



JUDICIAL STANDARDS COMMISSION
STATE OF NORTH CAROLINA

MEMORANDUM

TO: Members of the North Carolina Judiciary

FROM: Judge Chris Dillon, Chair of the Judicial Standards Commission

DATE: 16 March 2022

RE: Political Conduct and the Code of Judicial Conduct

To assist you with compliance with the Code of Judicial Conduct during the 2022 election cycle, we are providing this memorandum, which addresses political conduct allowed and prohibited under the Code for judges, generally, and for judges who have declared themselves as candidates. This memorandum also provides guidance on common questions we receive at the Commission. If you have a specific question, a judge or judicial candidate should contact the Commission for an informal advisory opinion by calling (919) 831-3630.

NOTE: Though the Commission does not have jurisdiction over non-judges seeking judicial office, Rule 8.2(b) of the State Bar Rules of Professional Conduct requires that “[a] lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.”

This memorandum addresses the following issues:

- 1) Overview of the Code of Judicial Conduct as it Relates to Political Conduct
- 2) Soliciting Funds for Your Campaign or a Joint Judicial Campaign
- 3) Other Do’s and Don’ts for Your Campaign
- 4) Assisting Other Candidates or Political Organizations

- 5) Disqualification Issues Relating to Campaign Conduct
- 6) Resign to Run Requirement
- 7) Campaign Misconduct By Candidates Who Are Not Judges

1. OVERVIEW OF THE CODE OF JUDICIAL CONDUCT AS IT RELATES TO POLITICAL CONDUCT

Canon 7 of the Code of Judicial Conduct governs political conduct and applies to all judges. The term “judges” also includes any emergency judges, retired judges subject to recall, and commissioners and deputy commissioners of the North Carolina Industrial Commission.

NOTE: Family members of judges are NOT bound by the restrictions in Canon 7.

Canon 7 is designed to distinguish between political conduct that *all* judges may engage and conduct reserved only for judges who are candidates. Canon 7(A)(1) defines a “candidate” as “a person actively and publicly seeking election to judicial office.” A judge becomes a candidate for judicial office in one of four ways:

- (1) making a public declaration of candidacy;
- (2) declaring or filing as a candidate with the appropriate election authority;
- (3) authorizing solicitation or acceptance of contributions or public support; or
- (4) sending a letter of intent to the Chair of the Judicial Standards Commission.

Canon 7A(1). As a best practice, the Commission would prefer a judge who intends to become a candidate to send a letter of intent to the office of the Judicial Standards Commission indicating the year in which the judge will be facing election and the office for which the judge will be campaigning. Please do not email letters of intent – we prefer that they be mailed to the Commission’s office.

NOTE: There is nothing in the Code limiting the window of time within which a judge may declare himself or herself a “candidate” for election. To be considered a candidate, however, a judge should be establishing himself or herself as a candidate in good faith and eligible to run for the seat in the year indicated in the letter of intent sent to the Commission. See Canon 7A(1).

While each of these topics is treated in more detail in this memorandum, judges **MAY NOT:**

- **Contribute** to any individual candidate or campaign committee;
- **Solicit** campaign funds or contributions for any candidate or political party/organization;
- **Endorse** any candidates for elected office (unless the judge is also a candidate);
- **Misrepresent** the judge’s identity or qualifications for office.

On the other hand, judges **MAY:**

- **Identify** with a political party;
- **Contribute** to a political party/organization;

- *Attend and speak* at political events and campaign fundraisers for other candidates;
- *Be listed in publicity* for a political event or fundraiser (but not as a host or sponsor);
- *Personally solicit* contributions to his or her own campaign or a joint judicial campaign.
- *Engage* in any other constitutionally protected political activity (not otherwise prohibited by the Code).

