

**The Good, the Bad, and the Ugly:
Getting Involved Without Getting in Trouble**

Hon. Rhynette N. Hurd
Shelby County Circuit Court

Marshall L. Davidson, III
Disciplinary Counsel
Board of Judicial Conduct

TN Judicial Conference
Oct. 17, 2023


1

Where Can I Get Ethics Assistance?

Judicial Ethics Committee

**Consists of seven judges
appointed by the Supreme
Court.**

**May issue formal ethics
opinions on proper
professional conduct
when requested
by a judge.**



2

Where Can I Get Ethics Assistance?

Judicial Ethics Committee

“A Formal Ethics Opinion shall constitute a body of principles and objectives upon which judges can rely for guidance.”

Tenn. Sup. Ct. R. 10A.6

“An opinion may not be issued in a matter that is the subject of a pending disciplinary proceeding.”

Tenn. Sup. Ct. R. 10A.4



3

Where Can I Get Ethics Assistance?

Judicial Ethics Committee

- Judge Ross Dyer, Chair
(901) 537-2978



4

What Is the Board of Judicial Conduct?

Authority of BJC:

- Exercises “broad powers to investigate, hear, and determine charges sufficient to warrant sanctions or removal” from office.
- Possesses “powers normally exercised by courts of record.”

Tenn. Code Ann. § 17-5-301(a)-(b).

5

What Is the Board of Judicial Conduct?

Composition

Sixteen members -

- Eight current or former judges
- Six non-lawyer/non-judge members
- Two lawyers

Selection: judicial conferences (5 appointments), Speakers of House and Senate (8 appointments), Governor (2 appointments), and Supreme Court (1 appointment).

Tenn. Code Ann. § 17-5-201

6

What Is the Board of Judicial Conduct?

Divided into:

- Investigative panels of three members each (at least one current or former judge)
- Hearing panels of five members each (at least two current or former judges).



Tenn. Code Ann. § 17-5-201

7

What Is the Board of Judicial Conduct?

Responding to a Complaint

- usually unnecessary and not requested
- “The ethical standards are clear that judges are required to cooperate with judicial disciplinary agencies . . . and the statutory duty to respond is not discretionary. Failing to respond to an investigation is inconsistent with a judge’s proper performance of the judge’s duties and undermines public confidence in the judiciary.” Public Reprimand – TN (2023).
- responses typically not provided to complaining party

8

What Is the Board of Judicial Conduct?

Jurisdiction

- trial judges (including general sessions, probate, juvenile, municipal judges, magistrates, court commissioners)
- appellate judges and justices
- senior judges
- claims commissioners

Tenn. Code Ann. § 17-5-102

9

What Is the Board of Judicial Conduct?

Jurisdiction

- sitting by special appointment
- candidates for judicial office
- anyone else presiding over a court created by the legislature

Tenn. Code Ann. § 17-5-102

10

What Is the Board of Judicial Conduct?

No Jurisdiction

- federal judges
- administrative law judges
- workers' compensation judges

Tenn. Code Ann. § 17-5-102

11

What Is the Board of Judicial Conduct?

Jurisdiction

Judicial behavior, not judicial decision-making.



*"Don't spread it around, but on the really tough ones,
I just go with 'eenie, meenie, minie, moe.'"*

Tenn. Code Ann. § 17-5-102(c)

12

What Is the Board of Judicial Conduct?

Jurisdiction

- Judge suffering from a physical or mental disability “that would substantially interfere with the prompt, orderly, and efficient performance of the judge’s duties.”
- BJC can take “appropriate action, including recommendation of removal from office.”

Tenn. Code Ann. § 17-5-302(a)

13

What Is the Board of Judicial Conduct?

Range of outcomes (any one or any combination):

- dismissal of complaint (no jurisdiction, no merit, legal issues, untimely, repetitive);
- warning/reminder;
- private reprimand;
- public reprimand;
- deferred discipline agreement;

Tenn. Code Ann. § 17-5-301(f)(1)

14

What Is the Board of Judicial Conduct?

Range of outcomes (any one or any combination):

- impose limits/conditions on performance of duties, including cease and desist order;
- suspension (with pay);
- recommend removal from office;
- immediate suspension upon being charged with a felony.

Tenn. Code Ann. §§ 17-5-301(f)(1), 303(g).

15

The Four Canons/Code of Judicial Conduct

1. "A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety."
2. "A judge shall perform the duties of judicial office impartially, competently, and diligently."
3. "A judge shall conduct the judge's personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office."
4. "A judge . . . shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary."

Tenn. Sup. Ct. R. 10 (Code of Judicial Conduct)

16

Extrajudicial/Personal Activities

A judge may not participate in personal or extrajudicial activities that:

- interfere with the proper performance of the judge's duties
- lead to frequent disqualification
- appear to a reasonable person to undermine the judge's independence, integrity, or impartiality
- appear to a reasonable person to be coercive

RJC 3.1

17

Do the Ethics Rules Apply to *Personal Activities?*

"Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives." Preamble, Tenn. Sup. Ct. R. 10.



