

RULE 3.5 IMPARTIALITY AND DECORUM OF THE TRIBUNAL

(a) A lawyer shall not:

(1) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;

(2) communicate ex parte with a juror or prospective juror except as permitted by law;

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

(i) in the course of official proceedings;

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

(iii) orally, upon adequate notice to opposing party; or

(iv) as otherwise permitted by law.

4. engage in conduct intended to disrupt a tribunal; including

- i. failing to comply with known local customs of courtesy or practice of the bar or a particular tribunal without giving opposing counsel timely notice of the intent not to comply;
- ii. engaging in undignified or discourteous conduct that is degrading to a tribunal;
- iii. intentionally or habitually violating any established rule of procedure or evidence; or

(5) after discharge of the jury, ask questions of or make comments to a juror that are calculated merely to harass or embarrass the juror or to influence the juror's actions in future jury service.

(b) All restrictions imposed by this rule also apply to communications with or investigations of members of the family of a venireman or a juror.

(c) A lawyer shall reveal promptly to the court improper conduct by a venireman or a juror, or by another toward a venireman or a juror or a member of his or her family, of which the lawyer has knowledge.

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. The 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.

[2] To safeguard the impartiality that is essential to the judicial process, veniremen and jurors should be protected against extraneous influences. When impartiality is present, public confidence in the judicial system is enhanced. There should be no extrajudicial communication with veniremen prior to trial or with jurors during trial by or on behalf of a lawyer connected with the case. Furthermore, a lawyer who is not connected with the case should not communicate with a venireman or a juror about the case. After the trial, communication by a lawyer with a juror is permitted so long as the lawyer refrains from asking questions or making comments that tend to harass or embarrass the juror or to influence actions of the juror in future cases. Were a lawyer to be prohibited from communicating after trial with a juror, the lawyer could not ascertain if the verdict might be subject to legal challenge, in which event the invalidity of a verdict might go undetected. When an extrajudicial communication by a lawyer with a juror is permitted by law, it should be made considerately and with deference to the personal feelings of the juror.

[3] Vexatious or harassing investigations of veniremen or jurors seriously impair the effectiveness of our jury system. For this reason, a lawyer or anyone on the lawyer's behalf who conducts an investigation of veniremen or jurors should act with circumspection and restraint.

[4] Communications with or investigations of members of families of veniremen or jurors by a lawyer or by anyone on the lawyer's behalf are subject to the restrictions imposed upon the lawyer with respect to the lawyer's communications with or investigations of veniremen and jurors.

[5] Because of the duty to aid in preserving the integrity of the jury system, a lawyer who learns of improper conduct by or towards a venireman, a juror or a member of the family of either should make a prompt report to the court regarding such conduct.

[6] The impartiality of a public servant in our legal system may be impaired by the receipt of gifts or loans. A lawyer, therefore, is never justified in making a gift or a loan to a judge, a hearing officer, or an official or employee of a tribunal.

[7] 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.

[8] The advocate's function is to present evidence and argument so that the cause may be decided according to law. Refraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants. A lawyer may stand firm against abuse by a judge but should avoid reciprocation; the judge's default is no justification for similar dereliction by an advocate. An advocate can present the cause, protect the record for subsequent review and preserve professional integrity by patient firmness no less effectively than by belligerence or theatrics.

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.

C. A judge should not hold membership in any organization that practices unlawful discrimination on the basis of race, gender, religion or national origin.

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.

(1) A judge should be faithful to the law and maintain professional competence in it. A judge should be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge should maintain order and decorum in proceedings before the judge.

(3) A judge should be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others 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.

(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.

(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 North Carolina or addressing North Carolina law and should encourage similar abstention on the part of court personnel subject to the judge's direction and control. This subsection does not prohibit a judge from making public statements in the course of official duties; from explaining for public information the proceedings of the Court; from addressing or discussing previously issued judicial decisions when serving as faculty or otherwise participating in educational courses or programs; or from addressing educational, religious, charitable, fraternal, political, or civic organizations.

(7) A judge should exercise discretion with regard to permitting broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during civil or criminal sessions of court or recesses between sessions, pursuant to the provisions of Rule 15 of the General Rules of Practice for the Superior and District Courts.

B. Administrative responsibilities.

(1) A judge should diligently discharge the judge's administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

(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.

(3) A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware.