Beyond Canon 7, campaign and political conduct of judges also implicates the following provisions of the Code: Canon 1 (duty to maintain the integrity and independence of the judiciary); Canon 2 (duty to avoid impropriety in all activities); Canon 3A (duty to remain “unswayed by partisan interests” and prohibition on comments about pending cases); Canon 3C (disqualification rules). As always, a judge’s core duty is to consistently ensure the integrity, impartiality and independence of the judiciary.

2. SOLICITING FUNDS FOR YOUR CAMPAIGN

Under Canon 7B(4), judges may *personally solicit* campaign funds and request public support for his or her own campaign. A judge may also manage and serve as treasurer of his or her own campaign or form a campaign committee to solicit and manage the expenditure of campaign funds (see below on use of court staff as campaign volunteers). Judges should also contact the North Carolina State Board of Elections for advice on reporting requirements and carefully review applicable campaign finance and election regulations.

Although a judge may personally solicit contributions for his/her own campaign, past advice from the Commission has identified some specific limitations on campaign solicitations based on the broader requirements of Canons 1, 2 and 3. As such, a judge **MAY NOT**:

- personally solicit campaign contributions and public support from parties and attorneys presently appearing before the judge. The term “presently appearing before the judge” includes those litigants and attorneys appearing before a judge in a courtroom. It is not to be read so broadly as to include attorneys or parties who may have a matter pending within the jurisdiction of the judge’s court but who currently have no hearings or appearances scheduled before that judge. Nor does it to be read to prohibit mass emails signed by the judicial candidate to members of the bar or other groups where there is no direct, personal contact between the judicial candidate and the contributor.
- solicit any contributions, personally or otherwise, within or around the courthouse or while discharging official duties. For instance, even if a litigant or attorney does not have a hearing scheduled or decision pending before a judge, it is still improper for a judge to solicit that person within the courthouse or during any function associated with the judge’s official job duties. Similarly, judges should never approach or speak to jurors about political issues or candidates, including introducing other judicial candidates or themselves as candidates or otherwise seeking support from jurors on political issues.
- use state resources for campaign purposes (this includes state computers, copiers, telephones, official email, official letterhead, or other state property).

Canon 7B(3) specifically allows a judge who is a candidate to conduct a “joint judicial campaign” with another judicial candidate. The term “joint judicial campaign” is not defined in the Code of Judicial Conduct. Past informal advisory opinions make it clear, however, that this rule is a narrow exception to the general rule that a judge may not contribute to other candidates for elected office. The exception for joint judicial campaigns is intended to allow joint campaign activity, such as joint events, shared campaign mailings, and the sharing of incidental judicial campaign costs, such as travel. The Commission advises that in order to participate in a joint judicial campaign, all participants must be active candidates for judicial office and currently engaged in campaign activity. Any shared expenses must be for the mutual benefit of all participants within the joint judicial campaign. Again, candidates should be mindful of any applicable reporting requirements under state election law and ensure that any joint judicial campaign activity is appropriately reported to the State Board of Elections.

3. OTHER DO’S AND DON’TS FOR YOUR CAMPAIGN

Court Personnel as Campaign Staff: Under Canons 1, 2 and 3A(1), a judge has a duty to ensure public confidence in the independence of the judiciary and that judicial decision-making is “unswayed by partisan interests.” For this reason, a judge must maintain a strict separation of any campaign activities from his or her official duties. As such, a judge **MAY NOT:**

- require his or her staff or other court employees to work on campaign related activities (although court personnel may volunteer to help after work or on personal time);
- 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.

Senior Resident Superior Court Judges and Chief District Court Judges are encouraged to remind other public officials who work in their courthouses, including Magistrates, Clerks of Superior Court and other court personnel, that they may not engage in any political conduct in violation of the AOC General Counsel’s office political conduct guidance and the Code of Conduct for Magistrates. Appellate judges and justices should make similar efforts with respect to political conduct of members of their chambers staff and other court employees over whom they exercise supervisory authority. This includes compliance with the Court of Appeals Code of Conduct for Research Assistants and Staff Attorneys.