18

May I write a letter of recommendation on judicial letterhead for a job applicant?

Yes, but . . .

“A judge may provide a reference or recommendation for an individual based upon the judge’s personal knowledge. The judge may use official letterhead if the judge indicates that the reference is personal and if there is no likelihood that the use of the letterhead would reasonably be perceived as an attempt to exert pressure by reason of the judicial office.”



RJC 1.3, cmt. 2

19

May I write a letter on judicial stationary seeking grant money for a court program, i.e, drug court, veterans court, mental health court, etc.?

Yes.

“Judges may appear before governmental bodies to endorse projects and programs directly related to the law, the legal system, the administration of justice and the provision of services to those coming before the courts, and may actively support the need for funding of such projects or programs. *This support can occur by personal appearance or by writing, such as a letter to be submitted with a request for funding by an entity that provides services to those coming before the courts.*”

RJC 3.2, cmt. 4 (emphasis added).

20

May I write a letter of recommendation on judicial letterhead for a law school applicant?

Yes.

“A judge may use official letterhead if the judge’s professional knowledge is germane to the purpose of the letter, such as writing a letter of recommendation for a former or current law clerk or a letter of recommendation for admission to law school.”



RJC 1.3, cmt. 2

21

May I write a letter on judicial letterhead and/or testify for a defendant seeking parole?

Not recommended.

“A judge shall not testify as a character witness in a judicial, administrative, or other adjudicatory proceeding or otherwise vouch for the character of a person in a legal proceeding, except when duly subpoenaed.” RJC 3.3.

“A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.” RJC 1.3.

22

May I raise money to fund a law school scholarship in the name of a deceased colleague?

Yes, but only from a select group of people.

A judge may solicit contributions “but only from members of the judge’s family, or from judges over whom the judge does not exercise supervisory or appellate authority.”

RJC 3.7 (A)(2).



23

May I serve on my HOA board of directors?

Yes.

“A judge may participate in activities . . . sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including but not limited to the following activities:

(6) Serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity:

(a) will be engaged in proceedings that would ordinarily come before the judge; or

(b) will frequently be engaged in adversary proceedings in the court of which the judge is a member, or in any court subject to the appellate jurisdiction of the court of which the judge is a member.”

RJC 3.7 (A)(6).

24

May I accept an appointment to the TN Monuments and Memorials Commission?

No.

“A judge shall not accept appointment to a governmental committee, board, commission, or other governmental position, unless it is one that concerns the law, the legal system, or the administration of justice.”

RJC 3.4.



25

May I, as a part-time judge, have my law office in the courthouse?

No.

- A judge may not “make inappropriate use of court premises, staff, stationary, equipment, or other resources.” RJC 3.1 (E).
- “A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge.” RJC 1.3.
- “A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.” RJC 1.2.

26

May I serve on the capital campaign committee at my church?

Yes.

- A judge may participate in activities sponsored by or on behalf of religious organizations, including assisting “in planning related to fundraising and participating in the management and investment of the organization’s or entity’s funds.”
- Be mindful of the limit on soliciting contributions, i.e., “from members of the judge’s family or from judges over whom the judge does not exercise supervisory or appellate authority.”



RJC Rule 3.7 (A)(1)-(2).

27

May I judge my former law firm’s chili cook-off contest?

A good idea?

- Guiding principle – judges are prohibited from engaging in *personal* activities that would appear to a reasonable person to undermine the judge’s independence, integrity, and impartiality or lead to frequent disqualification. RJC 3.1.
- Use good judgment when attending holiday parties, birthday parties, lake outings, sports events, lunches, trips/vacations with attorneys, business people, etc.
- Disclose personal and business relationships with parties, witnesses, and lawyers.

28

May I solicit donations of money/resources for a school on social media?

No.

“A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.” RJC 1.3.

“[C]onflating judicial office with promoting the private interests of others is prohibited.”
Reprimand - TN (2023)



29

May I serve of the board of directors of CASA?

It depends.

A judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, including serving as an officer, director, trustee, or nonlegal advisor unless it is likely that the organization or entity:

- will be engaged in proceedings that would ordinarily come before the judge or
- will frequently be engaged in adversary proceedings in the court of which the judge is a member, or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

RJC 3.7 (A)(6).

30

May I use social media to help the local high school sell tickets to musical/band events?

No.

“A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.” RJC 1.3.



31

May I represent a family member who is charged with a crime in a different court?

It depends.

- A full-time judge “shall not practice law. A judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge’s family, but is prohibited from serving as the family member’s lawyer in any forum.” RJC 3.10.
- A part-time judge “shall not practice law in the court on which the judge serves or in any court subject to the appellate jurisdiction of the court on which the judge serves, and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any proceeding related thereto.” Rule 10 III (B).

