

# Secondary Employment

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**Purpose** This establishes policy and procedures for employees to declare secondary employment and for supervisors and hiring authorities to review and approve secondary employment.

It is not the intent of this policy to discourage or limit participation in secondary employment by North Carolina Judicial Branch employees. However, the citizens of North Carolina must have confidence and trust that the duties of the Judicial Branch will be carried out in a fair, objective manner, without bias or favoritism. To maintain that confidence and trust requires careful scrutiny of secondary employment in which Judicial Branch employees may engage to be sure it does not:

- have an adverse effect on an employee’s Judicial Branch employment,
- create a conflict of interest or the appearance of a conflict of interest, or
- infringe upon the responsibility of the Judicial Branch to maintain impartiality and the appearance of impartiality with respect to the people’s legal affairs.

No Judicial Branch employee may hold a second job that impairs, in any way, their ability to perform the duties of their Judicial Branch employment or that creates a conflict of interest or the appearance of a conflict of interest or that reflects adversely on the dignity and integrity of the Judicial Branch.

Employment with a law firm, bondsman, law enforcement agency, or other entity that is regularly involved in court proceedings would ordinarily present a conflict. This is because the secondary employer’s interests are regularly affected by court actions. For an employee whose duties for the court could overlap with the secondary employer’s activities in court, the conflict could directly affect the employee’s independent and impartial judgment.

Even for an employee whose court duties would not directly interact with the secondary employer in court, there could be the appearance of a conflict. The court system must avoid even the appearance that someone might be receiving an advantage, “inside” information, or preferential treatment.

Employment with a company that does business with the court could create an appearance that the secondary employer has an inside track to a contract for the provision of goods or services, or access to confidential court information that the employer could use in its business.

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**Applicability** This policy applies to all Judicial Branch employees.

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**Authority** G.S. 7A-343

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## Secondary Employment, Continued

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**Definition** Secondary employment is any employment, other than the employment with the Judicial Branch, in which a Judicial Branch employee chooses to engage. Secondary employment includes, but is not limited to

- other public sector employment,
- private sector employment,
- self employment,
- ownership of a company, or
- other role in a company involving direct or indirect compensation, including serving on the Board of Directors, being a partner, and other roles or interests in a company where the employee receives compensation, other benefits, or exerts significant influence or control. Ownership of a company does not include owning mutual funds or stock comprising less than a controlling interest in a company.

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**Affect on other Policies** **If secondary employment is with another State agency**, then the Dual Employment policy also applies (see Section 3H: Dual Employment).

**If secondary employment is adjunct teaching by a judge or justice**, then the policy for Adjunct Teaching and Other Compensated Extra-Judicial Instructional Activities also applies (see Section 3I: Adjunct Teaching and Other Compensated Extra – Judicial Instructional Activities).

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**Examples of Generally Acceptable Secondary Employment** The following are examples of secondary employment that may be approved provided the work is performed outside of the employee’s work schedule and does not impede the employee’s employment with the Judicial Branch and does not cause a conflict with the employee’s work or the appearance of a conflict.

- Customer service (e.g. cashier, sales associate, food service)
  - Teaching
  - Tutoring
  - Consulting services (e.g. parenting)
  - Counseling or mentoring
  - Coaching (e.g. athletics, fitness)
  - Language interpreting
  - Catering and event planning services
  - Musician
  - Cleaning business
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## Secondary Employment, Continued

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### Examples of Generally Acceptable Secondary Employment (continued)

- Clerical
  - Sitter
  - Sales (e.g. cosmetics, jewelry, toys, antiques, automobiles)
  - Farm owner income (e.g. crops, timber, cattle, leases)
  - Rental income from a second home
  - Minister
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### Examples of Secondary Employment That May Cause a Conflict of Interest

Below are examples of secondary employment that may cause a conflict of interest or the appearance of a conflict of interest, or impair in some way an employee's ability to perform his or her primary employment responsibilities with the Judicial Branch.

- Employment with a law firm, bondsman, law enforcement agency, or other entity that is regularly involved in court.
  - Employment that engages in equipment repairing (machinery, computers, electronics), software development, computer programming, or information technology consulting.
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### Prohibited and Inappropriate Conflicts of Interest

Although for the most part, the following statutes and codes apply only to selected Judicial Branch officials and employees, the underlying principles offer guidance for a determination of whether a job would be a conflict for any employee.