Appropriate Campaign Ads and Materials: The Commission has received numerous inquiries and some complaints regarding the content of judicial campaign material. While candidates have broad latitude in the content of their campaign advertising, judges continue to be bound by Canons 1, 2 and 3 and 7C, which together require that all campaign materials are dignified, not intentionally misleading, and do not diminish public confidence in the integrity, impartiality and independence of the judiciary. Types of assertions or statements in campaign materials that can violate these rules include the following:

- Campaign materials that suggest a judge’s bias or predisposition for or against certain litigants, or that would create a reasonable suggestion that a judge would show favor toward a particular side in a legal dispute;

- An intentional and knowingly false representation about an opponent;
- Posting or distributing campaign signs and literature in the courthouse or any other place where the judge is holding court or conducting official business;
- Language or images in campaign ads that are undignified, profane or offensive;
- Language suggesting the judge has previously been elected when he or she was appointed; e.g., do not use the language “re-elect” if you have never been elected to the judicial office you are seeking; you may use the word “keep” or “elect” where appropriate;
- Language using the title “Judge” before the candidate’s name if the candidate is not a sitting judge.

Use of Photos of the Judge Robed and in the Courtroom: Campaign photographs/videos may be taken of a judge in his or her courtroom and wearing his or her robe. However, such photographs/videos should only be taken when the courtroom is otherwise not in use and should not be taken while the judge is presiding in court. The Commission also advises against using any photographs or video from an actual session of court for political purposes. Any use of photographs of a judge in a robe or in a courtroom should be appropriate and tasteful in order to promote continued respect for the decorum of the judicial office and the courthouse. Courtrooms and courthouses must also be available for such use by all judicial candidates and cannot be limited solely to incumbent judges, although non-judges may not appear in robes.

Use of State Seal on Campaign Literature: The use of the state seal, or any court seal, is not expressly prohibited under the Code of Judicial Conduct and may be appropriate to use in certain circumstances. However, in order to prevent confusion and to avoid the appearance of misuse of state property, any such materials bearing a seal or indicia of your office should include a clear and visible statement that the materials are not printed or mailed at government expense. The perception that government resources are being used for campaign purposes undermines public faith and confidence in the integrity and impartiality of the judiciary. It is the responsibility of the judge to take reasonable steps to prevent such confusion.

Use of Official Email and State Computers for Campaign Conduct: A judge should not use any court resources, equipment or supplies for campaign conduct. This prohibition includes use of a state email account or state computer for campaign purposes. Just as a judge should not use state resources for his or her own political purposes, a judge should facilitate the compliance of other judges and court officials with this standard. A judge should not send campaign emails to other judicial officials at their state email addresses. However, the Commission acknowledges that sometimes campaigns rely on mass email communications sent to large distribution lists, such as the list of all licensed attorneys sold by the State Bar, or membership lists of certain bar groups. Where a judge has listed his or her state email address as contact address for that group’s purposes, a judicial candidate may inadvertently send materials to that address. Such incidents would not be viewed as misconduct, however candidates should be cautioned that political mail sent to a state email address may not be well-received by the recipient.

Social Media Use in Campaigns: Campaign communications disseminated through social media are subject to the same standards as other written communications. In other words, the statements

should be truthful, dignified and professional and not undermine public confidence in the integrity, impartiality and independence of the courts. As a best practice, judges and candidates should also monitor comments on social media by followers and connections and remove offensive or profane comments on the judge's public campaign page. Although the Commission has never concluded that a connection to a person on social media alone is sufficient to justify disqualification, public and open communications and discussions on social media with followers/connections could later result in a motion for disqualification if that follower/connection appears before you and thus should be avoided.

Answering Questions in Surveys/Debates/Media Interviews: Judicial candidates are often asked to respond to surveys from special interest groups and to participate in media interviews and judicial debates. Generally, a judge should not respond to any question in a manner that undermines public confidence in the integrity, independence and impartiality of the judiciary or conveys the impression that the judge favors a particular group. The judge should also refrain from discussing the merits of any pending federal or state cases if the case implicates North Carolina law or the case or controversy arose in North Carolina (Canon 3A(6)).

