

NORTH CAROLINA MAGISTRATES

FALL CONFERENCE
OCTOBER 14, 2020

**ETHICAL PERSPECTIVES
ON POLITICAL CONDUCT
IN THE JUDICIAL BRANCH**




CAROLYN A. DUBAY
EXECUTIVE DIRECTOR
N.C. JUDICIAL STANDARDS COMMISSION

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**PROFESSIONAL BEHAVIOR AT ALL TIMES IS CRITICAL TO
CONFIDENCE IN THE COURTS**


- Judges are bound to follow “fundamental principles of judicial decorum” rooted in the concept that “[t]he place of justice is an hallowed place; and therefore not only the bench, but the foot-pace and precincts and purprise thereof, ought to be preserved without scandal and corruption.” *In re Kivett*, 309 N.C. 635, 644 (1983) (quoting *The Essays of Francis Bacon*).
- The Supreme Court has also warned that “[a]t a time when the requirements of the Rule of Law subject the judiciary to intense and ever greater scrutiny by our citizens, the demands of respondent’s judicial office require[] him to comport himself with dignity, reserve, and probity. The integrity of the office requires that its holder project nothing less than the high standards of character and rectitude citizens should expect from their judges.” *In re Badgett*, 362 N.C. 202, 210 (2008).



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**WHAT IS THE
NORTH
CAROLINA
CODE OF
JUDICIAL
CONDUCT?**

- The **North Carolina Code of Judicial Conduct** is promulgated by the North Carolina Supreme Court
- The Code is based on the 1973 ABA Model Code of Judicial Conduct but has many significant differences
- Violations of the Code of Judicial Conduct are investigated and enforced by the **Judicial Standards Commission**
 - Chaired by Judge Wanda Bryant
 - 12 Commission Members: mix of judges, lawyers and citizens
 - 4 Commission Staff: Executive Director, Counsel, Investigator and Executive Assistant



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MAGISTRATES & JUDICIAL ETHICS

- Magistrates are not subject to the jurisdiction of the Judicial Standards Commission, although the grounds for removing magistrates are the same as for removing judges
- The North Carolina Code of Judicial Conduct thus serves as important guidance on what conduct is expected of magistrates as well as judges
- North Carolina judicial disciplinary decisions provide insight into what type of conduct warrants significant sanctions



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CONFIDENCE IN MAGISTRATES PROMOTES THE SAME GOALS AS CONFIDENCE IN JUDGES



- ◊ Accountability for magistrates, like that for judges, is just one piece of the puzzle intended to:
 - Ensure public confidence in the courts
 - Preserve judicial independence
 - Maintain the rule of law



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"A frequent recurrence to **fundamental principles** is absolutely necessary to preserve the **blessings of liberty.**" NC Constitution, Article 1, Section 35.

- **Independence** –
"The legislative, executive, and supreme judicial powers of the State government shall be **forever separate and distinct** from each other." NC Const., Art. 1, Sec. 6.
- **Impartiality** –
"All courts shall be open . . . and right and justice shall be administered **without favor, denial, or delay.**" NC Const., Art. 1, Sec. 18.
- **Integrity** –
"The General Assembly shall prescribe a procedure . . . for the censure and removal of a Justice or Judge of the General Court of Justice for wilful misconduct in office, wilful and persistent failure to perform his duties, habitual intemperance, conviction of a crime involving moral turpitude, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute." NC Const., Art. IV, Sec. 17(2).





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NORTH CAROLINA COMMISSION ON ADMINISTRATION OF LAW & JUSTICE

PUBLIC TRUST & CONFIDENCE IN THE NORTH CAROLINA STATE COURTS

October – November 2015 Survey Results

December 15, 2015
Prepared by: Emily Fortner, NCALJ Research Associate

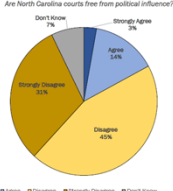



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JUDICIAL INDEPENDENCE

TAKEAWAYS:

- While 60% agree that judges make decisions based on facts, North Carolinians overwhelmingly (76%) feel judges' opinions ultimately influenced by their status as elected officials, and by political parties themselves
 - Consistent with 2015 NCSC national survey results (61%)
- Three-fourths feel the state court system overall is influenced by politics
 - Belief is stronger (82%) amongst respondents who know "a lot" about NC court system




Are North Carolina courts free from political influence?

