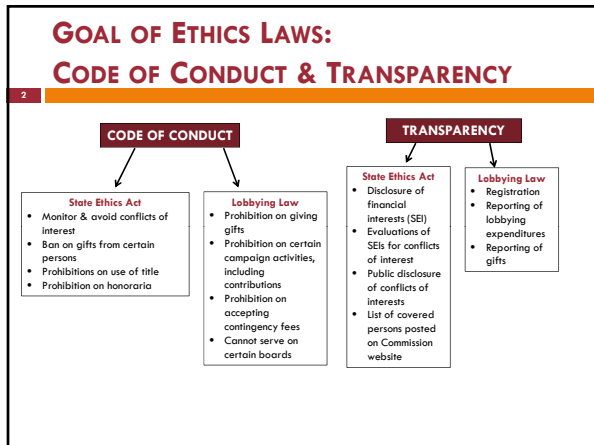


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THE STATE GOVERNMENT ETHICS ACT

WHAT YOU NEED TO KNOW AS A JUDGE

Presentation to Superior Court Judges Fall Conference
October 18, 2011



WHO IS COVERED BY THE STATE ETHICS ACT?

EXECUTIVE
"Public Servants"



- Governor
- Lt. Governor
- Council of State
- Cabinet Secretaries
- Governor's office employees
- Policy-making positions: chief deputies, confidential assistants
- Certain managerial positions
- Others designated by Governor
- Certain UNC & community college officials, Board of Governors & boards of trustees members
- Voting members of State non-advisory boards

LEGISLATIVE



- Legislators
- Legislative Employees

JUDICIAL
"Judicial Officers"



- Supreme Court Justices
- Court of Appeals Judges
- Superior & District Court Judges
- District Attorneys
- Clerks of Court

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TERMINOLOGY

4

- **“Judicial Officers”** – justices, judges, district attorneys, clerks of court, or anyone elected or appointed prior to taking office
- **“Covered Persons”**
 - ▣ Public Servants
 - ▣ Legislators
 - ▣ Judicial Officers

STATE ETHICS ACT & JUDICIAL OFFICERS

5

- Parts of the State Ethics Act do not apply to judicial officers.
- **HOWEVER**, more of the law may apply than you realize!
- Also, whether you are elected or appointed may make a difference.

STATE GOVERNMENT ETHICS ACT: APPLICATION TO “JUDICIAL OFFICERS”

ETHICS ACT	APPLIES
Statements of Economic Interest (SEI)	
• Filing	✓
• Evaluation by Commission	x
Ethics Education	x
“Conflicts of Interest”	x
Gifts & Other Items of Value	
• “Gift Ban”	x
• Quid Pro Quo	✓
• Honorarium	✓
• Soliciting Charitable Contribution from Subordinate State Employee	✓
• Outside Compensation	x
Use of Title & Position	
• Use of Public Position in Non-Governmental Advertising	✓
• Use of State Funds for Public Service Announcements	✓
• Employing/Supervising Extended Family Member	✓

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7 **STATEMENTS OF ECONOMIC INTEREST**

Filing Financial & Other Disclosures

WHEN is disclosure required?

- Candidate:**
 - Within 10 days of filing notice of candidacy.
 - File at same place file notice of candidacy, i.e., State Board of Elections.
- Appointee:**
 - Prior to being appointed.
- Annually** by April 15th.
 - If filed as candidate for reelection, do not have to re-file.
- After Leaving Office:**
 - Judges who were elected must file an SEI by April 15th of the year after leaving office.

WHAT do you have to disclose?

- Certain personal & financial information.
- About you or your immediate family.
 - Spouse, unless legally separated.
 - Unemancipated children living in your household.
 - "Extended family" who live with you
 - You & your spouse's lineal ascendants, lineal descendents, siblings, and the spouse of any of those individuals.