The United States Supreme Court ruled in *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002), that judicial candidates cannot be absolutely restricted from expressing their views on disputed issues of law or policy. However, the Commission advises that any such comments should continue to be made in a professional and civil manner and with due regard to ensuring public confidence in the impartiality and fairness of our courts. For example, a judge or judicial candidate should not state or forecast how he or she would rule in a particular case that is currently pending as such statements suggest pre-determination of issues to be presented in court and would undermine the appearance of fairness and impartiality.

Positions on Pending Legislation v. Pending Cases: Canon 3A(6) prohibits judges from publicly commenting on the merits of pending state and federal cases arising under North Carolina law or dealing with a case or controversy arising in North Carolina. As such, judges in all campaign statements should avoid such comments. On the other hand, Canon 4B allows judges to appear before public bodies to comment on issues affecting the administration of justice or the legal, economic, educational, or governmental system. The Commission has interpreted this provision as allowing judges to make comments on the impact of pending legislation on the administration of justice. As in any public statements, however, such comments should be dignified and professional, and should not suggest bias or lack of impartiality of the judge in cases that would normally come before him or her.

4. ASSISTING OTHER CANDIDATES OR POLITICAL ORGANIZATIONS

Canon 7 sets forth the parameters of the permissible political activity of judges in order to maintain public confidence in the impartiality and independence of the judiciary. Canon 7 respects the First Amendment rights of judges to participate in political activities. See Canon 7(B)(6). At the same time, Canon 7 provides some limitations on permissible political activities of judges who are candidates and more strictly limits the political conduct of judges who are not candidates when they are trying to assist other candidates or political organizations. The primary restrictions in

Canon 7 as to other candidates and political parties relate to endorsements, contributions, and assistance with fundraising.

Identifying with a Political Party: A judge may identify with and join a political party regardless of whether judicial elections are partisan or non-partisan and regardless of whether a judge is currently a candidate for judicial office. See Canon 7B(3).

Attending and Speaking at Political Events: A judge may “attend, preside over, and speak at any political party gathering, meeting or other convocation,” including fundraisers for other candidates and political parties, and may also be listed or noted as a speaker within any publicity relating to such an event. See Canon 7B(1). Because attendance at a candidate’s campaign event or fundraiser is explicitly permitted and may be noted in the event publicity, mere attendance and the notation of it in the event publicity will not be construed as an endorsement of that candidate.

If the event is a fundraiser, however, the event publicity should not list a judge as a host or sponsor (see below on solicitations and fundraising). In addition, if a judge is a speaker at the event, he or she should be careful not to (1) solicit contributions/financial support from the audience for the organization or a candidate or (2) endorse a candidate unless the judge is eligible as a candidate to endorse other candidates. More information on soliciting and endorsing is provided below. Finally, if the event is ticketed, the judge must be careful to ensure that the ticket proceeds are not considered prohibited “campaign contributions” (see below on contributions).

Endorsing Other Candidates: The term “endorse” is defined in Canon 7 as “to knowingly and expressly request, 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 that person’s efforts to be elected to public office.” Canon 7A(3).

Judges are generally prohibited from endorsing other candidates for elected office unless the judge is also a candidate for judicial office. Canon 7B(2), 7C(2). A judge who is entitled to endorse may do so regardless of whether he/she has any election opposition. Because emergency judges and retired judges subject to recall are not elected, they may not endorse other candidates. Special superior court judges, who are appointed, also may not endorse unless they become a candidate for an elected judicial office. The Commission has not treated recommendations to the Governor for judicial appointments as “endorsements.”