Strongly Agree 30%
Agree 34%
Disagree 40%
Strongly Disagree 12%
Don't Know 8%

Source: Ken University

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Public Confidence in the North Carolina State Courts | December 2015 28



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KEY ETHICAL CONSIDERATIONS IN POLITICAL CONDUCT

- Canon 7 of the Code of Judicial Conduct governs political conduct specifically, and expressly applies to judicial candidates who are not sitting judges
- Other provisions of the Code of Judicial Conduct also inform how judicial officers should behave whether a candidate or not:
 - Canon 1: judges must "personally observe" standards of conduct that reflect the integrity and independence of the judiciary
 - Canon 2: judges must "avoid impropriety" in ALL of your activities and conduct yourself "at all times" in a way that promotes public confidence in the integrity and impartiality of the judiciary
 - Canon 3A: when discharging any judicial duties, judges must be "unswayed by partisan interests, public clamor, or fear of criticism"
 - Canon 3C: disqualification is appropriate where the judge's impartiality could reasonably be questioned



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BIG ISSUES IN CAMPAIGN CONDUCT

- Campaign Finance
 - Soliciting or making contributions to **your own** or **other campaigns** or political organizations
- Endorsing Other Candidates
- Disqualification Issues Relating to Campaign Conduct
- Running for Non-Judicial Office
- Campaign Materials - Flyers & Ads, Websites, Social Media
- Answering Questions – Surveys, Debates, Endorsements, Questionnaires, Media Interviews



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CANON 7'S RESTRICTIONS ON CONTRIBUTIONS

- Judges and candidates **may** contribute to:
 - Political parties or organizations
 - Your own campaign
 - A joint campaign you have formed with another judicial candidate
- Judges and candidates **may NOT** contribute to:
 - Individual candidates (even your own family members)
 - Campaign committees for individual candidates
- A judge's spouse/family members **MAY** contribute to campaigns
 - **BEWARE!** the joint checking account problem – you must make sure your name is crossed out and that the candidate or campaign treasurer does not identify you as a contributor



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RESTRICTIONS ON SOLICITING CONTRIBUTIONS

- The Code restricts political fundraising by judges:
 - Under Canon 7, a judge may **NOT** solicit funds on behalf of a **political party, organization or an individual candidate** "by specifically asking for such contributions in person, by telephone, by electronic media, or by signing a letter"
- Ability to solicit funds for your own campaign (or a joint campaign) is a **NARROW EXCEPTION** to these rules
 - Judges **MAY personally** solicit contributions to your campaign (or joint campaign) and serve as their own treasurer or form a campaign committee to do so
 - Judges **MAY NOT** solicit contributions in the courthouse or during the performance of official judicial duties, and **NEVER** solicit from parties appearing before them
 - **NOTE:** many state codes of judicial conduct prohibit personal solicitations by judges and this type of restriction was found to be constitutional in *Williams-Yulee v. Florida Bar* (US Supreme Court 2015)



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ENDORISING OTHER CANDIDATES

- What is the definition of endorse?
 - Canon 7A(3): very broad definition that includes any express request that asks other persons to support a specific individual "to be elected to public office"
 - The definition does not encompass recommendations for appointed positions
- When can judges endorse other candidates for elected office?
 - **Only judicial CANDIDATES may endorse** – you become a candidate through:
 - Publicly declaring your intention to run or notifying the Commission in writing of such intention
 - Filing with the election commission
 - Authorizing or accepting contributions to your campaign
- Who cannot endorse?
 - Any judge whose seat is appointed, emergency and recall judges, judges who will be too old to seek re-election in the next election cycle



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DISQUALIFICATION ISSUES

- **Campaign staff and volunteers**
 - Disqualify from cases involving your campaign manager, treasurer and others who play a "significant role" in your campaign and for at least six months after the election
 - The parties **may remit** this conflict through written agreement (Canon 3D)
 - Conflict is **not generally imputed** to law firms employing campaign staff
- **Opponents**
 - Disqualify from cases where your opponent is appearing and for at least six months after the election if you win
 - **Same rules for campaign staff** of your opponent as apply to your own campaign staff (conflict may be remitted, applies for six months after election, generally not imputed to employer of the individual unless facts show basis for conflict)
- **Contributors/Donors** – no set amount that requires disqualification
 - Generally **do NOT disqualify UNLESS** you know the donor has made an **unusually large donation** (or has hosted an event that led to significant contributions), the donation is large and **occurred while a case is pending before you**, or if the contribution is coupled with other facts that would call into question your impartiality



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RUNNING FOR NON-JUDICIAL OFFICE

- Canon 7B(5) - a judge must "resign the judge's judicial office prior to becoming a candidate either in a party primary or in a general election for a non-judicial office"
- Clerk of Court is a "judicial office" and a judge does NOT need to resign to run
 - **Formal Advisory Opinion No. 2009-05:** office of clerk of superior court is a judicial office of the General Court of Justice because the North Carolina Constitution and General Statutes require clerks of superior court to exercise certain judicial functions and explicitly refer to clerks of superior court as "judicial officers."
- District Attorney is a "non-judicial office" and a judge **MUST RESIGN** to run
 - **Formal Advisory Opinion No. 2017-01:** District Attorney exercises no judicial power and instead prosecutes, in the name of the State of North Carolina, "all criminal actions and infractions requiring prosecution in the superior and district courts of his prosecutorial district."



