MAKING THE TRANSITION TO THE SUPERIOR COURT BENCH

WE ARE UNDER A CONSTITUTION, BUT THE CONSTITUTION IS WHAT THE JUDGES SAY IT IS, AND THE JUDICIARY IS THE SAFEGUARD OF OUR PROPERTY AND OUR LIBERTY.

CHARLES EVAN HUGHES

I LOVE JUDGES AND I LOVE COURTS. THEY ARE MY IDEALS THAT TYPIFY ON EARTH WHAT WE SHALL MEET HEREAFTER IN HEAVEN UNDER A JUST GOD.

WILLIAM HOWARD TAFT

HE HATH SHOWN THEE, O MAN, WHAT IS GOOD AND WHAT DOTH THE LORD REQUIRE OF THEE, BUT TO DO JUSTLY, AND TO LOVE MERCY, AND TO WALK HUMBLY WITH THY GOD.

MICAH 6:8

ALL JUDGES HAVE CASES THAT TOUCH OUR PASSIONS DEEPLY, BUT WE ALL STRUGGLE CONSTANTLY WITH REMAINING IMPARTIAL.

SONIA SOTOMAYOR

JUDICIAL ABUSE OCCURS WHEN JUDGES SUBSTITUTE THEIR OWN POLITICAL VIEWS FOR THE LAW.

LAMAR S. SMITH

JUST AS THE COMMON LAW DERIVES FROM ANCIENT PRECEDENTS – JUDGE'S DECISIONS – RATHER THAN STATUTES, BASEBALL'S CODES ARE THE GAME'S DISTILLED MORES. THEIR UNCHANGED PURPOSE IS TO SHOW RESPECT FOR OPPONENTS AND THE GAME. IN BASEBALL, AS IN THE REMAINDER OF LIFE, THE MOST IMPORTANT RULES ARE UNWRITTEN, BUT NOT UNENFORCED.

GEORGE WILL

JUDGES ARE LIKE UMPIRES. UMPIRES DON'T MAKE THE RULES. THEY APPLY THEM. THE ROLE OF AN UMPIRE AND A JUDGE IS CRITICAL. THEY MAKE SURE EVERBODY PLAYS BY THE RULES. BUT IT IS A LIMITED ROLE. NOBODY EVER WENT TO A BALLGAME TO SEE THE UMPIRE.

JOHN ROBERTS

I NEVER SPEAK ILL OF DEAD PEOPLE OR LIVE JUDGES

EDWIN EDWARDS

THERE IS ONE RULE FOR THIS PRESENTATION:

FEEL FREE TO ASK QUESTIONS AT ANY TIME!!!!

QUICK SURVEY FOR MY BENEFIT. HOW MANY OF YOU HAVE WORKED AS:

--DISTRICT COURT JUDGES

- --IN A DISTRICT ATTORNEY'S OFFICE
- --IN A PUBLIC DEFENDER'S OFFICE

--IN PRIVATE PRACTICE

--MAINLY CRIMINAL

--MAINLY CIVIL

HOW LONG HAVE YOU BEEN ON THE BENCH?

NEW REALITIES FOR DISTRICT COURT JUDGES

- --ROTATION New faces and New approaches
- --ON THE RECORD ALL THE TIME
- --LOCAL BAR'S VIEW CHANGES
- --COURT PERSONNEL'S VIEW CHANGES (This too will pass)
- --DEALING WITH JURIES AND JURORS
- --JURY INSTRUCTIONS
- --RULES OF EVIDENCE ACTUALLY APPLY
- --NO DOMESTIC CASES (Almost)

NEW REALITIES FOR DISTRICT ATTORNEYS AND PUBLIC DEFENDERS

- --WHAT IS A CIVIL CASE?
- --A LOT OF NEW LAW
- --DON'T HAVE A SIDE OF THE CASE OR A CLIENT
- --FINANCIAL REPORTING
- --CODE OF JUDICIAL CONDUCT APPLIES
- --JUDICIAL STANDARDS COMMISSION AND THE STATE BAR
- --RELATIONSHIP CHANGES WITH FORMER CO-WORKERS AND ADVERSARIES

A PUBLIC POSITION HAS SOME NATURAL DOWNSIDES





FINANCIAL REPORTING

--THE STATEMENT OF ECONOMIC INTEREST MUST BE FILED ANNUALLY BY APRIL $15^{\rm TH}.$

---CANON 6 OF THE CODE OF JUDICIAL CONDUCT CREATES A SEPARATE REQUIREMENT. "A judge shall report the name and nature of any source or activity from which the judge received more than \$2,000 in income during the calendar year for which the report is filed.