Soliciting Funds for Candidates or Political Parties/Organizations: The word “solicit” is defined in the Code to mean “to directly, knowingly and intentionally make a request, appeal or announcement, public or private, oral or written . . . 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.” Canon 7A(2). Solicitation can occur whether done personally “or through the press, radio, television, telephone, Internet, billboard, or distribution and circulation of printed materials”

Judges and judicial candidates may not solicit funds for a “political party, organization, or an individual (other than himself/herself) seeking election to office, by specifically asking for such

contributions in person, by telephone, by electronic media, or by signing a letter[.]” Canon 7C(1). Judges who are candidates may raise money for their own campaigns and for joint judicial campaigns as permitted in Canon 7B(2).

Judges should beware of common scenarios that could be considered active assistance in fundraising for other candidates or political parties:

- Avoid being listed as a “host” or “sponsor” of a fundraising event for a political party or candidate. See [Formal Advisory Opinion 2010-07](#).
- Do not sell tickets or ask people to buy tickets to a fundraiser for a candidate, political party or political organization.

Contributing to Political Organizations or Other Campaigns: A judge may make contributions to a political party or organization.

However, a judge, whether a candidate or not, may not “personally make financial contributions or loans to any individual seeking election to any office . . .” Canon 7B(3). This prohibition includes contributions and loans to candidates who are family members of the judge.

NOTE: Our Supreme Court in *In re Wright*, 313 N.C. 495 (1985) held that a candidate’s campaign committee is not a “political organization” but is the “alter ego of the candidate.” The Court disciplined a judge who contributed to another judge’s campaign committee, rejecting the argument that the committee was a “political party or organization.”

Based on *Wright*’s reasoning, the Commission has informally advised that a judge’s campaign committee may not donate to another candidate’s campaign committee, even if the donor committee is in the process of winding down.

Judges should be aware of the following common scenarios that can get judges into trouble for improper contributions to candidates:

- *Contributions from a Spouse Made from a Joint Checking Account:* A judge’s spouse and other family members are permitted to engage in political activity under Canon 7D. However, if a judge’s family member would like to make a financial contribution to an individual’s campaign, the judge should make sure the family member does so in a way that makes clear that the contribution comes from the family member and not the judge. If the judge and family member share a joint checking account, the family member should cross out the judge’s name on the check to avoid any confusion. The family member may want to confer with the candidate’s campaign treasurer as well to make sure the contribution is appropriately attributed to the family member and not the judge.
- *Buying Tickets to Campaign Fundraisers:* If paying to attend a ticketed political fundraiser for a specific candidate or group of candidates, beware that a judge should only contribute the reasonable cost of any food and beverage provided. Paying more than the cost of the food and beverage could be considered a contribution to the campaign and is prohibited. Some judges attend such events and reimburse the host/hostess for the cost of the meal.

The Commission advises that the best practice for a judge reimbursing a host for the costs of attending a campaign fundraiser is to make payment directly to the host or caterer of the event, rather than to the candidate's campaign committee. Too often such reimbursements may be reported by the committee as "contributions" and therefore appear as violations of the Code, even though they are otherwise allowable expenses. If the event is free to attend and not ticketed, and food is offered as part of the hospitality, a judge is not expected to pay for the cost of the food.

- *Buying Tickets to Other Political Events:* If a judge wishes to attend a ticketed event for a fundraiser for a political party or organization, the restrictions are more relaxed so long as the proceeds of the tickets are not being directed towards a specific candidate. A judge may attend such an event and may purchase tickets to such an event. A judge may also purchase tickets and give them to others. There is no Code provision prohibiting such an expense, especially if the judge is himself/herself a candidate and the tickets are part of the judge's campaign expenses. There is no limitation against a judge receiving extra tickets or other benefits (such as an advertisement in a program) in exchange for a contribution of a certain size. Again, this is limited to political events that are not fundraisers for specific candidates.

5. DISQUALIFICATION ISSUES RELATING TO CAMPAIGN CONDUCT

Canons 3C and 3D govern disqualification and remittal. Generally, a judge should disqualify himself/herself in any proceeding in which the judge's impartiality may be reasonably questioned. If the conflict is immaterial or insubstantial, it may be remitted (or waived) by written consent of the parties entered into the record.