Disclosure of Campaign Related Activities If Appointed by "Constitutional Officer"

10

- Judicial officer that serves on, or is a prospective appointee to, the Supreme Court, Court of Appeals, superior court, or district court
- Must indicate whether he or she did any of the following on behalf of the "Constitutional Officer"* that appointed him or her:
 - Collected & delivered multiple campaign contributions;
 - Hosted a fundraiser in residence or business; or,
 - Volunteered for campaign-related activity.

* "Constitutional Officer" – office established by Art. III of NC Constitution (Executive, e.g., Governor).

2012 Filing Information

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- Will be fillable .pdf on website.
- Amendment & No Change forms will be available.
- Candidates must file within 10 days of notice of candidacy at same place and in same manner as filing notice of candidacy.
- Not all questions apply to judicial officers.
- FAQs on Commission's website.

Changes to SEI

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FORGET TO DISCLOSE OR CORRECTIONS

- If you forget to disclose or need to correct something, notify the State Ethics Commission as soon as possible.

CHANGES DURING YEAR

- Once SEI is properly completed and filed, you are not required to update or supplement during the year.
- Account for any changes on next year's filing.

SEI VIOLATION PENALTIES

CIVIL PENALTY FOR LATE OR NON-FILING

- \$250 civil penalty.
- May result in removal from public position.

CRIMINAL PENALTIES

- **Class 1 misdemeanor** for knowingly concealing or failing to disclose information.
- **Class H felony** for knowingly providing false information.

REMINDER...

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- ❑ **STATEMENTS OF ECONOMIC INTEREST ARE PUBLIC RECORDS.**
- ❑ Includes any attachments filed with SEI.

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“GIFTS” & OTHER ITEMS OF VALUE

What Does, and Does Not, Apply to Judges

“Gifts” & Other Items of Value

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NC “Gift Ban”

- Prohibits accepting gifts from certain individuals to public servants, legislators, & legislative employees, unless there is an exception.
- Does **not** apply to “judicial officers”.

No quid pro quo

- Other than what you receive from the State, you cannot knowingly, directly or indirectly:
 - Accept, solicit, agree to receive, or assign anything of value
 - For you or another person
 - In exchange for being influenced in the discharge of your official responsibilities.
- ✓ **Does apply to judicial officers.**

Honoraria

“Payment for services for which fees are not traditionally or legally required.”

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Cannot accept honorarium from *any outside source*, if **ANY** of the following apply:

Your agency reimburses you for travel, subsistence, or registration

You use your agency's work time or resources

Activity bears a reasonably close relationship to your official duties, i.e., “But for” being a judge, you would not be performing the activity

Limitation on Charitable Solicitations

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- You cannot solicit charitable donations from subordinate State employees.
- **Exceptions:**
 - Generic written solicitations to a class of subordinates.
 - Serve as honorary State Employees' Combined Campaign chair.

19 **USE OF TITLE & PUBLIC POSITION**

Other Prohibitions Applying to Judges

Use of Title or Position: Advertising

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- Cannot mention or allow another to mention
- Your public position
- In non-governmental advertising advancing your or another's private interest

Exceptions:

- Political advertising.
- News stories or articles.
- Directories or biographical listings.
- Agendas or other documents related to a meeting, conference, or similar event when the disclosure could be considered material by someone attending the meeting, conference, or similar event.
- Charitable solicitations for 501(c)(3).

State Funds for Public Service Announcements

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Cannot use State funds for ads or public service announcements if

- Contain your name, picture, or voice; and,
- Appear on radio, TV, billboard or in magazine or newspaper.

Does not apply to public TV or radio fundraisers.

Employment of Family Members

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- You cannot cause the employment, appointment, promotion, transfer, or advancement of extended family to State office, or position which you supervise or manage.
- "Extended Family" includes you and your spouse's lineal ascendants, lineal descendants, siblings & the spouse of any of those individuals.

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COMPLAINTS

State Ethics Act Complaint Process for Judges

Commission's Jurisdiction

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- State Ethics Commission may investigate complaints of:
 - ▣ Violations of the State Ethics Act.
 - ▣ Violations of criminal law in the performance of the individual's official duties.
 - ▣ Violations of statute involving promises or threats to obtain political contribution or support.