--CANON 5C(4) OF THE CODE OF JUDICIAL CONDUCT EXTENDS THIS REPORTING OBLIGATION TO SOME GIFTS OVER \$500.00.

COURTROOM PERSONNEL

- --COURT ROOM CLERKS
- --BAILIFFS OR COURT ROOM OFFICERS
- --COURT REPORTERS
- --JUDICIAL ASSISTANTS AND TRIAL COURT ADMINISTRATIVE
- PERSONNEL --ATTORNEYS --JURORS

THEY DON'T WORK FOR YOU. EVERY ONE OF THEM HAS A BOSS. THAT BOSS IS SOMEONE ELSE OTHER THAN YOU.

COURT ROOM CLERKS

- --THEY WORK FOR THE ELECTED CLERK OF SUPERIOR COURT
- --THEIR EXPERIENCE LEVEL VARIES --YOU CAN MAKE THEIR LIVES EASIER (Judgments, Changes) --UNDERSTAND THE LOCAL COMMON LAW (Files for instance)

BAILIFFS OR COURT ROOM OFFICERS

- --THEY WORK FOR THE ELECTED SHERIFF
- --THEIR EXPERIENCE VARIES, TOO
- --DO YOU CARRY A GUN?
- --COORDINATION ESSENTIAL (Defendants, Witnesses, Inmates) --LUNCH

COURT REPORTERS

--THEY HAVE TO MAKE A RECORD --WHO KNOWS WHAT THEY ARE GETTING? --WHO INTERVENES? --ONLY ONE PERSON TALKS AT A TIME --SPEAK UP YOURSELF, AND SLOW DOWN --MAKE PARTIES SUBMIT A WITNESS LIST --TAKE BREAKS

COURT REPORTERS' TOP 10 RULES FOR JUDGES

Always remember that your main objective in court is to entertain the court reporter.

 No matter where it falls on the docket, regardless if there is a peremptorily set case, ALWAYS, ALWAYS call the Alienation of Affection cases first. (See Rule #1.)

3. Always remember that YOU work for the court reporter.

- Take as many jury views as possible preferably in the Spring and/or Fall even if none of the parties request it. (See Rule #1.)
- You are allowed to take as long or as short a luncheon recess as you like; however, the court reporter will take at least one hour.
- Never work through lunch on Monday Civil Motions Court in order to let an out of-district attorney go home. Always make him/her return after the luncheon recess. (See Rule #5.)
- See Rule #5.)
 Never allow Judge Beal to drive you in his car. It is best to offer to drive him. (Reference: The Honorable Shirley Fulton, Superior Court Judge, Mecklenburg County.)
- County.)
- Allowable rulings to motions/requests: "Sustained," "Overruled," "Tough, "So what?"
- Every now and then during the State's opening statement, yell "Guilty!" Then call 911 and ask for an ambulance. (See Rale #1.)
- 10. Bring chocolate to your court reporter. It will make YOUR day go by much faster.

JUDICIAL ASSISTANTS AND TRIAL COURT ADMINISTRATORS

--BE SELF-SUFFICIENT

--COORDINATE WITH THEM (E-mailed orders)

- --LEARN AND FOLLOW THE LOCAL RULES --TAKING MATTERS UNDER ADVISEMENT AND DELAYS

JURORS

--EXCUSES

- --BE CONSISTENT
- --CAN'T ALLOW THEM ALL
- --ADVISE THEM OF THE SCHEDULE AND LENGTH OF THE TRIAL
- --ACCOMODATIONS (Diabetics, Back Trouble, Child Care) --HONORARY JURORS
- --TALK TO THEM AFTERWARDS

COURT PERSONNEL HAVE LIVES OUTSIDE OF COURT. YOU AFFECT

THEM.

--IF YOU KEEP COURT OPEN LATE, THEN THEY MAY BE LATE PICKING UP THEIR CHILDREN FROM CHILDCARE AND BE FINED

\$5.00 PER MINUTE.

--IF YOU CUT THE LUNCH BREAK SHORT, THE BAILIFFS, WHO HAVE TO TRANSPORT PRISONERS, MAY NOT EAT.

WORKING LATE - CLEAR IT IN ADVANCE IF POSSIBLE

Eighty percent of life is showing up.

Woody Allen

SHOW UP ON TIME!!!!!!

COMMUNICATION CAN BE A ONE WAY OR TWO WAY STREET.

CRITICISM VS. QUESTIONS VS. SUGGESTIONS

DON'T SHOW UP THE PITCHER RULE FOR COURT PERSONNEL

VERY FEW PEOPLE SPEAK THE TRUTH TO POWER

WHAT IS YOUR JUDICIAL PHILOSOPHY?