Campaigning for judicial office creates five common scenarios involving disqualification. As all disqualification issues are very fact specific, if there are unique circumstances in the judge's case, that judge is free to reach out to the Commission staff for an informal advisory opinion on the issue. For all scenarios below, the Commission recommends a disqualification period to continue for an additional six months after the election, although a longer period may be recommended depending on the circumstances.

Judge's Own Campaign Staff: A judge who is a candidate should disqualify himself/herself from hearing matters involving his or her campaign manager, treasurer and others who play a significant role in the judge's own campaign regardless of whether a motion is made for disqualification. An alternative would be to strictly follow the remittal of disqualification procedures set forth in Canon 3D. We have informally advised that disqualification should be ongoing with respect to campaign treasurers for so long as the treasurer is publicly associating with the campaign by filing reports on behalf of the candidate even after the election is over.

With respect to employers of campaign staff, the Commission generally does not consider conflicts with campaign staff to be imputed to other colleagues or supervisors. Nevertheless, disqualification issues are very fact specific, and disqualification could be required depending on the size of the law office, the involvement of colleagues in the campaign and other factors. Judges and candidates are encouraged to contact the Commission if a disqualification issue arises.

Campaign Opponent & Opponent’s Campaign Staff: A judge who is a candidate should disqualify himself/herself from hearing matters involving the judge’s campaign opponent regardless of whether a motion is made for disqualification. Further, a judge should disqualify himself/herself from hearing matters involving a lawyer who has announced his or her intention to run for the judge’s seat, even if the judge has not publicly announced his or her future intentions. This conflict is generally not waivable unless in strict compliance with Canon 3D without any involvement of the judge. When an opponent works as an assistant district attorney or assistant public defender, a judge should work with the scheduling judge and elected District Attorney or appointed Public Defender to mitigate possible calendar conflicts that could be created by such disqualification.

A judge is not obligated to disqualify himself/herself from hearing matters involving other members of the opponent's law firm (or other public defenders or assistant district attorneys, if the opponent works for one of those institutions) should such a motion be made. There is no presumption of conflict. However, if 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, the judge may opt to disqualify himself or herself in such a situation. Judges are not automatically disqualified if an attorney announces he or she is running for judge but has not identified the seat that he or she will challenge.

A judge who is a candidate should also disqualify himself/herself from hearing matters involving his or her opponent’s campaign manager, treasurer and others who play a significant role in the opponent’s campaign regardless of whether a motion is made for disqualification. An alternative would be to disclose the conflict and strictly follow the remittal of disqualification procedures set forth in Canon 3D.

Campaign Contributors, Endorsers and Supporters: An endorsement or standard campaign contribution standing alone does not create a presumed conflict that would require a judge to disqualify himself or herself from hearing a matter involving the endorser or contributor. If an otherwise unremarkable campaign contribution or public support for a judicial candidate was presumed to create a conflict of interest justifying recusal, the potential for abuse and “judge shopping” – in which attorneys or litigants send token contributions to certain judges or simply publicly endorse the candidate - would impair the effective administration of justice. On the other hand, in *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009), the United States Supreme Court held that there are circumstances when it becomes a due process violation for a judge to preside over a case involving a campaign contributor. The Court adopted an objective standard focusing on the risk of actual bias even if the judge subjectively believes he or she can be fair and impartial in the case.

In response to *Caperton*, the Commission has not adopted a specific contribution amount that would require disqualification if the contributor appears before the judge. Even so, where the size and timing of financial support to a judge creates a reasonable presumption of influence, a judge should disqualify from matters involving that contributor. In determining whether it is reasonable to presume a conflict of interest from the contribution, a judge should weigh 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 funds above and beyond those personally given to the judge, such as when someone organizes and hosts a fundraiser for the judge, especially if those efforts result in a significant amount of the judge's total campaign contributions.

