



Political Conduct Update

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Fall Conference, 2014




Canon 7, section by section

A QUICK REVIEW




Canon 7

- Preamble
 - The right to engage in constitutionally protected political activity
 - Establishes a safe harbor of permissible political conduct
- Section A – Definitions
- Section B – Permissions
- Section C – Prohibitions
- Section D – Family & Relations



Candidate 7A(1)


- A person becomes a candidate for judicial office when:
 - 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
 - sends a letter of intent to the chair of the Judicial Standards Commission



Solicit 7A(2)


- directly, knowingly and intentionally
- request, appeal or announcement
 - public or private
 - oral or written
 - in person or through any method

(More)



Solicit 7A(2)

- expressly requests other persons to contribute, give, loan or pledge
 - money
 - goods
 - labor
 - services
 - real property interest
- to a specific individual's efforts to be elected to public office



Endorse 7A(3)

- knowingly and expressly
- request, appeal or announce publicly
- orally or in writing
- in person or through any method
- that other persons should support a specific individual in that person's efforts to be elected to public office

Attendance & Speaking 7B(1)

- attend, preside over, and speak at
- any political party gathering, meeting or other convocation, including a fund-raising function for himself/herself, another individual or group of individuals seeking election to office

Attendance & Speaking 7B(1)

- may be listed or noted within any publicity relating to such an event, so long as
 - does not expressly endorse a candidate (other than himself/herself) for a specific office
 - expressly solicit funds from the audience during the event

Endorse & Joint Judicial Campaign 7B(2)

- if a judge is a candidate
- endorse any individual seeking election to any office
- conduct a joint campaign with and endorse other individuals seeking election to judicial office, including the solicitation of funds for a joint judicial campaign

Party Affiliation & Financial Contributions 7B(3)

- identify as a member of a political party
- make financial contributions to a political party or organization
- 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

May Solicit Own Campaign Funds

- personally solicit funds for own campaign
- request public support for own campaign
- authorize or establish committees of responsible persons to secure and manage the solicitation and expenditure of campaign funds

Canon 7B(4)

Constitutionally Protected 7B(6)

- may engage in any other constitutionally protected political activity

Should Not Solicit Funds 7C(1)

- on behalf of a political party, organization, or an individual (other than himself/herself) seeking election to office

To Solicit? Or not to Solicit?

Canon 7C(1)

- A judge may not solicit funds 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

Canon 7 B(4)

- A judge or candidate may personally solicit campaign funds or request public support from anyone for his/her campaign, or
- establish committees of responsible persons to secure and manage the solicitation and expenditure of campaign funds.

Endorse? Or not Endorse?

Canon 7C(2)

- A judge or candidate should not endorse a candidate for public office,
- except as permitted under subsection B of this Canon or otherwise within this Code

Canon 7B(3)

- A judge or candidate may, if a judge is a candidate, endorse any individual seeking election to any public office

Misrepresent Qualifications 7C(3)

- Should not intentionally and knowingly misrepresent his/her identity or qualifications

Family Members 7D

- The spouse and other family members of a judge or a candidate are permitted to engage in political activity.

From complaints, informal advisory opinions, and court decisions

PRACTICAL APPLICATION

Candidate Advertising & Political Speech

- *What is appropriate content for a judge's judicial campaign materials?*
- *What is an appropriate response to unfair campaign communications?*

Candidate Advertising & Political Speech

Permissive

- Canon 7, rewritten in the wake of Republican Party of Minnesota v. White, 536 U.S. 765 (2002)
- Canon 7 provides a safe harbor of permissible political conduct
- "the right of judicial candidates to engage in constitutionally protected political activity"

But with limits

- No campaign materials that suggest a judge's bias for or against certain litigants, or that suggest a judge would show favor toward a particular side
- Intentional and knowingly false representations violate a judge's obligations to observe appropriate standards of conduct and to promote public confidence in the integrity of the judiciary.

