



JUDICIAL STANDARDS COMMISSION STATE OF NORTH CAROLINA

FORMAL ADVISORY OPINION: 2024-01

November 8, 2024

QUESTION:

May judges take part in “Judicial Councils,” consisting of leadership within their local court systems, to meet and discuss issues pertaining to courthouse administration, case management, and other pertinent issues facing their local judiciaries?

CONCLUSION:

Judges can, and should, take part in Judicial Councils or other similar meetings with members of leadership within their jurisdictions to promote the discharge of their Canon 3B administrative duties and to promote the public’s confidence in the integrity and impartiality of the judiciary under Canons 1 and 2A.

DISCUSSION:

In 1996, the Supreme Court brought together a committee consisting of trial judges, clerks, district attorneys, and public defenders to develop recommendations for a caseflow management plan to address the influx of cases within the State, to “avoid delay[s] and unnecessary appearances and to increase efficiency in the handling of cases in North Carolina’s trial courts.” In addressing these issues, the Committee’s report to the General Assembly (“the Report”) specifically mentioned that “[f]our separate and distinct constitutional offices must combine forces for the efficient operation of the court. The office of the Judge, the Clerk of Court, the District Attorney, and the Sheriff must work together for the judicial system to avoid some of the problems which cause delay.” To further these efforts, the Committee recommended, amongst other things, for jurisdictions to create

“teams” consisting of “the Superior Court Judges, District Court Judges, District Attorney, Public Defender [], Trial Court Administrator [], the local Bar President, and Clerk of Superior Court” to promote collaboration between these offices with general case management and courthouse administration issues.

The issues addressed in the Report are just as relevant in present day and continue to evolve with the everchanging landscape of the judiciary. As such, judges meeting amongst themselves and with other leaders within their jurisdictions in accordance with the recommendations laid out in the Report is integral to the judges diligently discharging their administrative duties under Canon 3B(1) and their adjudicative duty to “dispose promptly of the business of the court” under Canon 3A(5). Further, given the need for cooperation between various entities within each jurisdiction to facilitate the movement of cases and the general administration of justice, judges should be promoting the participation in these teams to other leaders in their jurisdictions to the best of their abilities under Canons 3B(1) and (2).

The public expects that the judiciary, as a whole, and thereby the individual courthouses within each jurisdiction, to function effectively, efficiently, and without unnecessary delays. To best promote this, Canons 1 and 2A explain that judges should “participate in establishing, maintaining, and enforcing, and should personally observe, appropriate standards of conduct” and “promote the public’s confidence in the integrity and impartiality of the judiciary.”

In participating in these teams, judges still have a duty under Canons 1, 2A, and 3A(1) to “be faithful to the law and maintain professional competence in it,” which would include ensuring that they are not engaging in inappropriate *ex parte* communications during these meetings regarding the merits of cases currently pending before them under Canon 3A(4). Rule 3.5(d) of the Rules of Professional Responsibility defines “*ex parte* communication” as “a communication on behalf of a party to a matter pending before a tribunal that occurs in the absence of an opposing party, without notice to that party, and outside the record.” Under this definition, communications regarding case management and the general administration of the courthouse not dealing with specific cases are not *ex parte* and, thus, are encouraged under the Code of Judicial Conduct.

References:

North Carolina Code of Judicial Conduct Canon 1, Canon 2A, Canon 3A(1), (4), and (5), Canon 3B
North Carolina Rules of Professional Conduct Rule 3.5(d)
Supreme Court Report