



**JUDICIAL STANDARDS COMMISSION
STATE OF NORTH CAROLINA**

FORMAL ADVISORY OPINION: 2023-01

October 13, 2023

QUESTION:

This opinion addresses frequently asked questions from new judges.

ANSWERS AND DISCUSSIONS:

Winding Up Law Practice

Q: When do new judges become subject to the Code of Judicial Conduct?

The Code applies to a new judge upon the administration of the judge's oath of office.

Q: May you still receive payment from your office or file fee applications and accept payment for court-appointed work?

Yes. Canon 5F prohibits judges from practicing law and you may not provide any legal services, paid or pro bono, after you take the oath of judicial office. However, you are entitled to collect fees earned before that time, including contingent fees and payment for court-appointed work. In addition, the Code's Note on Scope and Effective Date of Compliance provides, *inter alia*, that "it shall be permissible for a newly installed judge to facilitate or assist in the transfer of the judge's prior duties as legal counsel but the judge may not be compensated therefor." Thus, even if you are assisting with the transfer of your cases, you may not be compensated for such work performed after becoming a judge.

Q: Do you have to complete winding up your law practice before taking your oath of office?

No. The Commission understands that some aspects of closing down a practice take more than a few months. There is not any specific date by which you must wind down your former practice, but you should take action to ensure that your matters are wrapped up within a reasonable amount of time. So long as you are taking reasonable steps to facilitate the immediate wind up of your law practice, and/or dissolution of the firm, and that the actual

dissolution takes place within a reasonable time, the Commission would likely recognize your best efforts as compliance with the Code.

Q: Can you sell your practice/office space to an attorney in your district?

Yes. A judge may advertise the sale of his/her former practice, and/or business assets (furniture, etc.), but should not mention his/her judicial title in the advertisement. If your practice/property is bought by another attorney, you would need to disclose that transaction if the lawyer(s) appeared before you. Typically, we recommend disclosing such a relationship for at least 6 months after the transaction has been completed.

Q: Can you rent or lease office space to an attorney in your district?

Yes, but Canon 5C(1) cautions judges against engaging in financial or business dealings with lawyers or persons likely to come before the court on which the judge serves. At the same time, the Commission acknowledges the realities of real estate markets and that the most likely lessees of law office space are going to be lawyers. If an attorney rents or leases your office space, you would need to disqualify yourself from proceedings in which your tenant appears before you. The duty to disqualify would be ongoing for the duration of the business relationship (lease/rental) and for a 6-month period after the relationship ends. To avoid disqualification, you could carefully follow the requirements for remittal of the conflict under Canon 3D. For specific advice on renting office space to local attorneys and the disqualification issues that may arise, you are encouraged to contact the Commission staff.

Q: May I refer my clients to other attorneys?

Yes. You may recommend other attorneys to your former clients. When doing so, please remember that under Canon 2B, a judge should not lend the prestige of the judicial office to advance the private interests of others. To that end, and to avoid the appearance that you are steering clients to a particular attorney who would benefit from the prestige of your reference, the Commission recommends that you provide former clients with the names of several attorneys they may contact, and these attorneys should not be informed of your referral unless absolutely necessary.

Conflicts of Interest

Q: Is there a general rule for when you need to recuse from hearing certain cases?

Disqualification and recusal questions are both common and complicated, and always turn on the unique facts of each situation. Generally speaking, however, Canon 3C requires that a judge must recuse where he or she has a personal connection to the case that reasonably could affect the judge's decision on the merits. These conflicts include familial or other personal connections to the people involved in the case (the parties, the lawyers, the witnesses, the jurors), personal knowledge of the facts learned outside your role as the presiding judge, previous involvement in the matter as a lawyer, or a direct financial interest in the outcome of the case. Canon 3C not only identifies the specific grounds for mandatory disqualification,

but also states the general provision that disqualification is required where the judge's impartiality in deciding the case "may reasonably be questioned." At the same time, judges have a duty to hear and decide the cases before them, and disqualification should only occur when warranted by the facts of the particular case. Because of the fact specific nature of disqualification questions, you may also Commission staff for advice.

Q: If you're coming to the bench from the District Attorney's or Public Defender's Offices, can you hear cases in criminal court?

No. Pursuant to FAO 2009-02, a new judge who was formerly employed as an assistant district attorney must disqualify himself or herself from presiding over criminal district court cases where the judge: (1) was involved in the matter's investigation or prosecution, (2) has personal knowledge of disputed evidentiary facts, or (3) when the judge believes he/she cannot be impartial. See also FAO 2009-07 (relating to defense counsel). Generally, the Commission also advised in FAO 2009-002 that the best practice is for judges to follow a "Six Month Rule" whereby newly installed judges, for a minimum of 6 months after taking judicial office, refrain from presiding over any adjudicatory proceeding wherein an attorney associated with the judge's prior employer provides legal representation to a party in the proceeding. Specific circumstances may necessitate a deviation from the "Six Month Rule."