(4) A judge should not make unnecessary appointments. A judge should exercise the judge's power of appointment only on the basis of merit, avoiding nepotism and favoritism. A judge should not approve compensation of appointees beyond the fair value of services rendered.

C. Disqualification.

FILED

BEFORE THE JUDICIAL STANDARDS COMMISSION

JUN 6 2008
T.W.

STATE OF NORTH CAROLINA

JUDICIAL STANDARDS
COMMISSION

IN RE:)
INQUIRY CONCERNING A JUDGE, NO. [REDACTED]) PUBLIC REPRIMAND
[REDACTED], Respondent)

Respondent, [REDACTED] was at all times referred to herein a judge of the General Court of Justice, District Court Division, Judicial District [REDACTED] and, as such, was subject to the Canons of the North Carolina Code of Judicial Conduct, the laws of the State of North Carolina, and the provisions of the oath of office for a district court judge as set forth in the North Carolina General Statutes, Chapter 11.

On or about October 26, 2007, respondent was approached in chambers by Mr. [REDACTED], a member of the bar of District [REDACTED], who requested respondent sign an order on behalf of [REDACTED]'s client, [REDACTED], striking findings of fact made by Judge [REDACTED] in an earlier hearing in the matter of [REDACTED], [REDACTED] County file no. [REDACTED]. Respondent declined to sign the order. At that time Mr. [REDACTED] represented that one of the findings made by Judge [REDACTED] regarding representations Ms. [REDACTED] made to a police officer was made in error. Mr. [REDACTED] presented respondent a sworn deposition from a police officer stating that Ms. [REDACTED] had not told him she had a current 50B order in place. Mr. [REDACTED] further represented to Respondent that he had spoken to opposing counsel, [REDACTED] who had no objections to the modification.

Respondent informed Mr. [REDACTED] that he would consider a consent order, limited to correcting one finding of fact, without changing the original order's effect. Later that afternoon Mr. [REDACTED] returned to respondent's chambers with a proposed order. Respondent noted the order

was not signed by Mr. [REDACTED]. Mr. [REDACTED] represented to Respondent he had discussed the proposed order with Mr. [REDACTED], who had no objections. Mr. [REDACTED] represented to respondent that this was a urgent matter to his client. Without further inquiry or confirmation, respondent signed the order which was filed on Friday, October 26, 2007 at 4:31 p.m. The order was filed without any accompanying motion or notice of hearing having been filed or served on the parties or opposing counsel.

On or about October 30, 2007, Chief District Court Judge [REDACTED] of Judicial District [REDACTED], presided over a hearing in the case of [REDACTED] in Union County file no. [REDACTED]. The issues before the court were equitable distribution and child support. During that hearing, Ms. [REDACTED]'s attorney, [REDACTED], offered into evidence the order signed by Respondent on October 26, 2007. Judge [REDACTED] closely examined the order and, after Ms. [REDACTED] and Mr. [REDACTED] had completed their testimony, he inquired as to whether either of them had notice or had been involved in any hearing which was the subject of the order. Neither Ms. [REDACTED] nor Mr. [REDACTED] had received notice or participated in any hearing in [REDACTED] County regarding the October 26, 2007 order. A review of [REDACTED] County file no. [REDACTED] by Judge [REDACTED] showed that the October 26, 2007 order was entered by Respondent without any type of motion to modify Judge [REDACTED]'s order or notice of hearing having been filed or served on the parties or opposing counsel. Mr. [REDACTED] admitted that he went to Respondent and obtained the order without serving notice on the opposing parties and without a hearing.

Respondent's actions described above evidence a personal disregard of the principles of conduct embodied in the North Carolina Code of Judicial Conduct, including failure to personally observe appropriate standards of conduct to ensure that the integrity and independence of the

judiciary shall be preserved (Canon 1), failure to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary (Canon 2A), failure to be faithful to the law and maintain professional competence in it (Canon 3A(1)), and failure to 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 (Canon 3A(4)). Respondent's actions constitute conduct prejudicial to the administration of justice that brings the judicial office into disrepute (N.C. Const. art IV, § 17 and N.C.G.S. § 7A-376(a)).

Respondent agrees that he will not repeat such conduct in the future, mindful of the potential threat any repetition of his conduct poses to public confidence in the integrity and impartiality of the judiciary and to the administration of justice.

Respondent agrees he will promptly read and familiarize himself with the Code of Judicial Conduct.

