d 749 \(1989\)](#)

Censure

Changed verdicts in motor vehicle violation cases upon ex parte communications from defendants without providing the state an opportunity to be heard.

In re Martin [340 N.C. 248, 456 S.E.2d 517 \(1995\)](#)

Censure

Initiated a series of extensive ex parte communications with both law enforcement personnel and court personnel about the teenage son of a friend who had been taken into custody for the felonious breaking and entering of a Wal-Mart store, asking for help on behalf of juvenile, and expressing his view that the matter was not one for court.

Initiated ex parte communications with a law enforcement officer about a car accident which

resulted in charges against driver of a car in which the daughter of Judge's friend was a passenger, including suggesting the officer reconsider his assessment as to fault.

In re Ammons [344 N.C. 195, 473 S.E.2d 326 \(1996\)](#)

Censure

Issued an *ex parte* order for the sheriff to assist the custodial parent in obtaining children from the noncustodial parent. The noncustodial parent not having been cooperative, the next day issued an additional *ex parte* order directing the sheriff to arrest the noncustodial parent if the noncustodial parent did not cooperate. This arrest order was issued without assuring that the noncustodial parent had received the notice and opportunity to be heard and was issued six days prior to initiation of civil contempt proceedings against the noncustodial parent.

In re Tucker [350 N.C. 649, 516 S.E.2d 593 \(1999\)](#)

Censure

Disposed of criminal case without the State's knowledge and without giving the State an opportunity to present evidence or otherwise be heard, despite prosecutor's presence in the courtroom and ready availability.

In re Brown [351 N.C. 601, 527 S.E.2d 651 \(2000\)](#)

Censure

Rendered conviction out of court at a time when the case was not calendared, and after discussing the case with defense counsel a few days earlier.

In re Brown [356 N.C. 278, 570 S.E.2d 102 \(2002\)](#)

Censure

Entered two 1998 orders *ex parte* not only vacating 1983 and 1986 judgments of conviction of a defendant for DWI but also dismissing those cases when he knew that each of the two cases was before him only on a motion for appropriate relief and was not on any court calendar for disposition.

In re Royster [361 N.C. 560, 648 S.E.2d 837 \(2007\)](#)

Censure

Participated in an *ex parte* conference with a defendant's attorney and entered an order as a result thereof, without notice to plaintiff and without taking evidence, striking an order entered by another district court judge which had found defendant in contempt for failure to comply with child support orders and had ordered his arrest.

In re Allen [362 N.C. 73, 653 S.E.2d 423 \(2007\)](#)

Verbally ordering county magistrates to set unsecured bond for a former client in the amount of \$500.00 in each of three cases.

Requesting that the Chief District Court Judge “go easy” on his former client when setting bond because he had arranged for a bail bond firm to post bond for the former client and needed the former client out of jail to perform air conditioning work for him.

Signed an *ex parte* order granting the former client emergency temporary custody of three minor children in a pending case.

In re Hartsfield [365 N.C. 418, 722 S.E.2d 496 \(2012\)](#)

On numerous occasions, personally entered guilty pleas, guilty verdicts, PJC's and remitted fines and court costs against defendants, who were not present in court nor represented by an attorney. The judgments were entered without notice to or participation by the prosecuting attorney for the State.

In re Totten [365 N.C. 458, 722 S.E.2d 783 \(2012\)](#)

After accepting a driving while impaired plea, initiated *ex parte* communication with defense counsel about suppression of the defendant's blood alcohol concentration thereby negating the requirement for an interlock device. Instructed the defense attorney to prepare an order suppressing the defendant's blood alcohol concentration, which the judge signed without allowing the ADA to make substantive arguments and without fully reviewing the order.

Public Reprimands

Thomas G. Taylor [07-227](#)

Entered an order modifying another judge's order without a motion, notice, or hearing. The request was made by an attorney who assured the judge that opposing party consented to the modification.

James F. Ammons, Jr. [11-020](#)

On January 1, 2011, while at a swearing-in ceremony for the newly elected district attorney, the judge was presented with five motions for appropriate relief and corresponding orders striking criminal convictions from 1994 and 1995 for three defendants. Each order was dated December 31, 2010 and signed by the outgoing district attorney. Each motion failed to comply with the procedural requirements set out in the general statutes.