

JUDICIAL ETHICS IN ELECTION CAMPAIGNS

POLITICAL CONDUCT FOR ALL JUDGES

*All judges **may** . . .*

- attend political gatherings, including political party meetings and conventions, campaign events and fundraisers for candidates for election to public office. (Mere attendance does not equate to an endorsement) (Canon 7B(1))
- speak at political party events and fund-raising events for other candidates. (Canon 7B(1))
- identify himself/herself as a member of a political party. (Canon 7B(3))
- contribute to a political party or organization. (Canon 7B(3))
A candidate's campaign committee is not a "political organization", *In re Wright*, 313 N.C. 495 (1985))
- serve as a political party official or delegate at the national, state, or local level. (Canons 4C, 5B(2) and 7B(6))

*All judges **may not** . . .*

- solicit funds for a political organization or political party. (Canon 7C(1))
- solicit funds for any candidate seeking election to any office, other than himself/herself or as part of a joint judicial campaign in which the judge participates. (Canons 7B(2), 7B(4) and 7C(1))

- make a financial contribution or loan to any individual seeking election to any office, other than himself/herself or as part of a joint judicial campaign in which the judge participates. 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))
- authorize publicity of the judge as a **sponsor** or **host** of a fund raising event for a political party or organization. (Canons 4C, 5B(2), 7C(1) and FAO 2010-07)
- request, encourage or 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))
- continue to hold judicial office once the judge becomes a candidate for election to a non-judicial office. (Canon 7B(5))

EXAMPLES – **May a judge . . .**

serve as an ex-officio member of a county political party executive committee responsible for the selection of the successor to a locally elected public official such as the sheriff, clerk of superior court, register of deeds, or county commissioner? Yes, this conduct is permissible pursuant to canons 4C and 7B(1). The same reasoning would allow a judge to service as a precinct representative on a local party platform committee.

serve on the board of directors of the Lincoln Forum? Yes, service is allowed by Canons 4C and 5B(2) provided such service does not interfere with the performance of judicial duties nor reflect adversely upon the judge's impartiality.

attend a party convention or fundraising event? Yes,

attendance at such events is allowed by Canon 7B(1), and a judge may pay for a ticket to such functions because Canon 7B(3) permits a judge to contribute to a political party or organization.

speak at a Young Democrats/Young Republicans meeting regarding judicial campaigning? Yes, Canon 7B(1) allows a judge to attend and speak at a political gathering.

permit the judge's name to be listed as a special guest, guest of honor, guest speaker, contributor, etc. on the invitation to a political party fundraising event? Yes, a listing of this nature is permitted by Canon 7B(1), so long as the judge does not expressly endorse a candidate (other than himself/herself) or expressly solicit funds from the audience during the event. The judge may not be listed as a "host" or "sponsor" of the event, as per Formal Advisory Opinion 2010-07.

work in the Republican/Democratic party booth at the State Fair and distribute other candidates' campaign literature and accept contributions to the party? While a judge may work at the booth, only a judge who is a candidate may distribute other candidates' campaign literature. Contributions to the party may not be accepted by any judge while working at the booth. Canons 7B(2), 7C(1) and 7C(2)

contribute to his/her child who is a candidate for election to the local school board? No, Canon 7B(3) prohibits such contributions whether or not you are a judicial candidate and whether or not you are related to the individual.

authorize the judge's name to be listed as a special guest on the invitation to another judicial candidate's fundraising event? Yes, Canon 7B(1) allows a judge to be listed or noted within any publicity relating to such an event. However, while at the event, the judge may not expressly endorse any candidate (other than himself/herself) nor solicit funds from the audience.

attend a \$100.00 per person fundraising dinner for a gubernatorial candidate? Yes, Canon 7B(1) allows a judge to attend the event, however a judge may pay no more than the reasonable cost of the meal as any excess amount would be deemed a contribution in violation of Canon 7B(3).

contribute to the judicial campaign of a cousin in another judicial district? No, Canon 7B(3) provides that a judge may not personally make financial contributions or loans to any individual seeking election to office (other than himself/herself) except as part of a joint judicial campaign.

use official court letterhead for a letter recommending an individual for appointment to a judgeship? No, personal stationery should be used so that the recommendation does not lend the prestige of judicial office to advance the prospective candidate's private interests in violation of Canon 2B. However, should the judge's recommendation be formally solicited by the appointing official, the judge's response would be in furtherance of his/her judicial duties, wherein use of official court letterhead is appropriate.