Respondent has had the opportunity to consult with an attorney prior to acceptance of this Public Reprimand.

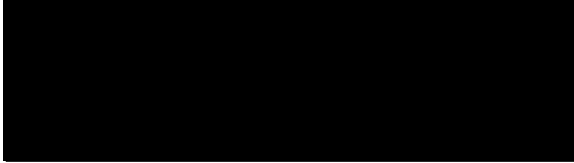
Respondent further agrees that he will not retaliate against any person known or suspected to have cooperated with the Commission, or otherwise associated with this matter.

Served upon respondent, [REDACTED], on the 23RD day of May, 2008.

By: Paul R. Ross
Paul R. Ross, Executive Director
Judicial Standards Commission

6/6/08
Date

Accepted this the 27 day of May, 2008.



5-27-08
Date

ORDER OF PUBLIC REPRIMAND

Now therefore, pursuant to the Constitution of North Carolina, Article IV, Section 17, the procedures prescribed by the North Carolina General Assembly in the North Carolina General Statutes, Chapter 7A, Article 30, and Rule 11(b) of the Rules of the Judicial Standards Commission, the North Carolina Judicial Standards Commission, hereby orders that respondent, Thomas G. Taylor, be and is hereby PUBLICLY REPRIMANDED for the above set forth violations of the Code of Judicial Conduct. Respondent shall not engage in such conduct in the future and shall fulfill all of the terms of the Public Reprimand as set forth herein.

Dated this the 6th day of June, 2008.



John C. Martin, Chairman
Judicial Standards Commission

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
07G1360

IN THE MATTER OF)
)
) CENSURE
)
ATTORNEY AT LAW)
)

On January 22, 2009, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by the North Carolina State Bar.

Pursuant to section .0113(a) of the Discipline and Disability Rules of the North Carolina State Bar, the Grievance Committee conducted a preliminary hearing. After considering the information available to it, including your response to the letter of notice, the Grievance Committee found probable cause. Probable cause is defined in the rules as "reasonable cause to believe that a member of the North Carolina State Bar is guilty of misconduct justifying disciplinary action."

The rules provide that after a finding of probable cause, the Grievance Committee may determine that the filing of a complaint and a hearing before the Disciplinary Hearing Commission are not required and the Grievance Committee may issue various levels of discipline depending upon the misconduct, the actual or potential injury caused, and any aggravating or mitigating factors. The Grievance Committee may issue an admonition, a reprimand, or a censure.

A censure is a written form of discipline more serious than a reprimand, issued in cases in which an attorney has violated one or more provisions of the Rules of Professional Conduct and has caused significant harm or potential significant harm to a client, the administration of justice, the profession or a member of the public, but the misconduct does not require suspension of the attorney's license.

The Grievance Committee believes that a hearing before the Disciplinary Hearing Commission is not required in this case and issues this censure to you. As chairman of the Grievance Committee of the North Carolina State Bar, it is now my duty to issue this censure.

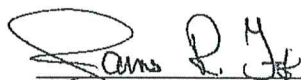
You had ex parte communication with a Judge in connection with your efforts to get a domestic violence protective order amended. You failed to file the proper motions with the court in support of amendment of the domestic violence protective order. You did not inform current counsel for the opposing party of your efforts to have the order amended. You falsely informed the Judge that you had obtained the consent of former counsel to the opposing party – former counsel never consented to the amendment of the order. Your conduct in this case was in violation of Rules 3.5(a)(3) and 8.4(c).

You are hereby censured by the North Carolina State Bar for your violation of the Rules of Professional Conduct. The Grievance Committee trusts that you will ponder this censure, recognize the error that you have made, and that you will never again allow yourself to depart from adherence to the

high ethical standards of the legal profession. This censure should serve as a strong reminder and inducement for you to weigh carefully in the future your responsibility to the public, your clients, your fellow attorneys and the courts, to the end that you demean yourself as a respected member of the legal profession whose conduct may be relied upon without question.

In accordance with the policy adopted January 24, 2008 by the Council of the North Carolina State Bar regarding the taxing of the administrative and investigative costs to any attorney issued a censure by the Grievance Committee, the costs of this action in the amount of \$100.00 are hereby taxed to you.

Done and ordered, this 12th day of February, 2009.



James R. Fox, Chair
Grievance Committee

The North Carolina State Bar