



**JUDICIAL STANDARDS COMMISSION  
STATE OF NORTH CAROLINA**

**FORMAL ADVISORY OPINION: 2017-01**

May 15, 2017

**QUESTION:**

Is a sitting judge required to resign the judge's judicial office before becoming a candidate in a public primary or general election for the office of district attorney?

**CONCLUSION:**

Yes. Canon 7B(5) of the North Carolina Code of Judicial Conduct provides that a judge must “resign the judge’s judicial office prior to becoming a candidate either in a party primary or in a general election for non-judicial office.” As the office of district attorney is a non-judicial office, resignation is required before becoming a candidate in a public primary or general election for such office.

**DISCUSSION:**

Canon 7B(5) of the North Carolina Code of Judicial Conduct provides that a judge must “resign the judge’s judicial office prior to becoming a candidate either in a party primary or in a general election for non-judicial office.” This restriction serves the important purpose of furthering the fundamental values of impartiality, independence and integrity that underlie the Code of Judicial Conduct in general. While a judge’s impartiality and independence would not be threatened by a campaign for another judicial office that requires the same impartiality and independence, the same cannot be said for running for an elected office that in fact depends on partiality. The Commission finds that it would be particularly concerning if a sitting judge who presides over criminal cases

was simultaneously campaigning for district attorney. Campaigning for prosecutorial office could raise reasonable questions as to the judge's impartiality in cases he or she must adjudicate in accordance with the Code of Judicial Conduct. See, e.g., Canon 2B (a judge "should conduct himself/herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary"); Canon 3 ("A judge should perform the duties of the judge's office impartially and diligently"); Canon 3A(1) ("A judge should be unswayed by partisan interests, public clamor, or fear of criticism"); Canon 3C(1) ("a judge should disqualify himself/herself in a proceeding in which the judge's impartiality may reasonably be questioned.").

With respect to Canon 7B(5) in particular, the Commission in Formal Advisory Opinion No. 2009-05 advised that the office of clerk of superior court is a judicial office of the General Court of Justice as set forth in N.C. Const. Article IV, Section 9 and N.C. Gen. Stat. Chapter 7A, Article 12. In addition, N.C. Gen. Stat. § 7A-40 provides that the "clerk of superior court in the exercise of the judicial power conferred upon him . . . is a judicial officer of the Superior Court Division . . ." As such, resignation of judicial office is not required to seek election as clerk of court. By contrast, the District Attorney exercises no judicial power and instead prosecutes, in the name of the State of North Carolina, "all criminal actions and infractions requiring prosecution in the superior and district courts of his prosecutorial district" and performs such other duties as authorized pursuant to N.C. Gen Stat. § 7A-61. While the District Attorney does possess some calendaring authority, see e.g. N.C. Gen. Stat. § 7A-49.4, and is administratively assigned to the North Carolina Administrative Office of the Courts for certain purposes, these facts do not transform the District Attorney as an officer of the court into a judicial officer who exercises judicial power in the State of North Carolina. The District Attorney thus cannot be considered a judicial officer for purposes of Canon 7B(5).

**References:**

Canons 2B, 3, 3A, 3C and 7B(5) of the North Carolina Code of Judicial Conduct  
Formal Advisory Opinion No. 2009-05  
N.C. Const. Art. IV, Section 9  
N.C. Gen. Stat. Chapter 7A, Art. 12  
N.C. Gen. Stat. § 7A-40  
N.C. Gen. Stat. § 7A-49.4  
N.C. Gen. Stat. § 7A-61