

## **The Georgia Code of Judicial Conduct Preamble**

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system.

Every judge should strive to maintain the dignity appropriate to the judicial office. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law. As a result, judges should be held to a higher standard, and should aspire to conduct themselves with the dignity accorded their esteemed position.

The Code of Judicial Conduct is intended to establish standards for ethical conduct of judges. It consists of broad statements called Canons, specific rules set forth in Sections under each Canon, a Terminology Section, an Application Section and Commentary. The text of the Canons and the Sections, including the Terminology and Application Sections, is authoritative. The Commentary, by explanation and example, provides guidance with respect to the purpose and meaning of the Canons and Sections. The Commentary is not intended as a statement of additional rules. When the text uses "shall" or "shall not," it is intended to impose binding obligations the violation of which can result in disciplinary action. When "should" or "should not" is used, the text is intended as advisory and as a statement of what is or is not appropriate conduct, but not as a binding rule under which a judge may be disciplined. When "may" is used, it denotes permissible discretion or, depending on the context, it refers to action that is not covered by specific proscriptions.

The Canons and Sections are rules of reason. They should be applied consistent with constitutional requirements, statutes, other court rules and decisional law, as well as in the context of all relevant circumstances. The Code is to be construed so as not to impinge on the essential independence of judges in making judicial decisions, or on judges' First Amendment rights of freedom of speech and association.

The Code is designed to provide guidance to judges and candidates for judicial office and to provide a structure for regulating conduct through disciplinary agencies. It is not designed for nor intended as a basis for civil liability or criminal prosecution. Furthermore, the purpose of the Code would be subverted if the Code were invoked by lawyers for mere tactical advantage in a proceeding.

The text of the Canons and Sections is intended to govern conduct of judges and to be binding upon them. It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is

appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system.

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**CANON 7 Judges Shall Refrain from Political Activity Inappropriate to Their Judicial Office.**

**A. Political Conduct in General.**

(1) A judge or a candidate\* for public election\* to judicial office shall not:

(a) act or hold himself or herself out as a leader or hold any office in a political organization\*;

(b) make speeches for a political organization or candidate or publicly endorse a candidate for public office;

*Commentary: A candidate does not publicly endorse another candidate for public office by having his name on the same ticket.*

(c) solicit funds for or pay an assessment or make a contribution to a political organization, or purchase tickets for political party dinners, or other functions, except as authorized in subsection A(2).

(2) Judges holding an office filled by public election\* between competing candidates\*, or candidates for such office, may attend political gatherings and speak to such gatherings on their own behalf when they are candidates for election or re-election.

**B. Campaign Conduct**

(1) Candidates\*, including an incumbent Judge, for any judicial office that is filled by public election\* between competing candidates:

(a) shall prohibit official or employees subject to their direction or control from doing for them what they are prohibited from doing under this Canon and shall not allow any other person to do for them what they are prohibited from doing under this Canon;

(b) shall not make statements that commit the candidate with respect to issues likely to come before the court;

*Commentary: This Canon does not prohibit a judge or a candidate from publicly stating his or her personal views on disputed issues, see Republican Party V. White, 536 U.S. 765 (2002). To ensure that voters understand a judge's duty to uphold the constitution and laws of Georgia where the law differs from his or her personal belief, however, judges and candidates are encouraged to emphasize in any public statement their duty of uphold the law regardless of their personal views.*

(c) shall not use or participate in the publication of a false statement of fact concerning themselves or their candidacies, or concerning any opposing candidate or candidacy, with knowledge of the statement's falsity or with reckless disregard for the statement's truth or falsity;

*Commentary: The determination of whether a candidate knows of falsity or recklessly disregards the truth or falsity of his or her public communication is an objective one, from the viewpoint of a "reasonable attorney", using the standard of "objective malice". See In re Chmura, 608 N.W. 2d31 (Mich. 2000)*

(3) shall be responsible for the content of any statement or advertisement published or communicated in any medium by a campaign committee if the candidate knew of or recklessly disregarded the content of said statement or advertisement prior to its release;

(4) and except where a statement or advertisement is published or communicated by a third party, shall be responsible for reviewing and approving the content of his or her statements and advertisements, and those of his or her campaign committee. Failure to do so will not be a defense to a complaint for violation of this Canon.

