

The Texas Code of Judicial Conduct: An Introduction

Judicial Orientation for New County Judges

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Texas Association of Counties



Presenter

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The SCJC

Constitutionally Created (1965)

13 Commissioners

- *Six Judges (Supreme Ct.)*
- *Five Public Members (Governor)*
- *Two Attorney Members (State Bar)*

Staggered six year terms

SCJC Staff

- **14 Employees**
 - *3 Administrators*
 - *3 Investigators*
 - *2 Legal Assistants*
 - *6 Attorneys*

SCJC Complaint Process

Passive

- *Online*
- *Mailed*

Comm'n may initiate

Sources

- *Public*
- *Litigants*
- *Attorneys*
- *Other judges*



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Your New Friend, the Texas Code of Judicial Conduct (the “Canons”)



The Canons of Judicial Conduct

- Describe minimum standards of conduct for judges
- Some are mandatory (“shall” or “shall not”)
- Some are aspirational (“should” or “should not”)
- Available on www.scjc.texas.gov website

The SCJC (not) Top 10* List

[* Ways to Have A Grievance Filed Against You]

Ways to Get A Grievance

10. Lend the “prestige” of judicial office (Canon 2B)

Examples:

- ❖ Letters of recommendation
- ❖ “Don’t You Know Who I Am?”
- ❖ Fundraising

Ways to Get A Grievance

9. Political Activities (Canons 2B and 5(2))

Examples:

- ❖ Bumper stickers/yard signs/T-shirts
- ❖ Attending campaign/party functions
- ❖ Political contributions to candidates
- ❖ Attack Ads
- ❖ Social Media

Ways to Get A Grievance

8. Participate in Fundraising (Canon 4C)

Examples:

- ❖ ALS “Bucket” Challenge
- ❖ Runway Model, Celebrity Waiter, Dancing with the “Stars”
- ❖ Donations in Lieu of Community Service

Ways to Get A Grievance

7. Accept a gift/fail to report a gift (Canon 4D(4))

Examples:

- ❖ Around Christmas, your friends will be more than happy to bring turkeys, cookies, and bottles of Scotch/Bourbon/etc.
- ❖ Football tickets
- ❖ Trips
- ❖ Discounted legal fees/free representation

Ways to Get A Grievance

6. Demeanor Issues (Canon 3B(4))

Examples:

- ❖ When sarcasm, humor go wrong
- ❖ Embroilment
- ❖ Treating people differently based on race, sex, etc.
- ❖ Influence of TV “syndi-court” programs

Ways to Get A Grievance

5. Misuse county or state property (Canon 2A)

Examples:

- ❖ Offices
- ❖ Computers/Equipment
- ❖ Personnel
- ❖ Time
- ❖ Funds

Ways to Get A Grievance

4. Appear biased or prejudiced (Canon 3B(5))

Examples:

- ❖ Do you have a reputation as pro-law enforcement/prosecution/defendant?
- ❖ Extra-Judicial Activities/Memberships
- ❖ Failure to disclose relationships
- ❖ Too familiar/casual with one side or their counsel
- ❖ Campaign statements
- ❖ Social Media

Ways to Get A Grievance

3. Allow improper *Ex Parte* communications (Canon 3B(8))

Examples:

- ❖ to the public, appearance = reality
- ❖ Independent investigations of facts, evidence, witnesses, litigants, counsel, etc.
- ❖ Social Media
- ❖ Do “smart phones” make you smarter?

Ways to Get A Grievance

2. Abuse/Exceed Authority/Fail to Follow the Law (Canon 2A)

Examples:

- ❖ Closing Courtroom to Public
- ❖ Mishandling Contempt
- ❖ Too-Creative Sentencing
- ❖ Criminal conduct
- ❖ Opening court proceedings with prayer
- ❖ Discrimination against certain individuals due to religious beliefs
- ❖ Sexual Harassment/Hostile Work Environment/Retaliation

Ways to Get A Grievance

1. Mishandling recusal/disqualification (Canon 3B(1))

Examples:

- ❖ Failure to disclose relationships
- ❖ Failure to maintain adequate system for conflicts checks
- ❖ Campaign statements
- ❖ Social Media Hazards

True/False Test*

[*The nature of ethics does not lend itself to black or white/bright-line answers; “ethics” deals with the gray areas in between “right” and “wrong” answers; all come with caveats and cautions.]