May a judge's spouse contribute to a family member's campaign for the legislature? Yes, Canon 7D allows a spouse and other family members to engage in political activity; however the donation should be made of the spouse's free will and solely in the spouse's name.

POLITICAL CONDUCT FOR JUDGES WHO ARE CANDIDATES

Judges Who Are Candidates May . . .

- form a campaign committee to solicit and manage the expenditure of campaign funds. (Canon 7B(4))
- conduct a joint campaign with other judicial candidates. (Canon 7B(3))

- personally solicit campaign funds and public support for the judge's campaign and a joint judicial campaign in which the judge participates. (Canon 7B(4))
- serve as treasurer of the judge's own campaign. (Canon 7B(4))
- endorse any individual seeking election to any office. (Canon 7B(3))

Judges Who Are Candidates May Not . . .

- allow public officials/employees subject to the judges' direction or control to do for a judge what he/she cannot do himself/herself. (Canon 3B(2))
- intentionally or negligently misrepresent any fact. (Canon 2A)
- intentionally and knowingly misrepresent the judge's identity or qualifications. (Canon 7C(3))
- post or distribute campaign material in the courthouse or any other building where the judge is holding court. (Canons 1, 2A and 2B)
- 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))
- use or allow the use of campaign funds for the private benefit of the judge or the judge's family. (Canon 2A and 2B)
- donate unused campaign funds to another candidate. (Canon 7B(3))

EXAMPLES – **May a judge, who is a judicial candidate, . . .**

but is running unopposed, endorse another candidate?

Yes, Canon 7B(2) allows judicial candidates to endorse any individual seeking election to any office. There is no requirement that the judge have election opposition.

run and pay for a campaign ad in the newspaper that asks others to vote for a judge and 3 other judicial candidates?

Yes, such an ad is permissible as part of a joint judicial campaign pursuant to Canon 7B(3), however the cost of the ad should be shared pro rata by all candidates participating in the joint judicial campaign.

along with other judges in a judicial district, send out an invitation to a non-fundraising reception for a judicial candidate?

Yes, but *only* if the judges are themselves judicial candidates. The issuance of the invitation constitutes a public endorsement permitted by Canon 7B(2) for judicial candidates, but prohibited by Canon 7C(2) for judges who are not candidates.

solicit campaign support for the judge's campaign from parties and attorneys appearing before the judge while court is in session in the courtroom or in a courthouse hallway during a recess?

No, an order of censure was entered in *In re Stephenson*, 354 N.C. 201(2001), for such conduct which the Court declared to be willful misconduct in office and conduct prejudicial to the administration of justice in violation of Canons 1, 2A and 3A(1).

permit publication of the judge's name and biographical information in a political party mailing to promote the party's slate of candidates, including non-judicial candidates?

Yes, a judge may identify himself/herself as a member of a political party as per Canon 7B(3).

post a campaign sign in a conspicuous location in a building where the judge is holding court? No, the use of public property for campaign purposes calls into question the independence, integrity and impartiality of the judiciary in violation Canons 1 and 2.

use official court letterhead for a letter seeking campaign contributions or support for the judge's candidacy? No, use of State resources for campaign activity violates Canons 1 and 2.

use personal stationery bearing the State Seal and contact information, for campaign mailings if the stationary also contains a statement that State funds were not used for printing and mailing? No, use of the Seal and official contact information abuses the prestige of the judge's office and obliges the inappropriate use of State resources for campaign activity in violation of Canons 1 and 2.

authorize the judge's campaign committee to mail a fund-raising invitation where the return envelope notes it is for the judge's personal attention and contains the judge's name and return address? Yes, Canon 7B(4) allows a judge to personally solicit campaign funds and request public support from anyone for the judge's own campaign.