(2) Candidates\*, including an incumbent judge, for a judicial office that is filled by public election\* between competing candidates, may personally solicit campaign contributions and publicly stated support. Candidates, including incumbent judges, should not use or permit the use of campaign contributions for the private benefit of themselves or members of their families.

*Commentary: Although judges and judicial candidates are free to personally solicit campaign contributions and publicly stated support, see Weaver V. Bonner, 309 F 3d 1312 (11<sup>th</sup> Cir. 2002), they are encouraged to establish campaign committees of responsible persons to secure and manage the expenditure of funds for their campaigns and to obtain public statements of support of their candidacies. The use of campaign committees is encouraged because they may better maintain campaign decorum and reduce campaign activity that may cause requests for recusal or the appearance of partisanship with respect to issues or the parties which require recusal.*

### C. Applicability

- (1) This Canon generally applies to all incumbent judges and judicial candidates\*. A successful candidate, whether or not an incumbent, is subject to judicial discipline by the Judicial Qualifications Commission for his or her campaign conduct.
- (2) A lawyer who is a candidate\* for judicial office shall comply with all provision of the Code of Judicial Conduct applicable to candidates\* for judicial office. An unsuccessful lawyer candidate\* is subject to discipline for campaign conduct by the State Bar of Georgia pursuant to applicable standards of the State Bar of Georgia, and the Judicial Qualifications Commission shall immediately report any such alleged conduct to the office of the General Counsel of the State Bar of Georgia for such action as may be appropriate under applicable bar rules.
- (3) An unsuccessful non-lawyer candidate\* is subject to discipline for campaign misconduct by the Judicial Qualifications Commission, and in addition to any other sanctions authorized by the Rules of the Judicial Qualifications Commission, the Commission, after full hearing, is authorized to recommend that such individual be barred from seeking any elective or appointive judicial office in this State for a period not to exceed 10 years.

## **Rule 27. Special Committee on Judicial Election Campaign Intervention**

(a) In every year in which a general election is held in this State and at such other times as the Commission may deem appropriate, the Chair shall name three (3) members to a Special Committee on Judicial Election Campaign Intervention ("Special Committee") whose responsibility shall be to deal expeditiously with allegations of ethical misconduct in campaigns for judicial office. The membership of such committee shall consist of the senior member of each of the three (3) categories of Commission membership if available, and if not, the next most senior member from that category. The Commission Director shall also serve as an ex-officio member. The objective of such committee shall be to alleviate unethical and unfair campaign practices in judicial elections, and to that end, the Special Committee shall have the following authority:

(b) Upon receipt of a complaint or otherwise receiving information facially indicating a violation by a judicial candidate of any provision of Canon 7 during the course of a campaign for judicial office, the Director shall immediately forward a copy of the same by facsimile and U.S. Mail to the Special Committee members and said Committee shall:

- (1) seek, from the complainant and/or subject of the complaint, such further information on the allegation of the complaint as it deems necessary;
- (2) conduct such additional investigation as the Committee may deem necessary;
- (3) determine whether the allegations of the complaint warrant speedy intervention; if no intervention is needed, dismiss the complaint and so notify the complaining party;
- (4) if further investigation is deemed necessary, request confidential written responses from the subject of the complaint and the complaining party on the following schedule:
  - (A) within 3 business days of receiving such a request from the Committee, a written response from the subject of the complaint;
  - (B) the Committee will share the subject's written response with

the complaining party on a confidential basis, who shall be requested to provide a written response within 3 business days; and (C) the Committee will share the complaining party's response with the subject of the complaint, who then shall be requested to submit a written rebuttal within 1 business day.

In the event a complaint is filed within two (2) weeks before a judicial election, or if circumstances otherwise dictate, the Committee may accelerate the above.

