



RESULTS OF THE 2021 AUDIT OF FIDUCIARY ACTIVITIES OF JUDGES & MAGISTRATES

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July 14, 2021



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About the North Carolina Judicial Branch

The mission of the North Carolina Judicial Branch is to protect and preserve the rights and liberties of all the people as guaranteed by the Constitutions and laws of the United States and North Carolina by providing a fair, independent and accessible forum for the just, timely and economical resolution of their legal affairs.

About the North Carolina Administrative Office of the Courts

The mission of the North Carolina Administrative Office of the Courts is to provide services to help North Carolina’s unified court system operate more efficiently and effectively, taking into account each courthouse’s diverse needs, caseloads, and available resources.

About the Internal Audit Program

The Internal Audit Program serves the Judicial Branch by authority of [G.S. § 7A-343\(3a\)](#) which provides the foundation for its existence along with its responsibilities. The mission of the Internal Audit Program is to provide independent, objective assurance and consulting activities that add value and improve the operations of the Judicial Branch. Our activities are conducted in accordance with the *International Standards for the Professional Practice of Internal Auditing*.



Engagement Overview

Background

District Court Judge William Brooks was suspended on April 16, 2021 by the NC Supreme Court for violating Canon 5D within the North Carolina Code of Judicial Conduct. He served as executor of the estates of two individuals who were not family, which is specifically prohibited, and then failed to report his substantial commissions on his Statement of Economic Interest (SEI) filed with the State Ethics Commission or on his Canon 6 income disclosure filed with his Clerk of Superior Court. This investigation was commenced to determine statewide compliance with Canon 5D among all NC judges and magistrates.

Objectives

The primary objective of the audit was to determine if sitting judges and magistrates are currently identified in court records as serving as the executor, administrator, trustee, guardian or other fiduciary of an estate for individuals who were not family. A second objective was to recommend corrective action in appropriate cases if necessary to ensure compliance with Canon 5D.

Audit Procedures

To accomplish this objective we gained an understanding of the NC Code of Judicial Conduct, consulted with the Office of General Counsel, and President of the Magistrates' Conference, compared fiduciary data in VCAP to personnel data from Human Resources, consulted with estate clerks, analyzed case histories in VCAP, and reviewed estate files.

Scope

Our audit scope included statewide estates closed during the period of April 1, 2020 through March 31, 2021, or open as of March 31, 2021.

Audit Standards

This engagement was conducted in accordance with the *International Standards for the Professional Practice of Internal Auditing*.



Criteria

Canon 5D of the NC Code of Judicial Conduct states the following:

D. Fiduciary activities. *A judge should not serve as the executor, administrator, trustee, guardian or other fiduciary, except for the estate, trust or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of the judge's judicial duties. "Member of the judge's family" includes a spouse, child, grandchild, parent, grandparent or any other relative of the judge by blood or marriage. As a family fiduciary a judge is subject to the following restrictions:*

(1) A judge should not serve if it is likely that as a fiduciary the judge will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust or ward becomes involved in adversarial proceedings in the court on which the judge serves or one under its appellate jurisdiction.

(2) While acting as a fiduciary a judge is subject to the same restrictions on financial activities that apply to the judge in his/her personal capacity.

Magistrates are trained and expected to abide by this same code in the absence of a code of conduct specific to them to govern their activities. Discussions occurred with the authors of a code of conduct written for magistrates that has been drafted and presented to legislators for approval. This draft code of conduct includes the specific prohibition noted above.



Conclusions

Following a statewide review of court records during our audit period, no judges who are currently subject to the Code of Judicial Conduct (active or emergency) served as fiduciaries in estate cases for individuals who were not family. In one case, a newly installed judge was identified in court records as a fiduciary in an estate matter during the audit period, but there is no indication that the judge has undertaken any fiduciary duties since becoming subject to the Code of Judicial Conduct or has failed to take action to ensure transfer of such duties in a timely manner upon becoming a judge. In another case, a retired judge who is currently not subject to the Code of Judicial Conduct was identified as serving as a fiduciary during the audit period in two related estate matters and while the judge was also eligible to serve as an emergency judge. The retired judge was commissioned to serve as an emergency judge only once during the audit period, and fully retired several weeks later and no longer serves as an emergency judge.

Only one magistrate was identified as serving in a fiduciary capacity for the estate of an individual who was not family. We will refer this particular matter to appropriate individuals for corrective action and training.

These audit results show the Brooks' case was an isolated incident and that existing training programs and resources have been generally effective in ensuring compliance with Canon 5D in estate matters. Newly elected and appointed judges also receive training from the Judicial Standards Commission on their ethical duties, including Canon 5D.

Our audit procedures revealed that many estate clerks are not aware of the prohibition of Canon 5D. Their knowledge of this and perhaps other elements of the Code of Judicial Conduct could be helpful in encouraging compliance. **We recommend training at conferences for Elected Clerks and Deputy and Assistant Clerks and orientation for new clerks incorporate relevant elements of this Code.**