Q: What if any obligations do you have when a family member appears before you as a lawyer in a case?

Disqualification of the judge is required in matters in which a spouse or child living within the judge's household represents a litigant or has contributed to the preparation of the matter for hearing. In 2015, the Commission issued FAO 2015-03 to guide judges through disqualification based on familial connections, including when a family member's employer appears before you, and what to do in cases involving more distant family relationships.

Q: Do I have to disqualify if someone complains about me to the Judicial Standards Commission?

Generally, no. To avoid judge shopping through the filing of complaints with the Commission, the Commission in FAO 2014-02 explained that disqualification would only be required if the judge has been notified of the initiation of a formal investigation, received a private letter of caution, or has been served with a statement of charges. Of course, circumstances could exist where the judge has developed a demonstrated and actual bias against a litigant for filing a complaint, and these facts may warrant disqualification.

Charitable, Civic and Bar-Related Activities

Q. I serve on the board of a local non-profit. Do I have to step down now that I'm a judge?

It depends. Generally speaking, judges may continue to engage in a wide range of charitable and civic activities pursuant to Canons 4 and 5. Canon 4C specifically allow judges to serve in a quasi-judicial capacity as an officer or board member of an organization or governmental

agency relating to the legal, economic, educational or governmental system, or those that relate to the administration of justice. Similarly, Canon 5B permits judges to serve as an officer or board member of educational, religious, charitable, fraternal or other civic organizations. The caveats for service on such boards are as follows: (1) the judge is strictly prohibited from assisting the organization with fundraising, which includes prohibitions on being listed as a host or sponsor of a fundraising event (see FAO 2013-02); (2) the judge should not provide legal advice to the organization (Canon 5F); (3) the service should not interfere with the judge's official duties (Canon 5B); (4) association with the organization should not reflect adversely on the judge's impartiality (Canon 5B); and (5) the organization should not be one that regularly appears before you as a judge (Canon 5B).

Q. Can I continue to be involved with my local bar association?

Yes. In FAO 2014-01, the Commission opined that "a judge may maintain membership in a voluntary bar association so long as the organization promotes the bar in general and the legal profession as a whole, and is not essentially a law-related special interest group which promotes issues pertaining to the representation of a particular group of clients, such as criminal defendants, personal injury plaintiffs, criminal prosecution, insurance defense" or other similarly interest-focused advocacy groups.

Q. Can I fill out a Certificate of Moral Character for the Board of Law Examiners for someone I know who is taking the bar?

Yes. Normally, a judge may not voluntarily provide character evidence regarding an individual, as per Canon 2B. In an exception to this rule, the Commission found in FAO 2007-03 that it would be appropriate for judges to complete the North Carolina Board of Law Examiner's Certificate of Moral Character on behalf of an applicant seeking admission to practice law in North Carolina.

Business and Financial Activities

Q: Now that I'm a judge, what sort of involvement may I have in for profit businesses?

The relevant portion of Canon 5C(2) states judges "... should not serve as an officer, director or manager of any business." This language precludes judges from serving in an official capacity for any business concern. The Code also does not contain any exception for a wholly owned or closely held family business.

Q: May I still manage my family's financial and real property interests?

Yes. Canon 5C(2) provides that "a judge may hold and manage the judge's own personal investments or those of the judge's spouse, children, or parents, including real estate investments, and may engage in other remunerative activity not otherwise inconsistent with the provisions of this Code but should not serve as an officer, director or manager of any business."

Gift and Income Reporting Requirements

Q: What is the Canon 6 financial disclosure and do you have to fill it out?

Judges are required to file annual gift and income reports by May 15 each year on forms provided by the Commission. These reports must identify sources of outside income over \$2,000 and certain gifts you received where the value exceeds \$500. Reports from superior and district court judges are to be filed with the Clerk of Superior Court of the county in which the judge resides. Please note that this form is entirely distinct from the required Statement of Economic Interest (SEI) forms you must file each year by April 15 with the State Ethics Commission and you should contact them for filing requirements and advice on SEIs.

References:

- Code of Judicial Conduct: Canons 2B, 3C, 3D, 4C, 5B, 5C(1), 5C(2), 5F, 6, Scope and Effective Date of Compliance
- Formal Advisory Opinions: 2007-03, 2009-01, 2009-02, 2009-07, 2013-02, 2014-01, 2014-02, 2015-03