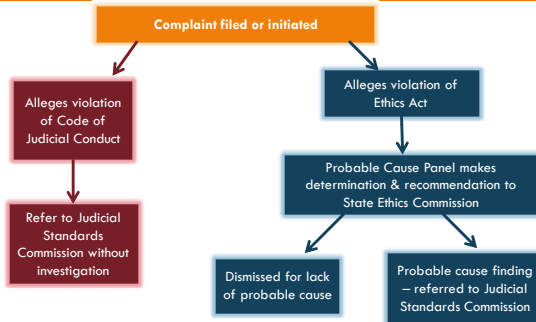
WHO can file or initiate a complaint?

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- **Anyone.**
 - In writing.
 - No telephone complaints.
 - Signed & Sworn.
 - No anonymous complaints.
 - Specific allegations.
 - Filed within 2 years.
- State Ethics Commission can initiate complaint on its own motion.

Complaint Process

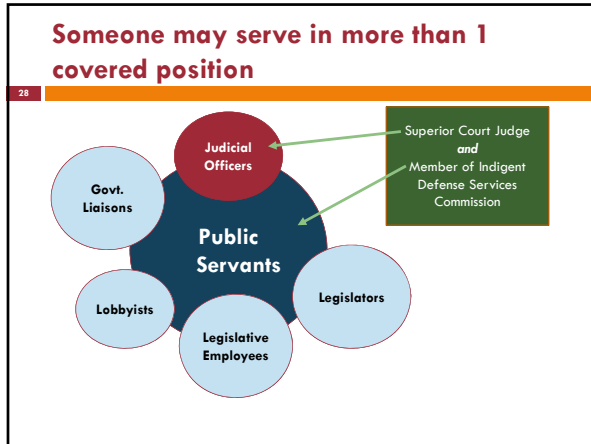
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JUDGES AS "PUBLIC SERVANTS"

Judges Serving on "Covered Boards"



State Government Ethics Act: "Judicial Officers" vs. "Public Servants"

ETHICS ACT	JUDICIAL OFFICER	PUBLIC SERVANT
Statements of Economic Interest (SEI)		
• Filing	✓	✓
• Evaluation by Commission	x	✓
Ethics Education	x	✓
"Conflicts of Interest"	x	✓
Gifts & Other Items of Value		
• "Gift Ban"	x	✓
• Quid Pro Quo	✓	✓
• Honorarium	✓	✓
• Soliciting Charitable Contribution from Subordinate State Employee	✓	✓
• Outside Compensation	x	✓
Use of Title & Position		
• Use of Public Position in Non-Governmental Advertising	✓	✓
• Use of State Funds for Public Service Announcements	✓	✓
• Employing/Supervising Extended Family Member	✓	✓

- Additional Requirements for Public Servants**
- **Conflicts of Interest**
 - SEI evaluated by Commission staff for actual & potential conflicts of interest.
 - "Financial benefit" to you or "person with which associated".
 - "Relationship" with "participant in the proceeding"
 - Safe Harbor exceptions.
 - **NC Gift Ban**
 - Unless there is an exception, prohibited from accepting gifts from "lobbyists," "lobbyist principals," or "interested persons".

Complaints Against Public Servants

31

- Complaints against public servants investigated by State Ethics Commission.
- If probable cause found, open hearing before the State Ethics Commission.
- Complaint & all other documents public record.
- May result in removal from public servant's position by appointing authority.

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ADVICE & ADVISORY OPINIONS

What to do when you don't know what to do!

Informal Advice & Formal Advisory Opinions

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- Informal Advice issued by Commission staff.
- Formal advisory opinions issued by State Ethics Commission & confer immunity from investigation by State Ethics Commission.
- Both are confidential.
- Authority to issue informal advice or formal advisory opinions to judicial officers applies only to advice concerning Statements of Economic Interest.
- Judicial officer also serving as public servant may obtain informal advice or formal advisory opinion on any question regarding actions as a public servant.
- If you have any questions about compliance with State Ethics Act, contact the Commission.

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