With respect to endorsements, we have informally advised that a judge should disqualify in cases in which (s)he has solicited an endorsement and the endorsing party appears as a party or lawyer before the judge. Similarly, if a judge has endorsed an elected official who appears before the judge, the judge should disqualify as well. The period of disqualification, like in other campaign situations, should continue for a reasonable period after the election in which the endorsement was made (usually six months). Unsolicited endorsements do not necessarily require disqualification, and a judge with a question about this issue should contact the Commission for advice based on the specifics of the situation.

Disqualification Based on Campaign Statements: Judges should be mindful that whenever they make public statements, whether in the campaign context or otherwise, there is a potential that those statements can be used as a basis for a disqualification motion if the statements show a bias in a particular case or towards a particular class of litigants. In all campaign statements, therefore, judges should use the same caution and professionalism as they would in other contexts to ensure continued public confidence in the impartiality, integrity and independence of the courts, and to avoid reasonable questions as to the judge's impartiality in the cases over which he or she presides.

Disqualification Based on Status as a Candidate in Election-Related Disputes: The Commission has received many inquiries regarding whether a judge who is a candidate must disqualify in all cases involving electoral issues during the year in which the judge will be on the ballot. The Commission has consistently advised that judges who are candidates are not automatically disqualified from hearing any election-related cases simply on the basis of their status as a candidate. A judge who is a candidate is only required to disqualify under Canon 3C in these circumstances if the judge has an interest "that could be substantially affected by the outcome of the proceeding." Speculative or attenuated political advantages generally are insufficient to meet this standard and overcome the judge's duty to sit and decide cases, particularly when all judges of the same court are elected. On the other hand, if the outcome of the case will have a specific, substantial, and tangible impact on a judge's campaign (whether in the same year as the case is heard or beyond), the judge should seek guidance from the Commission on whether disqualification is required.

6. RESIGN TO RUN REQUIREMENT

Although Canon 7B(5) permits judges to become a candidate in a primary or a general election for a judicial office, a judge is required to resign his or her position to run for election to a "non-judicial office." The Code does not define "non-judicial office" but the Commission has issued two formal advisory opinions on the issue.

- *Clerk of Court:* See [Formal Advisory Opinion 2009-05](#) (a judge is not required to resign his or her position as a judge prior to becoming a candidate for Clerk of Court).
- *District Attorney:* See [Formal Advisory Opinion 2017-01](#) (a judge must resign his or her position prior to becoming a candidate for District Attorney).

7. CAMPAIGN MISCONDUCT BY CANDIDATES WHO ARE NOT JUDGES

The Commission frequently receives inquiries concerning alleged misconduct by judicial candidates who are not judges. While all judicial candidates are required to comply with Canon 7 of the North Carolina Code of Judicial Conduct, the Judicial Standards Commission has no authority or jurisdiction over the conduct of attorneys who are not currently judges. Instead, attorneys who are judicial candidates, but not yet judges, are under the jurisdiction of the North Carolina State Bar. Rule of Professional Conduct 8.2(b) requires that a lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.

In addition, lawyers are also bound by Rule 8.2(a) of the North Carolina Rules of Professional Conduct, which provides that a lawyer “shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, or other adjudicatory officer or of a candidate for election or appointment to judicial office. As noted in Comment [4] to Rule 8.2(a), “[w]hile a lawyer as a citizen has a right to criticize such officials publicly, the lawyer should be certain of the merit of the complaint, use appropriate language, and avoid petty criticisms, for unrestrained and intemperate statements tend to lessen public confidence in our legal system. Criticisms motivated by reasons other than a desire to improve the legal system are not justified.”

Any violations of Canon 7 by judicial candidates who are not judges should be reported to the North Carolina State Bar for appropriate review, rather than the Commission. A judge has the authority to take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct which the judge may become aware, although this authority should be exercised cautiously if attempting to discipline a campaign opponent. The Commission recommends as a best practice that the judge contact the State Bar for guidance on attorney misconduct issues during a judicial campaign.