Candidate Advertising & Political Speech

- A judge or a candidate should not intentionally or knowingly misrepresent his/her identification or qualifications. (*Canon 7C(3)*)
- A judge should abstain from public comment about the merits of a pending proceeding in any state or federal court dealing with a case or controversy arising in North Carolina or addressing North Carolina law. (*Canon 3A(6)*)

Candidate Advertising & Political Speech

- 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 1.*)
- A judge should avoid impropriety in all the judge's activities. 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. (*Canon 2A*).

Campaign Solicitation & Contributions to Others

- *May a judge solicit campaign contributions and public support from parties and attorneys presently appearing before the judge?*
- *May a judge solicit campaign contributions and public support from parties and attorneys in the court house, if those parties and attorneys are not presently appearing before the judge?*

Campaign Solicitation & Contributions to Others

NO!

Such conduct would be in violation of Canons 1, 2A, and 3A(1).
Such conduct creates a public appearance tantamount to *quid pro quo* corruption.

Campaign Solicitation & Contributions to Others

- “Presently before a judge...”
 - Includes attorneys, witnesses, and litigants before a judge in a courtroom
 - Does not include those who may still have a matter within the jurisdiction of a judge but who currently have no hearings or appearances scheduled before that judge
- Improper to solicit within the courthouse
- Improper to engage in political activity on state time or using state resources

Campaign Solicitation & Contributions to Others

- *May a judge give to a political party, political organization, or an organization that is supporting a specific candidate or limited group of candidates?*

Campaign Solicitation & Contributions to Others

- A judge or candidate may make financial contributions to a political party or organization, provided that he/she may not make financial contributions or loans to any individual seeking election to office (other than himself/herself), except as part of a joint judicial committee. (*Canon 7B(3)*)

Campaign Solicitation & Contributions to Others

- No contributions to parties or political groups that are “pass-throughs” to a specific candidate
- Joint judicial campaigns permit some shared expenses, provided that
 - all participants must be active candidates currently engaged in campaign activity, and
 - any shared expenses must be for the mutual benefit of all participants within the joint judicial campaign
 - Intended for joint events, “ticket” advertising, shared travel, etc.

Campaign Solicitation & Contributions to Others

- *May a retired judge subject to recall or an emergency judge make a campaign contribution?*

Campaign Solicitation & Contributions to Others

- No. The prohibition applies to retired, emergency, and recalled judges as well as active judges.
- If a judge has retired and seeks no future commission or appointment to serve then he or she is under no such prohibition.

Campaign Solicitation & Contributions to Others

- *Though a judge may not give a personal contribution to another candidate, may a judge's political committee give or disburse excess campaign funds to another candidate's committee?*

Campaign Solicitation & Contributions to Others

- In Re Wright, 313 N.C. 495 (1985)
- Holding: a candidate's campaign committee is not a political organization but is the "alter ego of the candidate."
- Allowing a campaign committee to make contributions that were otherwise prohibited would circumvent and render moot the rule established by the Code of Judicial Conduct.

Political Events & Fundraising

- *Though a judge may not contribute to a candidate's fundraising event, may a judge attend?*
- *May a judge pay for expenses associated with any meal or benefit provided to attendees of the fundraiser?*

Political Events & Fundraising

- *Contribute, no!*
- *Attend, yes!*
- A judge or candidate may attend, preside over, and speak at any political party gathering, meeting or other convocation, including a fundraising function for himself/herself, another individual or group of individuals seeking election to office. (*Canon 7B(1)*)
- Tip: If costs are associated with an event, seek to reimburse the host, not the candidate committee

Political Events & Fundraising

- *Though a judge may not contribute to a candidate's fundraising event, may a judge appear in any publicity materials related to the event?*

Political Events & Fundraising

Publicized?

- May appear in publicity about event
- May not endorse any candidate (other than self) at event
- May not solicit funds at event, for self or others

Not Publicized?

- Judge does not appear in any publicity for the event
- May publically endorse any candidate, if judge is also a candidate
- May publically solicit funds for own campaign
- May not solicit funds for others

Political Events & Fundraising

- *Regarding political party fundraisers, what, if any, of these activities are permitted?*
 - Attend a party fundraiser?
 - Purchase tickets for himself/herself and a spouse?
 - Purchase tickets for others?
 - Purchase a table of eight and/or be featured in the program as a supporter?
 - Sell tickets to others or encourage them to buy their own tickets?