send a mass mailing soliciting contributions to the judge's campaign, to all attorneys in the judicial district, including attorneys who have matters presently pending before the judge? Yes, a mass mailing soliciting campaign contributions, even if some of the letters go to lawyers with matters pending before the judge is permitted. Only in-person or targeted solicitations of attorneys who have matters presently pending before the judge would be inappropriate. (Canons 2B & 7B(4))

authorize a campaign committee to distribute a mailing comprised of an informational letter signed by the judge and a form soliciting monetary contributions, volunteer

services and endorsements? Yes, a judge may authorize or establish a committee of responsible persons to secure and manage the solicitation and expenditure of campaign funds and public support as per Canon 7B(4).

or the judge's campaign committee contribute the judge's campaign funds to another judicial candidate? No, Canon 7B(3) provides that a judge may not make financial contributions or loans to any individual seeking election to office except to a joint judicial campaign in which the judge participates per Canon 7B(2).

hold a campaign fundraiser in the judge's home to benefit his/her candidacy? Yes, Canon 7B(4) allows a judge to personally solicit campaign funds and request public support from anyone for the judge's own campaign.

advertise his/her political party affiliation on yard signs, brochures, etc. during the campaign even though the election is non-partisan? Yes, Canon 7B(3) allows a judicial candidate to identify himself/herself as member of a political party.

respond to a survey form from a special interest group? Yes, but the judge should not provide any response which would:

- fail to promote public confidence in the integrity, impartiality and independence of the judiciary (Canons 1 and 2A);
- convey the impression that the group is in a special position to influence the judge (Canon 2B);
- cast substantial doubt on the judge's capacity to decide impartially any issue which may come before the judge (Canons 3A(1) and 4);

DISQUALIFICATION ISSUES

A JUDGE WHO IS A CANDIDATE SHOULD DISQUALIFY FROM OR FOLLOW REMITTAL OF DISQUALIFICATION PROCEDURES IN MATTERS WHEREIN . . .

- the judge's election opponent appears as counsel, a party or witness
- an election opponent's campaign manager or treasurer, or a significant participant in the election opponent's campaign appears as counsel, a party or witness
- the judge's campaign manager or treasurer, or a significant participant in the judge's campaign appears as counsel, a party or witness

EXAMPLES

May a judge preside over a criminal proceeding wherein the defendant is represented by a partner in the judge's election opponent's law firm? Unless the attorney plays a significant role in the judge's opponent's campaign, 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 associate of the judge's opponent. However, if a judge does not believe he/she can be impartial, the judge should disqualify.

Should a judge disqualify is a civil proceeding wherein a party is represented by an attorney who contributed \$1,000.00 to the judges election campaign, hosted a fund-raising event at the attorney's home, and has been distributing yard signs throughout the district? The judge should disqualify from matters wherein the attorney appears as counsel for a party. The attorney's participation in the judge's campaign is significant and provides a reasonable basis upon which to question the judge's impartiality in matters wherein the

attorney appears as counsel, a party or witness.

**RELEVANT PROVISIONS OF THE
N.C. CODE OF JUDICIAL CONDUCT**

Canon 1

A judge should uphold the integrity and independence of the judiciary.

A judge should participate in establishing, maintaining, and enforcing, and should personally observe, appropriate standards of conduct to ensure that the integrity and independence of the judiciary shall be preserved.

Canon 2

A judge should avoid impropriety in all the judge's activities.

A. A judge should respect and comply with the law and should conduct himself/herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge should not allow the judge's family, social or other relationships to influence the judge's judicial conduct or 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. . .

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.

B. Administrative responsibilities.

(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.

C. Disqualification.

(1) On motion of any party, a judge should disqualify himself/herself in a proceeding in which the judge's impartiality may reasonably be questioned. . .

D. Remittal of disqualification.

Nothing in this Canon shall preclude a judge from disqualifying himself/herself from participating in any proceeding upon the judge's own initiative. . .

Canon 4

A judge may participate in cultural or historical activities or engage in activities concerning the legal, economic, educational, or governmental system, or the administration of justice.

A judge, subject to the proper performance of the judge's judicial duties, may engage in the following quasi-judicial activities, if in doing so the judge does not cast substantial doubt on the judge's capacity to decide impartially any issue that may come before the judge:

C. A judge may serve as a member, officer or director of an organization or governmental agency concerning the activities described in Canon 4A, and may participate in its management and investment decisions. A judge may not actively assist such an organization in raising funds but may be listed as a contributor on a fund-raising invitation. . .