Question 1

I am required to report another judge's misconduct to the State Commission on Judicial Conduct.

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False

Canon 3D does impose a duty to report to SCJC *or take other appropriate action* in certain circumstances

Question 2

I am justified in shouting over a loud, vulgar, or offensive litigant in order to maintain control of my courtroom.

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FALSE

Canons 3B(3) and 3B(4) appear to be at odds, but judges have other tools available for handling difficult or disruptive litigants or attorneys that do not require the judge to lose control and resort to shouting in the courtroom to maintain order and decorum

Question 3

The Commission can sanction me if I am arrested for DWI.

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TRUE

Under Article V, Sec. 1-a(6)A of the Texas Constitution, any judge who engages in willful or persistent conduct inconsistent with the proper performance of his duties, or that casts public discredit upon the judiciary or the administration of justice can be sanctioned or removed from office. A lot depends on behavior of judge during stop, arrest, and trial.

Question 4

I can never hear a case involving a relative or someone I know personally.

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FALSE

Canon 3B(1) requires judges to hear and decide all cases assigned to them except when disqualification is required or recusal is appropriate. Judges need to know the law on disqualification and recusal, and need to know when to get off a case or if the conflict can be cured or waived by disclosure. Judges should avoid situations where they are frequently having to disqualify or recuse themselves. If faced with recusal motion, judges must stay out of the process and avoid even appearance of attempting to intervene.

Question 5

I can use the court computer to send and receive political messages, jokes, and family pictures, as long as I use my personal/private e-mail account.

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FALSE

Anything but a *de minimus* use of county resources can subject a judge to a grievance, and possibly, criminal charges. Private emails can/do become public and may subject the judge to embarrassment, recusal, and/or discipline. If you wouldn't want your Mother or kids to see the post/email/picture on the front page of the morning newspaper – DON'T HIT SEND!!!

Question 6

It is acceptable for me to participate in a public forum sponsored by MADD.

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TRUE

Caveat: Be cautious of level of involvement/participation with advocacy organizations if you preside over cases where that group has an interest. Questions may be raised about impartiality and may result in frequent recusal. [Canon 4A]

Question 7

It is acceptable for me to hug my clerk if we both agree it is not offensive.

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True(ish)

Caveat: At what point do you have a conversation with your clerk about the appropriateness of physical contact and expressions of affection in the workplace? What if another clerk is offended by the conduct, feels discriminated against, or decides to file a hostile workplace complaint? What if the clerk decides he/she is no longer comfortable with the conduct? Physical contact with subordinates remains perilous territory.

Question 8

It is acceptable for me to send a letter of support to the State Commission on Judicial Conduct when asked by a fellow judge who is under investigation.

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FALSE

If the SCJC needs factual information from another judge in the course of its investigation, it will ask that judge directly. Voluntary character testimony is prohibited by Canon 2B, and is rarely helpful in the decision to sanction a judge for judicial misconduct.

Question 9

I can be “friends” with litigants/ prosecutors/attorneys on Facebook, or be “connected” to them on LinkedIn, as long as we don’t discuss cases and I have a disclaimer prominently displayed on my social networking page.

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I can be “friends” with litigants/prosecutors/attorneys on Facebook, or be “connected” to them on LinkedIn, as long as we don’t discuss cases and I have a disclaimer prominently displayed on my social networking page.

TRUE

Caveat: Under Canon 4A, questions may be raised about a judge’s impartiality and this may lead to frequent recusals; disclosure may be helpful but difficult to keep up with if you have more than a handful of “friends.”

Question 10

It is acceptable for members of my court staff to sell Girl Scout cookies, raffle tickets, or engage in other fundraising activities as long as they do not sell them in the courtroom.

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TRUE

Caveat: Be sure to train all court staff to comply with the Code of Judicial Conduct, and have a policy in place that prohibits this type of conduct in workplace and prohibits staff from invoking judge's name/position/court when engaging in these activities.

Thoughts...

“Ethics is knowing the difference between what you have a right to do and what is right to do.”

Justice Potter Stewart



Thoughts...

“But”

Final Thought

“We judge ourselves by our best intentions, our most noble acts, and our most virtuous habits.

We are judged by our last, worst act.”

Michael Josephson