IT IS TIME TO START FORMING OR THINKING ABOUT ONE.

A JUDGE SHOULD RESPECT AND COMPLY WITH THE LAW.

CANON 2 OF THE CODE OF JUDICIAL CONDUCT

A JUDGE SHOULD BE FAITHFUL TO THE LAW...

CANON 3A(1) OF THE CODE OF JUDICIAL CONDUCT

"A SUIT AT LAW IS NOT A CHILDREN'S GAME, BUT A SERIOUS EFFORT ON THE PART OF ADULT HUMAN BEINGS TO ADMINISTER JUSTICE AND THE PURPOSE OF PROCESS IS TO BRING PARTIES INTO COURT. IF IT NAMES THEM IN SUCH TERMS THAT EVERY INTELLIGENT PERSON UNDERSTANDS WHO IS MEANT...IT HAS FULFILLED ITS PURPOSE; AND COURTS SHOULD NOT PUT THEMSELVES IN THE POSITION OF FAILING TO RECOGNIZE WHAT IS APPARENT TO EVERYONE ELSE."

Wiles v. Welparnel Construction Co., 295 N.C. 81, 243 S.E. 2d 756 (1978)

"IT IS THE ESSENCE OF THE RULES OF CIVIL PROCEDURE THAT DECISIONS BE HAD ON THE MERITS AND NOT AVOIDED ON THE BASIS OF MERE TECHNICALITIES."

Mangum v. Surles, 281 N.C. 91, 99, 187 S.E. 2d 697 (1972).

A JUDGE SHOULD MAINTAIN ORDER AND DECORUM IN PROCEEDINGS BEFORE THE JUDGE.

CANON 3A(2) OF THE CODE OF JUDICIAL CONDUCT

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.

CANON 3A(3) OF THE CODE OF JUDICIAL CONDUCT

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...

CANON 3A(4) OF THE CODE OF JUDICIAL CONDUCT

A JUDGE SHOULD DISPOSE PROMPTLY OF THE BUSINESS OF THE COURT.

CANON 3A(5) OF THE CODE OF JUDICIAL CONDUCT

LET'S CONSIDER SOME SITUATIONS

CELL PHONE RINGS IN COURT



HUSBAND/WIFE ATTORNEY MED MAL DISASTER







DO YOU ATTEMPT TO NEGOTIATE PLEAS OR SETTLEMENTS?

HOW MUCH PRESSURE DO YOU APPLY?

HOW YOU RESOLVE THESE SITUATIONS AND OTHERS INVOLVES HOW YOU DEFINE YOUR OWN APPROACH TO YOUR JOB.

"IF THE LAW PRESUMES THAT, THE LAW IS AN ASS - A IDIOT."

State vs. Seahorn, 166 N.C. 373, 81 S.E. 687(1914) (Quoting Bumble in the Beadle from Oliver Twist on the presumption that the wife is under the direction of the husband.)

ERVIN'S MAXIM

"THE LAW IS NOT AN ASS."

BE CAREFUL WHAT YOU SAY ON AND OFF THE RECORD

IN A HEARING IN OPEN COURT, THE TRIAL JUDGE ASKED COUNSEL:

"Educate me. Who was on the panel of the Court of Appeals that ruled?"

WHEN TOLD THE NAMES OF THE JUDGES, THE TRIAL JUDGE RESPONDED:

"How many trial judges participated in drafting the statute?"

THEN THE TRIAL JUDGE OBSERVED:

"As always...I'm concerned that the parties that make the decisions that impact these processes have never tried a case, never been in a courtroom. Now, Judge Smith has, of course. But it is troublesome to me that a lot of decision-making goes on that's made by people who have never been there and done that."

Beaufort County Board of Education v. Beaufort County Board of Commissioners, 184 N.C. App. 110, 645 S.E. 2d 857(2007).

TRIAL JUDGE REFERRED TO A DOMESTIC VIOLENCE VICTIM'S GROUP AS "A ONE-SIDED, MAN-HATING BUNCH OF FEMALES, A PACK OF SHE DOGS."

THE SAME JUDGE, ACCORDING TO THE FINDINGS OF THE JUDICIAL STANDARDS COMMISSION, EMBARASSED AND HUMILIATED THE SEVEN – MONTHS PREGNANT VICTIM OF AN ASSAULT BY TELLING HER SHE WOULD RUIN HER CHILDREN'S LIVES IF SHE DID NOT RECONCILE WITH HER ESTRANGED HUSBAND.