Canon 5

A judge should regulate the judge's extra-judicial activities to ensure that they do not prevent the judge from carrying out the judge's judicial duties.

A. Avocational activities. A judge may write, lecture, teach, and speak on legal or non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not substantially interfere with the performance of the judge's judicial duties.

B. Civic and charitable activities. A judge may participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of the judge's judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal or civic organization subject to the following limitations.

(1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge.

(2) A judge may be listed as an officer, director or trustee of any cultural, educational, historical, religious, charitable, fraternal or civic organization. A judge may not actively assist such an organization in raising funds but may be listed as a contributor on a fund-raising invitation.

Canon 7

A judge may engage in political activity consistent with his status as a public official.

The provisions of Canon 7 are designed to strike a balance between two important but competing considerations: (1) the need for an impartial and independent judiciary and (2) in light of the continued requirement that judicial candidates run in public elections as mandated by the Constitution and laws of North Carolina, the right of judicial candidates to engage in constitutionally protected political activity. To promote clarity and to avoid potentially unfair application of the provisions of this Code, subsection B of Canon 7 establishes a safe harbor of permissible political conduct.

A. Terminology. For the purposes of this Canon only, the following definitions apply.

(1) A “candidate” is a person actively and publicly seeking election to judicial office. A person becomes a candidate for judicial office as soon as he makes a public declaration of candidacy, declares or files as a candidate with the appropriate election authority, authorizes solicitation or acceptance of contributions or public support, or sends a letter of intent to the chair of the Judicial Standards Commission. The term “candidate” has the same meaning when applied to a judge seeking election to a non-judicial office.

(2) To “solicit” means to directly, knowingly and intentionally make a request, appeal or announcement, public or private, oral or written, whether in person or through the press, radio, television, telephone, Internet, billboard, or distribution and circulation of printed materials, that expressly requests other persons to contribute, give, loan or pledge any money, goods, labor, services or real property interest to a specific individual’s efforts to be elected to public office.

(3) To “endorse” means to knowingly and expressly request, appeal or announce publicly, orally or in writing, whether in person or through the press, radio, television, telephone, Internet, billboard or distribution and circulation of printed materials, that other persons should support a specific individual in his efforts to be elected to public office.

B. Permissible political conduct. A judge or a candidate may:

(1) attend, preside over, and speak at any political party gathering, meeting or other convocation, including a fund-raising function for himself, another individual or group of individuals seeking election to office and the judge or candidate may be listed or noted within any publicity relating to such an event, so long as he does not expressly endorse a candidate (other than himself) for a specific office or expressly solicit funds from the audience during the event;

(2) if he is a candidate, endorse any individual seeking election to any office or conduct a joint campaign with and endorse other individuals seeking election to judicial office, including the solicitation of funds for a joint judicial campaign;

(3) identify himself as a member of a political party and make financial

contributions to a political party or organization; provided, however, that he may not personally make financial contributions or loans to any individual seeking election to office (other than himself) except as part of a joint judicial campaign as permitted in subsection B(2);

(4) personally solicit campaign funds and request public support from anyone for his own campaign or, alternatively, and in addition thereto, authorize or establish committees of responsible persons to secure and manage the solicitation and expenditure of campaign funds;

(5) become a candidate either in a primary or in a general election for a judicial office provided that he should resign his judicial office prior to becoming a candidate either in a party primary or in a general election for a non-judicial office;

(6) engage in any other constitutionally protected political activity.

C. Prohibited political conduct. A judge or a candidate should not:

(1) solicit funds on behalf of a political party, organization, or an individual (other than himself) seeking election to office, by specifically asking for such contributions in person, by telephone, by electronic media, or by signing a letter, except as permitted under subsection B of this Canon or otherwise within this Code;

(2) endorse a candidate for public office except as permitted under subsection B of this Canon or otherwise within this Code;

(3) intentionally and knowingly misrepresent his identity or qualifications.

D. Political conduct of family members. The spouse or other family member of a judge or a candidate is permitted to engage in political activity.