## **OPINION SUMMARIES**

### **Pertaining to Judicial Elections**

- OPINION 1: A judge may accept an invitation to attend a meeting sponsored by a political party for the purpose of reporting on and discussing matters relating to the judicial system.
- OPINION 4: A public official of a municipality, who is not subject to a judicial candidate's direction and control, may serve on that candidate's campaign finance committee.
- OPINION 5: A candidate for judicial office is not required by the Code of Judicial Conduct to maintain a separate bank account and appoint a committee to make campaign expenditures, where the candidate does not intend to accept contributions and the funds expended will be the candidate's personal funds.
- OPINION 7: WITHDRAWN: This Opinion is withdrawn to the extent that it conflicts with current Canon 7 (B) (2), which allows judicial candidates to personally solicit campaign contributions and publicly stated support, see Weaver v. Bonner, 309 F.3d 1312 (11<sup>th</sup> Cir. 2002), and because time limits for campaign fund raising were deleted from Georgia's Code of Judicial Conduct in 1984.
- OPINION 22: WITHDRAWN: This Opinion is withdrawn to the extent that it conflicts with current Canon 7 (B) (2), which allows judicial candidates to personally solicit campaign contributions and publicly stated support, see Weaver v. Bonner, 309 F.3d 1312 (11<sup>th</sup> Cir. 2002), and because time limits for campaign fund raising were deleted from Georgia's Code of Judicial Conduct in 1984.
- OPINION 23: WITHDRAWN: This Opinion is reversed and superseded by Opinion 36, and is further withdrawn to the extent that it conflicts with current Canon 7 (B) (2).
- OPINION 25: An honorably retired Court of Appeals Judge not holding emeritus status but receiving State retirement benefit does not hold judicial office, and may engage in political activities without conforming to the Code of Judicial Conduct. (Note: this opinion is not applicable to retired judges maintaining eligibility to preside in court.)

- OPINION 27: A candidate for judicial office should encourage spouse to resign position on a county political committee. (Note: since the rendition of this Opinion, the Supreme Court has amended the Canons concerning political conduct in a manner affecting this Opinion.)
- OPINION 36: If running on a partisan basis, a judge or judicial candidate may join the Georgia Federation of Democratic Women and contribute financially to a political party. Candidate status conferred by taking any step toward seeking judicial office. (Note: this Opinion withdraws Opinion 23 but since the rendition of both Opinions, the Supreme Court has amended the Canons concerning political conduct but not affecting this Opinion.)
- OPINION 39: A person who is a candidate for judicial office should not at the same time hold a non-judicial office which it would be improper to hold if elected as judge.
- OPINION 41: A duly appointed campaign finance committee may raise funds with which to pay the qualifying fee of the candidate in either the primary or general election.
- OPINION 55: In election advertising, the incumbent judge may, at personal expense, use official stationery in a campaign for re-election, may employ the title of judge and use a photograph depicting the judge wearing a robe while seated at the judicial bench.
- OPINION 56: WITHDRAWN: This Opinion is withdrawn to the extent that it conflicts with current Canon 7 (B) (2), which allows judicial candidates to personally solicit campaign contributions and publicly stated support, see Weaver v. Bonner, 309 F.3d 1312 (11<sup>th</sup> Circ. 2002).
- OPINION 62: A candidate for a judicial office may be reimbursed for campaign expenditures from surplus contributions at the conclusion of the campaign, provided such funds are used for nothing more than to reimburse contingent up front advances and loans made to the campaign committee pending receipt of adequate contributions.
- OPINION 63: A judge may send letters of recommendation for judicial appointment to a screening committee of the Bar, provided that the letters are submitted because of the peculiar opportunity of those from whom such letters are sought to know and to recommend the applicant, rather than to exploit the prestige of the judicial office.
- OPINION 75: The Code of Judicial Conduct, as amended effective May 15, 1984, no longer contains any prohibition against a judge becoming a candidate for political office while retaining a judicial position. (Note: the State Constitution (Art. II, Sec. 2, Par. 5) and election statutes would now

control the answer to the matter in question.)

