



JUDICIAL STANDARDS COMMISSION  
STATE OF NORTH CAROLINA

**MEMORANDUM**

TO: Members of the North Carolina Judiciary

FROM: Commission Chairperson – Judge Wanda G. Bryant

DATE: March 24, 2014

With the 2014 election cycle firmly upon us, the following information is offered to advise as to the applicability of the N.C. Code of Judicial Conduct to campaign issues:

**Permissible Political Conduct**

All judges may:

- 1) attend and speak at various political events, conventions, and fund raisers for candidates for public office. Mere attendance at a candidate's campaign event or fund raiser will not be construed as a public endorsement of that candidate. A judge may also be listed or noted as a speaker within any publicity relating to such an event, however, while at the event the judge may not endorse a candidate (other than himself/herself) or expressly solicit funds from the audience (other than for himself/herself). (*Canon 7B(1)*)
- 2) identify himself/herself as a member of a political party. (*Canon 7B(3)*)
- 3) make financial contributions to a political party or organization, however a candidate's campaign committee is not a "political organization" within the meaning of Canon 7B(3). (*In re Wright*, 313 N.C. 495 (1985))

- 4) serve as a political party delegate or officer at the national, state, and local levels. (Canon 7B(6))

A judge who is also a judicial candidate may:

- 1) form a campaign committee to solicit and manage the expenditure of campaign funds. (Canon 7B(4))
- 2) personally solicit campaign funds and public support for his/her own candidacy. A judge may serve as treasurer of his/her own campaign. (Canon 7B(4))
- 3) conduct a joint campaign with another judicial candidate(s). (Canon 7B(3)) endorse any individual seeking election to any office, regardless of whether he/she has any election opposition. (Canon 7B(2))
- 4) respond to surveys from special interest groups, however the judge should not respond to any portion of the survey soliciting responses which:
  - a. diminish public confidence in the integrity and impartiality of the judiciary; (Canon 2A)
  - b. convey the impression that the group is in a special position to influence the judge. (Canon 2B)
- 5) issue an invitation to a non-fund raising reception for any other candidate. Issuance of the invitation constitutes a public endorsement and solicitation of public support. (Canons 7B(2) and 7C(2))

**Prohibited Political Conduct**

All judges may not:

- 1) solicit funds for a political organization, political party, nor any candidate seeking election to any office, other than himself/herself or as part of a joint judicial campaign. (Canons 7B(3) and 7C(1))
- 2) make a financial contributions or loans to any individual seeking election to any office, other than himself/herself or a joint judicial campaign. This prohibition includes donations to candidates who are related to the judge. If attending a fund raising event for an individual candidate or group of candidates, a judge may pay no more than the reasonable cost of any food and beverage provided. (Canon 7B(3))
- 3) be listed as a **sponsor** or **host** of a fund raising event for another candidate, political party or organization. Sponsorship of or hosting a fund raising event is considered active assistance in raising funds.(Canons 4C, 5B(2) and 7C(1))

- 4) request, encourage nor allow public officials/employees subject to the judge's direction or control to engage in campaign activity while at their public employment. (*Canon 3B(2)*)
- 5) continue to hold judicial office once the judge becomes a candidate for election to a non-judicial office. (*Canon 7B(5)*) The office of Clerk of Court is considered to be a judicial office (*Formal Advisory Opinion 2009-05*). The Commission has informally advised that the office of District Attorney should not be considered to be a judicial office as the term is used within the Code of Judicial Conduct.
- 6) post nor distribute campaign signs and literature in the courthouse or any other building where the judge is holding court. (*Canons 1 and 2*)
- 7) intentionally or negligently misrepresent any fact, nor intentionally and knowingly misrepresent his/her identity or qualifications. (*Canons 1, 2A and 7C(3)*) Please see the cautionary note below concerning the how a judge's name and office sought are presented to voters.
- 8) solicit campaign contributions and public support from parties and attorneys presently appearing before the judge. No solicitations should occur within the courthouse. (*Canons 1, 2A and 3A(1)*)

### **Disqualification Issues**

#### **1) Campaign Opponent**

A judge who is a candidate should disqualify himself/herself from hearing matters involving the judge's campaign opponent regardless of whether or not a motion is made for disqualification. An alternative would be to strictly follow the remittal of disqualification procedures set forth in Canon 3D.

#### **2) Campaign Staff**

A judge who is a candidate should disqualify himself/herself from hearing matters involving a campaign manager, treasurer and others who play a significant role in an opponent's campaign or in the judge's own campaign regardless of whether or not a motion is made for disqualification. An alternative would be to strictly follow the remittal of disqualification procedures set forth in Canon 3D.

#### **3) Campaign Opponent's Law Partners and Legal Associates**

One could not reasonably question a judge's ability to remain unbiased when a party appearing before the judge is represented by a law partner or legal associate of the judge's opponent in an upcoming election. Therefore, a judge need not disqualify himself/herself from hearing matters involving members of the opponent's law firm should such a motion be made, unless the judge is actually biased. However a judge may disqualify himself/herself if he/she desires.

## **Cautionary Notes**

- 1) Emergency, Special and Retired/Recalled judges **are** subject to the Code of Judicial Conduct, including Canon 7.
- 2) Do **not** use or permit staff to use State or other public resources in connection with campaign activities and do **not** permit staff or public employees to wear or display campaign paraphernalia or otherwise participate in campaign activities during working hours, whether or not in the courthouse. A judge may not require his/her staff to engage in campaign related activities.
- 3) A judge's spouse and other family members are permitted to engage in political activity. (*Canon 7D*)
- 4) The North Carolina State Bar has recently cautioned judicial candidates who are not judges against using campaign materials which could intentionally or negligently misrepresent the candidate's current office. The State Bar has warned that, under RPC 7.1, when candidate literature uses only the candidate's name and the name of the office sought, and when it is unclear whether the candidate holds that position or is simply seeking that position, misrepresentation may occur and the rule may be violated. The rules for candidates who are judges are somewhat different, with Canon 7C(3) of the Code of Judicial Conduct providing that a judge or judicial candidate should not knowingly misrepresent his/her identity. The Commission has in prior elections advised that judges who are candidates be cautious and use clear language in campaign materials to prevent any reasonable appearance of misrepresentation, however it has not treated the practice criticized by the State Bar - using only a candidate's name and the office sought in campaign materials such as yard signs and bumper stickers - as a violation of the Rules of Judicial Conduct.
- 5) Please review Canon 7A definitions of the terms "candidate", "solicit" and "endorse."

## **Closing**

It would be helpful if all Senior Resident Superior Court Judges and Chief District Court Judges will meet with other public officials who work in our courthouses, including Clerks of Superior Court, and explain that political conduct on their part, or on the part of their staff, in the courthouse environs, particularly during court sessions, diminishes the dignity and appearance of impartiality of the administration of justice.

I hope this information will be of assistance to you, however should you have any specific questions, please do not hesitate to contact the Commission's incoming Executive Director, Chris Heagarty at 919-831-3630, or by email at [jch@coa.nccourts.org](mailto:jch@coa.nccourts.org).