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CAMPAIGN MATERIALS - GENERALLY

- **Apply core values of impartiality, integrity and independence** when preparing, reviewing and approving your campaign materials:
 - Partisan elections do not mean we have partisan justice – duty to protect independence and impartiality of the courts even during a campaign - Canons 1, 2 & 3
 - False or misleading campaign ads or accusations about your opponent show a lack of integrity – Canon 1 [e.g., do not state “re-elect” if you have never been elected]
 - Undignified or offensive ads raise questions about your integrity and impartiality – Canons 1, 2 and 3
 - Statements that would suggest bias or lack of impartiality in certain cases or towards certain litigants threaten public confidence in the impartiality of the courts – Canons 1, 2 and 3C
 - Avoid comments about the merits of any pending cases – Canon 3A(6)
 - Monitor your social media pages for inappropriate content and comments



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CAMPAIGN MATERIALS – GENERALLY

- **DO NOT** use court or state equipment, computers, stationery, email, etc. to conduct campaign business
 - Do not use state owned equipment to print or disseminate campaign materials
 - Do not use official court stationery to send political messages or ads
- **DO NOT** require court staff and employees to help your campaign, and only allow volunteer work **AFTER BUSINESS HOURS**
- **DO NOT** engage in campaign conduct while on the job
 - Do not engage in campaigning while at work
 - Do not wear (or allow staff to wear) campaign buttons and other indicia of campaign conduct at work or post literature in the courthouse
- **YOU MAY**
 - Use court or state seal in personal stationery and campaign materials **SO LONG AS** conspicuously noted that it was not printed at state expense
 - Have photographs taken in your robe in the courtroom **SO LONG AS** they are not taken during actual proceedings or while courtroom is in use [your opponent may use the courtroom too, but not in robes unless a judge]



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- **Surveys**
 - Special interest groups may send you surveys, and you **MAY** respond
 - **BE CAREFUL** not to make statements that would undermine your impartiality or convey the impression that they can influence you
- **Debates**
 - Be dignified, respectful and civil
 - Avoid comments on pending cases and other statements that might later be used to call into question your impartiality or integrity
- **Media interviews**
 - Same rules as above
 - Avoid interviews about cases, even those pending in other courts
- **Positions on Proposed Legislation Affecting the Courts**
 - Canon 4 specifically allows judges to speak on matters affecting the administration of justice, including consulting with executive and legislative branch officials on these issues
 - Beware making comments on the legislation if the constitutionality or legality of the legislation, if passed, could end up in litigation before your court



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WHEN YOUR OPPONENT IS NOT . . .

. . . bound by the Code of Judicial Conduct.

- The Code provides that “[t]he provisions of Canon 7 of this Code shall apply to judges and candidates for judicial office.”
- Rule 8.2 of the NC Rules of Professional Conduct:
 - (a) A lawyer shall not make a statement that the lawyer knows to be *false* or with *reckless* disregard as to its truth or falsity concerning the qualifications or integrity of a judge, or other adjudicatory officer or of a candidate for election or appointment to judicial office.
 - (b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.



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OTHER POLITICAL CONDUCT ISSUES

- Attending political events and fundraisers
 - **JUDGES MAY:**
 - attend political events and fundraisers
 - be listed as a speaker in the publicity for the event
 - endorse other candidates while at the event **BUT ONLY IF YOU ARE A CANDIDATE YOURSELF**
 - buy and share tickets – but BEWARE tickets for fundraisers for individual candidates – see below
 - **JUDGES MAY NOT:**
 - pay more than the actual cost of the meal if you are attending a fundraising event for an individual campaign - anything over that cost may be considered an improper campaign contribution
 - be listed as “host” or “sponsor” for any fundraising events, but you CAN be listed as a contributor, patron, friend or like name that does not suggest that you are leading the fundraising efforts



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THANK YOU

CAROLYN A. DUBAY, EXECUTIVE DIRECTOR
NC JUDICIAL STANDARDS COMMISSION
(919) 831-3630
CAD@COA.NCCOURTS.ORG



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