**Private practice of law is prohibited for justices, judges, magistrates, prosecutors, public defenders, and clerks:** G.S. 84-2: "No justice judge, magistrate, full time district attorney, full time assistant district attorney, public defender, assistant public defender, clerk, deputy or assistant clerk of the General Court of Justice...shall engage in the private practice of law." Violation is a Class 3 misdemeanor. Note: G.S. 84.2 does not apply to attorneys working under contract for Indigent Defense Services to provide indigent defense.

**Assistant district attorney – full time, no private practice:** G.S. 7A-63: "An assistant district attorney shall...devote his full time to the duties of his office and shall not engage in the private practice of law during his term."

**Clerk, full time; business activities should not conflict:** G.S. 7A-101(a): "The clerk of superior court is a full-time employee of the State..." Although there is no formal code of ethics applicable to clerks, a code of ethics for clerks in the Clerks' Manual (Section IV, at 11.7) states the principle that the clerk's business activities should not conflict with the duties as clerk.

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## Secondary Employment, Continued

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### **Prohibited and Inappropriate Conflicts of Interest (continued)**

**Code of Judicial Conduct (applicable to justices and judges) and State Bar Rules of Professional Conduct (applicable to all lawyers):** Although most Judicial Branch employees are not subject to these codes, they address conflicts of interest. While not every income-producing activity violates these codes, they clearly proscribe activities that would impair the ability to exercise fair and impartial judgment. Canons 1 and 3 of the Code of Judicial Conduct speak to upholding the independence and impartiality of the judiciary, and Canon 5.C(1) states that a “judge should refrain from financial business dealings that reflect adversely on the judge’s impartiality, [or] interfere with the proper performance of the judge’s judicial duties....” Canon 6 addresses compensation for quasi-judicial and extra-judicial activities. The State Bar Rules of Professional Conduct, Rule 1.11 (d), addresses conflict situations for a lawyer currently serving as a public officer or employee. If a Judicial Branch lawyer were to represent a person or give legal advice, the conflict would relate to the lawyer’s ability to exercise independent judgment for both the agency and the person, and it could create an appearance that the person is getting some inside, legal advantage from the court.

**Personal gains from public contracts are unlawful:** Under G.S. 14-234, it is a misdemeanor for an employee of an agency to gain a benefit from an agency contract, such as where the employee has an interest in the company with which an agency has contracted. That statute forbids an employee of an agency from soliciting or receiving a gift or reward in exchange for trying to influence the award of a contract by the agency. This statute does not address secondary employment per se, but it reflects the concern that a conflict may be presented if a court employee works for a business that contracts with the court.

**State Government Ethics Act:** (G.S. Chapter 138A): For the courts, this Act applies only to elected officials and a few others. However, the Act defines standards of ethical conduct and conflicts of interest. Among other things, persons subject to the Act must not participate in official matters when they have a conflict of interest, such as a financial interest. The purpose of the Act (stated in G.S. 138A-2) is to ensure that “officials exercise their authority honestly and fairly, free from impropriety, threats, favoritism, and undue influence.”

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## Secondary Employment, Continued

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### Disclosure and Approval of Secondary Employment

**New employees.** All new employees must complete form [AOC-A-237](#) “Disclosure and Approval of Secondary Employment” and declare any secondary employment as part of the hiring process. The hiring authority will review secondary employment declared by new employees. Unacceptable secondary employment must be resolved either by withdrawing the offer of employment, or production of evidence that the employee has terminated the secondary employment. The hiring authority will then forward the form to the NCAOC Human Resources Division along with other new-hire documentation for review.

**Current employees.** Individuals currently employed with the Judicial Branch must declare secondary employment using form AOC-A-237 at the time of their annual performance review and before beginning any secondary employment and submit it through their immediate supervisor to the hiring authority for approval. If the secondary employment is deemed unacceptable the employee must be informed that he or she may not engage in that employment and that engagement will result in termination of their Judicial Branch employment. Finalized Forms AOC-A-237 will be forwarded to the Human Resources Division for review and filing in the personnel record.

It is a violation of this policy to begin or continue secondary employment without the approval of the hiring authority and the Human Resources Division and may result in disciplinary action or dismissal.

**Elected officials.** Secondary employment by elected officials is governed by relevant provisions of law. For these officials, the form should be completed and submitted to the Human Resources Division for record keeping purposes only.

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### Public Information

Employee requests for approval of secondary employment, accompanied by any required supporting information, are considered public information and may be released upon request.

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