- OPINION 81: It would be permissible for a judge to attend or to contribute to a dinner of the Anti Defamation League of B'nai B'rith honoring the Speaker of the Georgia House of Representatives with the "Torch Of Liberty Award".
- OPINION 82: WITHDRAWN: This Opinion is superseded by current Canon 7 (B) (1) (b), which expressly allows a judicial candidate to publicly state his or her personal views on disputed issues, see Republican Party of Minnesota v. White, 536 U. S. 765 (2002), but prohibits judicial candidates from making statements that "commit the candidate with respect to issues likely to come before the court." Canon 7 (B) (1) (b).
- OPINION 85: WITHDRAWN: This Opinion is withdrawn to the extent that it conflicts with current Canon 7 (b) (2), which allows judicial candidates to personally solicit campaign contributions and publicly stated support, see Weaver v. Bonner, 309 F.3d 1312 (11<sup>th</sup> Cir. 2002).
- OPINION 90: WITHDRAWN: This Opinion is withdrawn to the extent that the answer given to question number 5 conflicts with current Canon 7 (B) (2), which allows judicial candidates to personally solicit campaign contributions and publicly stated support, see Weaver v. Bonner, 309 F.3d 1312 (11<sup>th</sup> Cir. 2002).
- OPINION 106: WITHDRAWN: This Opinion is superseded to the extent that it conflicts with current Canon 7 (B) (2), which allows judicial candidates to personally solicit campaign contributions and publicly stated support, see Weaver v. Bonner, 309 F.3d 1312 (11<sup>th</sup> Cir. 2002).
- OPINION 108: A judge cannot be a delegate to a political convention, as this would be improper holding of a leadership position in a political organization.
- OPINION 120: WITHDRAWN: This Opinion is withdrawn to the extent that the answer to question number 3 conflicts with current Canon 7 (B) (2), which allows judicial candidates to personally solicit campaign contributions and publicly stated support, see Weaver v. Bonner, 309 F.3d 1312 (11<sup>th</sup> Cir. 2002).
- OPINION 123: A pro hac judge may not act as a treasurer of the campaign committee formed to help re-elect another judge, in view of the Code of Judicial Conduct provisions prohibiting political organization leadership activity.
- OPINION 124: After a judge or a candidate has made the decision to run for election or re-election such individual is a "candidate for election or re-election"

within the meaning of the Code of Judicial Conduct, and if acting pursuant to this purpose, may attend a fund raising for a partisan non-judicial candidate or an “appreciation dinner” for a friend who is retiring from the General Assembly, subject to the restriction imposed by Opinion 83.

OPINION 129: A judge should not serve as a member of a county executive committee of the Democratic Party because doing so violates Code of Judicial Conduct limitations on being a leader or an office holder in a political organization.

OPINION 131: It is permissible for candidates to state their political party affiliation and offices they have held in partisan organizations in either partisan or non-partisan elections. The candidates may also attend partisan political functions and seek the support/endorsement of these organizations but they may not, in either partisan or non-partisan elections, represent that they are qualified, or better qualified, because of their political party affiliations.

OPINION 141: A judge is not prohibited from making a private personal financial contribution to a candidate for a political office in a partisan race, so long as it is done in such a way as not to constitute a public endorsement. However, a judge cannot do anything which would constitute a public endorsement, specifically including the activities listed in this Opinion.

OPINION 163: WITHDRAWN: This Opinion is withdrawn to the extent that it conflicts with current Canon 7 (B) (2), which allows judicial candidates to personally solicit campaign contributions and publicly stated support, see Weaver v. Bonner, 309 F.3d 1312 (11<sup>th</sup> Cir. 2002).

OPINION 165: Neither a judge nor candidate for a judicial position may continue to serve or be elected to a county Democratic or Republican committee, even if the individual is not an officer on that committee. A judge or candidate may not be elected as a delegate to a district, state or national political convention.

OPINION 167: A lower court part-time judge who is not an incumbent in the judicial office to which election is sought may appropriately use the term “judge” in political advertising, so long as the judicial position currently held is clearly specified and such advertisements are not otherwise misleading.

OPINION 191: A private, personal political contribution by a judge of a sum which is statutorily required to be publicly disclosed does not constitute a “public endorsement” of the candidate prohibited by Canon 7A (1) (b).

OPINION 203: WITHDRAWN: This Opinion is withdrawn to the extent that the answer to the second issue raised below conflicts with current Canon 7 (B) (2),