In Re Greene, 328 N.C. 639, 403 S.E. 2d 257 (1991)

DEALING WITH COLLEAGUES

--SEARCH WARRANTS

- --IN CAMERA REVIEWS
- --HOLD OVERS
- --OUT OF COUNTY VS. RESIDENT'S WORK
- --COVERING/VOLUNTEERING TO HELP OUT
- --YOUR APPROACH CRIMINAL ADMINISTRATIVE COURT
- --COURT LASTS ALL WEEK

ROTATION

--IT IS REALITY

- --LOCAL RULES AND POLICIES (Bonds, Weekends, Pre-trial Monitoring) --"WHEN IN ROME"
- --CALL SENIOR RESIDENT BEFORE ROTATION BEGINS

(What do I need to know?) ---CALL TRIAL COURT COORDINATOR/JUDICIAL ASSISTANT

(Access to courthouse, what do I need to know?) --LOCAL JURY SYSTEM

HANDLING YOUR PERSONAL LIFE

--DOCTOR'S AND DENTIST'S APPOINTMENTS --RECREATIONAL ACTIVITIES OR BAR EVENTS --FUNERALS AND RECEIVINGS

WHAT SHOULD I TAKE TO COURT?

WHAT DO I CARRY?

--ROBE

--LAP TOP

- --CATALOGUE CASE
 - --Excedrin Migraine
 - --Cough Drops
 - --Sentencing Charts and Markham Probation pamphlet --Sex Offender Registration Cheat Sheet --Sentencing Forms

PELONY CONVICTION --- ACTIVE SENTENCE
Definition:
Offense(i) of Conviction: Offense Class:______ Prior Racord Level:_____ Range: Aggraveted Presumptive Mitigated Findings for Range:_____ Cossolitated P______ Term: Minimum of _____months; Maximum of _____months In Cannoly at: DOC _____ of Shortff ______ Jail Cruft: ______drys/months At représion of another sentenced? ((f so, specify sentence) Concurrent/Consecutive (If so, identify seatence) Court Cost; ______ Fins: ______ DART/SAA: ______ PsychiatrioPsychologisal: ______ Work Release Recommended: Yas: _____ No: _____ Restitution: _____

PHLORY CONVECTION- DUPENDED SINTENCE
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Othermol(c) of Convention
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Atturneys Page Commanity Service Page
MONESS ON SCHEDULE DITISMENTS BY PROBATION

WHAT DO I CARRY? (continued)

--Notes from Prior Sessions in the rotation in that County --Pens --Letterhead

WHAT NOT TO CARRY

--PATTERN JURY INSTRUCTIONS

--GENERAL STATUTES

--GREY WILSON, BRANDIS ON EVIDENCE, ROBINSON ON CORPORATIONS --SCHOOL OF GOVERNMENT MATERIALS FROM PAST CONFERENCES --NOTEBOOK (Use Word Processing System)

KEEPING NOTES ON CASES

--NOTES DURING A TRIAL

--ONE EXCEPTION – WHEN FINDER OF FACT --NOTES ON SENTENCING DECISIONS --PROBATION VIOLATIONS

--CIVIL MOTIONS

YOU CAN'T KNOW EVERYTHING

WHAT DO YOU DO WHEN YOU DON'T KNOW THE ANSWER?

I AM STILL COMING ACROSS NEW ISSUES AFTER OVER A DECADE.

IN A CIVIL CASE, HOW MANY PEREMPTORY CHALLENGES DO YOU GET FOR EACH ALTERNATE JUROR?

IN A CRIMINAL CASE, EACH PARTY GETS ONE ADDITIONAL PEREMPTORY CHALLENGE FOR EACH ALTERNATE JUROR. N.C. GEN. STAT. 15A-1217(c)

IN A CIVIL CASE, EACH PARTY GETS TWO ADDITIONAL PEREMPTORY CHALLENGES FOR EACH ALTERNATE JUROR.

N.C. GEN. STAT. 9-18(a)

YOU ARE TRYING A CRIMINAL CASE. DURING JURY SELECTION, YOU TAKE A LUNCH RECESS. AFTER LUNCH, THE DEFENDANT DOES NOT RETURN TO THE COURTROOM AND HIS LAWYER CAN'T REACH HIM BY PHONE.

DO YOU DECLARE A MISTRIAL BECAUSE THE JURY HAS NOT BEEN EMPANELED OR CAN YOU KEEP GOING IN HIS ABSENCE?

YOU CAN CONTINUE IN THE ABSENCE OF THE DEFENDANT ONCE JURY SELECTION HAS STARTED.

