



JUDICIAL STANDARDS COMMISSION STATE OF NORTH CAROLINA

FORMAL ADVISORY OPINION: 2017-02

September 13, 2017

QUESTION:

Under what circumstances can delay in convening court sessions rise to the level of a violation of the Code of Judicial Conduct?

CONCLUSION:

A judge has an ethical obligation under Canon 3A(5) to “dispose promptly of the business of the court.” This obligation requires not only promptness in issuing decisions and orders, but punctuality in convening court. In addition, judges have ethical obligations under Canon 1 and Canon 2 to observe personal standards of conduct that ensure public confidence in the integrity, impartiality and independence of the judiciary. Canon 3A(3) further requires a judge to be “courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in the judge’s official capacity.” Finally, Canon 3B(1) provides that a judge should diligently discharge the judge’s administrative responsibilities and maintain professional competence in judicial administration. Repeated or unjustified tardiness of a judge in opening court sessions runs afoul of these ethical rules and can lead to the imposition of judicial discipline. If a recess is required to attend to other official business that must be considered before the court session may proceed, the judge should as a best practice open court on time and communicate either personally or through court staff to those present in the courtroom when court will be reconvened and the reasons for the recess.

DISCUSSION:

Delay is one of the most common complaints of judicial misconduct, whether it arises from excessive grants of continuances, delays in rendering decisions under advisement, lengthy periods of time in issuing written orders, or the judge’s regular tardiness in appearing at scheduled court times. These delays raise the costs of litigation, increase frustration with the judicial system and diminish public confidence in the courts. This concern was recently emphasized in the Final Report of the Public Trust and Confidence Committee of the North Carolina Commission on the

Administration of Law and Justice, which noted as follows: “As stewards of public resources and individual citizens’ time, Judicial Branch officials must strive to operate a court system that facilitates the just, timely, and economical scheduling and disposition of cases.” Final Report, North Carolina Commission of the Administration of Law and Justice, March 2017, at 69.

In the specific context of convening court sessions, a judge’s ethical duty under Canon 3A(5) to “dispose promptly of the business of the court” includes the duty to be punctual and open court sessions as scheduled. Tardiness in convening court also calls into question whether a judge is meeting his or her obligation under Canon 3B(1) to “diligently discharge the judge’s administrative duties and maintain professional competence in judicial administration. In addition, Canon 1 and Canon 2A of the Code of Judicial Conduct require judges to observe personal standards of conduct that ensure public confidence in the integrity, impartiality and independence of the judiciary. Canon 3A(3) further requires a judge to be “courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in the judge’s official capacity.” Repeated or unjustified delays in convening court sessions threaten public confidence in the judiciary and display a lack of courtesy towards litigants, lawyers, victims, law enforcement, court personnel and all those who are required to be punctual in arriving to court. A judge’s tardiness also exacerbates wait times associated with calendar calls and increases the costs of litigation for represented litigants. Poor communication about when the judge will arrive and the reasons for the delay heightens frustration among individuals present in the courtroom, many of whom have taken time away from work or traveled long distances to appear at the required time under threat of sanction if late. In these circumstances, when a judge repeatedly or unjustifiably fails to open court on time, the attending frustration impairs public confidence in the courts.

Accordingly, a violation of the Code of Judicial Conduct occurs where a judge engages in repeated or unjustified tardiness in convening court. A judge should open court on time, and if a recess is required to attend to other official business that must be considered before the court session continues, the judge should as a best practice open court on time and communicate either personally or through court staff to those present in the courtroom when court will be reconvened and the reasons for the recess.

References:

Canons 1, 2, 3A and 3B of the North Carolina Code of Judicial Conduct
Final Report, North Carolina Commission of the Administration of Law and Justice (March 2017)