32

May I teach a law-related class at a local college? At a law school? At the police academy?

Yes, within limits.

“To the extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities. Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, and teaching.”

RJC 3.1, cmt. 1



33

May I help raise money for Legal Aid?

Yes, with restrictions.

A judge may solicit contributions for organizations that concern the law, the legal system, or the administration of justice *but* only from members of the judge's family or from judges over whom the judge does not exercise supervisory or appellate authority.

RJC 3.7 (A)(2).



34

May I post on social media my “legal tip of the day?”

No.

- **A judge shall act at all times in a manner that promotes public confidence in the integrity of the judiciary and avoid impropriety and the appearance of impropriety. RJC 1.2.**
- **May not engage in personal activities that would appear to a reasonable person to undermine the judge’s independence, integrity, or impartiality. RJC 3.1(C).**

35

May I post on social media my “legal tip of the day?”

“Judges choosing to participate in inherently public platforms must exercise caution and carefully evaluate whether their social media communications foster public confidence in the integrity, independence, and impartiality of the judiciary.”

Public reprimand – TN (2021)

36

May I endorse/promote the real estate business of a close friend on social media?

No.

A judge cannot lend the prestige of judicial office to advance the personal or economic interests of the judge or others.

RJC 1.3.



37

May I repost on Facebook fundraising information for a disabled veteran who is a friend of mine?

No.

A judge cannot use the prestige of judicial office to advance the personal or economic interests of the judge or others.

RJC 1.3.



38

May I use “judge” in my profile information on social media? What about a picture in my judicial robe?

- Not a specific rule against it, but proceed with caution, as it can draw unwelcome attention.
- Judges are prohibited from engaging in *personal activities* that would appear to a reasonable person to undermine the judge’s independence, integrity, and impartiality. RJC 3.1.

**CAUTION
PROCEED
CAREFULLY**

39

Use of Social Media

**“Lawyers who choose to post on social media must realize they are handling live ammunition.”
In Re Sitton, 618 S.W.3d 288 (Tenn. 2021).**



40

May I talk on the radio about interesting cases in my court?

No.

Public comments on matters pending or impending in any court which might reasonably be expected to affect the outcome or impair its fairness are prohibited.

RJC 2.10 (A).



41

May I talk on the radio about interesting cases in my court?

“Any reasonable jurist would know that using a case pending before him or her for their own extra-judicial purposes on social media or elsewhere runs a significant risk of undermining the administration of justice, public confidence in the individual judge, and violating the Code of Judicial Conduct.”

Suspension Order - TN (2022)



42

May I research media accounts of an event the parties are litigating before me to assist in making the most informed decision possible?

No.

“A judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.”

RJC 2.9 (C).



43

May I speak/write about the history and interpretation of the state constitution?

Yes.

“To the extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities. Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, and teaching.”

RJC 3.1, cmt. 1.

44

**May I speak at an event honoring law enforcement?
At an event protesting law enforcement?**

Not recommended.

A judge may not participate in extrajudicial activities that:

- can lead to frequent disqualification
- appear to a reasonable person to undermine the judge's independence, integrity, or impartiality

RJC 3.1(B) and (C).



45

May I appear before my county legislative body to advocate for a new courthouse?

Yes.

Judges may appear at a public hearing or otherwise consult with executive or legislative officials -

- in connection with matters concerning the law, legal system, or the administration of justice
- regarding matters about which the judge acquired knowledge or expertise in the course of the judge's duties

RJC 3.2.

46

May I testify as a fact witness in a case in which I saw the car accident?

Yes, but . . .

“A judge shall not testify as a character witness in a judicial, administrative, or other adjudicatory proceeding or otherwise vouch for the character of a person in a legal proceeding, except when duly subpoenaed.” RJC 3.3.

“A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.” RJC 1.3.

47

May I represent the estate of a close friend?

No.

- A judge cannot accept appointment to serve in a fiduciary position, such as executor, administrator, trustee, guardian, conservator, attorney in fact, or other personal representative.
- A judge may, however, serve in one of these capacities for a member of the judge's family but only if such service will not interfere with the proper performance of judicial duties.

RJC 3.8 (A)

48

May I serve on the board of directors of my local bank?

Not recommended.

“A judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including but not limited to the following activities:

(6) Serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity:

(a) will be engaged in proceedings that would ordinarily come before the judge; or

(b) will frequently be engaged in adversary proceedings in the court of which the judge is a member, or in any court subject to the appellate jurisdiction of the court of which the judge is a member.” RJC 3.7 (A)(6).

49

REMAIN VIGILANT

“Willful misconduct in office of necessity is conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

“However, a judge may also, through negligence or ignorance not amounting to bad faith behave in a manner prejudicial to the administration of justice so as to bring the judicial office into disrepute.”

- Commission on Judicial Performance v. Dodds, 680 So. 2d 180, 190-91 (Mississippi 1996).

50