STATE V. RICHARDSON, 330 N. C. 174, 410 S.E. 2d 61 (1991)

TAKING MATTERS UNDER ADVISEMENT

YOU CAN'T TAKE EVERYTHING UNDER ADVISEMENT

IS IT IMPORTANT TO THE OUTCOME OF THE CASE?

IS IT DISCRETIONARY?

HOW CONFIDENT AM I ABOUT THE ISSUE?

IS IT A MATTER THAT I WILL ENCOUNTER AGAIN IN THE SAME CASE?

WHAT TIME IS IT AND CAN I SCHEDULE AROUND THIS ISSUE?

HOW QUICKLY DO I NEED AN ANSWER?

AN ORDER OF THE SUPERIOR COURT, IN A CRIMINAL CASE, MUST BE ENTERED DURING THE TERM, DURING THE SESSION, IN THE COUNTY AND IN THE JUDICIAL DISTRICT WHERE THE HEARING WAS HELD. ABSENT CONSENT OF THE PARTIES, AN ORDER ENTERED IN VIOLATION OF THESE REQUIREMENTS IS NULL AND VOID AND WITHOUT LEGAL EFFECT.

State vs. Trent, 359 N.C. 583, 585, 614 S.E. 2d 498 ,499(2005).

IT IS NOT ENOUGH TO GET CONSENT TO TAKE THE MATTER UNDER ADVISEMENT. THE PARTIES MUST CONSENT TO THE ORDER BEING ENTERED OUT OF TERM AND OUT OF SESSION.

State v. Branch, 177 N.C. App. 104, 627 S.E. 2d 506 (2006).

RULE 58 OF THE NORTH CAROLINA RULES OF CIVIL PROCEDURE PROVIDES THAT:

CONSENT FOR THE SIGNING AND ENTRY OF JUDGMENT OUT OF TERM, SESSION, COUNTY AND DISTRICT SHALL BE DEEMED TO BE GIVEN UNLESS AN EXPRESS OBJECTION TO SUCH ACTION WAS MADE ON THE RECORD PRIOR TO THE END OF THE TERM OR SESSION AT WHICH THE MATTER WAS HEARD.

RULE 58 APPLIES TO JUDGMENTS

ABSENT THE AGREEMENT OF THE PARTIES, AN ORDER OF THE SUPERIOR COURT MUST BE ENTERED DURING THE TERM AND SESSION AND IN THE COUNTY AND JUDICIAL DISTRICT WHERE THE HEARING WAS CONDUCTED.

IF, HOWEVER, CONSENT OF THE PARTIES TO ENTRY OUTSIDE THE SESSION APPEARS BY FAIR IMPLICATION FROM WHAT APPEARS IN THE RECORD, THE JUDGMENT IS VALID. (Judge said that it might be a week or so before he decided the case and there was no objection.)

City of Asheville v. Woodberry Associates, 114 N.C. App 377, 384, 442 S.E. 2d 328 (1994).

USE THE AVAILABLE RESOURCES:

--AOC/SOG PROVIDE USEFUL MATERIALS

- --THE BENCH BOOK IS AVAILABLE ON-LINE
- --THE CRIMINAL CASE COMPENDIUM
- --JESSIE SMITH'S AND ANN ANDERSON'S REVIEWS OF RECENT APPELLATE DECISIONS

--SCHOOL OF GOVERNMENT BLOGS

- --GREY WILSON'S NORTH CAROLINA CIVIL PROCEDURE TREATISE
- --BRANDIS AND BROUN ON NORTH CAROLINA EVIDENCE
- --CONSULT YOUR COLLEAGUES OR MENTOR
- --CALL JESSIE OR ANN OR SOG FACULTY

JUDICIAL EDUCATION IS AN ON-GOING MATTER

CONTINUING JUDICIAL EDUCATION

Each judge and justice of the trial and appellate division shall attend at least thirty (30) hours of instruction in one or more approved continuing legal or judicial education programs in each biennium...

Rule II B of the Rules of Continuing Judicial Education.

Each judge must report in writing to the Administrative Office of the Courts, no later than July 31 following the end of each year of an educational biennium, the continuing education programs he has attended.

Rule IVB of the Rules of Continuing Judicial Education

SUPERIOR COURT JUDGES CONFERENCES

--Held in June and October

--"All Superior Court Judges are expected to attend the scheduled Superior Court Judges Conferences and the programs there presented." Rule IIC of the Rules of Continuing Judicial Education.

APPELLATE COURT OPINIONS

--The Court of Appeals issues opinions about every other Tuesday

--The Supreme Court has its own schedule

- --Both Jessie Smith and Ann Anderson email out summaries of criminal and
- civil cases from these Courts

--Review them for your own cases