Political Events & Fundraising

- May attend such a party event or meeting of a political organization
- May purchase tickets to a party (not candidate) or political event May purchase tickets and give them to others
- May not be recognized as a “sponsor” or “host”
 - BUT may be receive extra tickets or other benefits in exchange for a contribution of a certain size
 - May be recognized as a contributor to an organization, listed under titles of other than “sponsor” or “host”
- May not sell tickets to a fundraiser for a political party or political organization.

Use of Courtroom or Trappings & Indicia of Office

- *May a judge have photos taken in his or her court room, wearing his or her judicial robe, for use in campaign materials?*
- *May a judge have photos or video taken of him or her presiding in court?*

Use of Courtroom or Trappings & Indicia of Office

- Any use thereof should be appropriate, tasteful, and not a misuse of public property.
- Campaign photographs may be taken of a judge in his or her courtroom, and wearing his or her robe, but only when the courtroom is otherwise not in use and not during hours when the judge is assigned to court.
- Court rooms must be available for such use by all judicial candidates and not just incumbent judges.
- Do not use photography or video from an actual session of court.

Use of Courtroom or Trappings & Indicia of Office

- *May a judge use, for campaign purposes, stationary, cards, and similar materials bearing the state seal and other indicia of their office, so long as it paid for privately, not by the state?*

Use of Courtroom or Trappings & Indicia of Office

- Use of state seal, or any court seal, is not expressly prohibited under the Code of Judicial Conduct.
- Any such materials should include a clear and visible statement that the materials are not printed or mailed at government expense.
- A judge is obligated to take steps to prevent the perception that government resources are being used for campaign purposes.



Use of Courtroom or Trappings & Indicia of Office

- *May a judge use a state email address to send campaign emails?*
- *May a judge send campaign emails to other judicial officials at their state email addresses?*



Use of Courtroom or Trappings & Indicia of Office

- A judge should not use court resources, such as a state email account or state computer, for campaign purposes. To use public resources for personal political purposes would violate Canons 1, 2A, and 2B of the Code.
- Where possible a judge should not send campaign emails to other judicial officials at their state email addresses. Unintentional or inadvertent use of state email addresses does not rise to judicial misconduct.
- Political email sent to state email addresses may not be well received by the recipient.



Disqualification Issues

- *When should a judge disqualify from hearing matters connected to a campaign opponent? To associates of an opponent?*
- *To supporters of campaign staff an opponent?*
- *What about a judge's own staff or supporters?*



Disqualification Issues

- Campaign Opponent & Opponent's Legal Associations
 - Disqualify from matters involving a 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.
 - When an opponent works as an assistant district attorney, work with the scheduling judge and elected District Attorney to mitigate possible calendar conflicts
 - No obligation to disqualify from matters involving other members of an opponent's law firm (or other public defenders or assistant district attorneys) unless the judge questions his or her own impartiality toward the individual, or believes that there could be a reasonable perception of bias based on the campaign



Disqualification Issues

- Campaign Staff
 - Disqualify from 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.
 - "Significant role" is subjective, depending on size of campaign.



Disqualification Issues

- Campaign Contributors and Fundraisers
 - A campaign contribution or endorsement, alone, does not create a presumed conflict requiring disqualification
 - Prevents "judge shopping" by contributing token amounts
 - If size and timing of support to a judge creates a reasonable presumption of influence, a judge should disqualify from matters involving that contributor.
 - A "reasonable conflict of interest" based on:
 - the amount of the contribution relative to other contributors,
 - the range of allowable contributions and the candidate's total budget,
 - the timing of the contribution as it regards proximity in time to any past or pending legal action,
 - and whether an individual is responsible for raising significant funds above and beyond those personally given to the judge



Conduct by Magistrates & Other Court Personnel

- *Magistrates are subject to Canon 7 of the Code of Judicial Conduct.*
 - *No political contributions to candidates*
 - *No endorsements unless they are also candidates*
- A judge may not require his/her staff to engage in campaign related activities.
- 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.



When in doubt....

CALL US!

919-831-3630

