

Canons of Judicial Ethics

Canon 3.

A judge should perform the duties of his office impartially and diligently.

The judicial activities of a judge take precedence over his other activities. His judicial duties include all the duties of his office prescribed by law. In the performance of these duties, the following standards apply:

A. ADJUDICATIVE RESPONSIBILITIES:

(1) A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge should maintain order and decorum in proceedings before him.

(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity, and should require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control.

Commentary

The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Courts can be efficient and business-like while being patient and deliberate.

(4) A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider ex parte communications concerning a pending or impending proceeding. A judge, however, may obtain the advice of a disinterested and impartial expert on the law applicable to a proceeding before him; provided however, a judge should use discretion in such cases and, if the judge considers that justice would require it, should give notice to the parties of the person consulted and the substance of the advice, and afford the parties reasonable opportunity to respond.

(5) A judge should dispose promptly of the business of the court, being ever mindful of matters taken under submission. On the first day of January and the first day of July of each year, each judge shall file a report which shall show the cases and/or matters which have been under submission or advisement for a period of six months or longer, and if there has been no case or matter under submission or advisement for a

period of six months or longer the report shall so state. Where a matter or case has been under submission or advisement for six months or longer, the report shall give the date that the matter or case was taken under submission or advisement and the reasons for the failure of the judge to decide such matters or cases. Trial judges shall file their lists with the administrative office of courts, and appellate judges shall file their lists with the clerk of their appellate court.

Commentary

Prompt disposition of the court's business requires a judge to devote adequate time to his duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants and their lawyers cooperate with him to that end.

(6) A judge should abstain from public comment about a pending or impending proceeding in any court, and should require similar abstention on the part of court personnel subject to his direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

Commentary

"Court personnel" does not include the lawyers in a proceeding before a judge. The conduct of lawyers is governed by the Code of Professional Responsibility of the Alabama State Bar.

(7) A trial judge or an appellate court should prohibit broadcasting by television or radio, recording or taking of photographs in the courtroom unless the trial judge or appellate court determines that such should be allowed in accordance with the provisions of (7A) or (7B); however, a trial judge or appellate court may, in the exercise of sound discretion, authorize:

(a) The use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record, or for other purposes of judicial administration;

(b) The broadcasting, televising, recording, or photographing of investitive, ceremonial, or nonjudicial proceedings;

(c) The photographic or electronic recording and reproduction of appropriate court proceedings for instructional or educational purposes under the following conditions:

(i) The means of recording will not distract participants or impair the dignity of the proceedings;

(ii) The parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;

(iii) The reproduction will not be exhibited until after the proceedings have been concluded and all direct appeals have been exhausted; and

(iv) The reproduction will be exhibited only for instructional or educational purposes.

(7A) A trial judge, in the exercise of sound discretion, may authorize the broadcasting, televising, recording or taking of photographs in a courtroom during a trial or other judicial hearing;

(a) Provided, the supreme court of Alabama has authorized a plan for the courtroom in which the photographing, recording or broadcasting by radio or television will occur. The authorized plan shall set forth the safeguards to ensure that such photographing, recording or broadcasting by radio or television of such proceedings will not detract from the dignity of the court proceedings, distract any witness from giving testimony, degrade the court, or otherwise interfere with the achievement of a fair trial and shall further set forth the places where cameras, lights, wires and transmitting devices may be located and other details, including, but not limited to, the area of movement of media personnel. Prior to the supreme court's approval of such a plan, a petition shall have been filed with the supreme court signed by the presiding judge of the circuit, the district attorney, president of the local bar association and the chairman of the county commission, which petition shall recommend safeguards and details designed to guarantee that the photographing, recording or broadcasting by television or radio will not (1) detract from the dignity of the court proceedings, (2) distract any witness in giving testimony, (3) degrade the court, or (4) otherwise interfere with the achievement of a fair trial.

(b) Provided further, if the case is a criminal proceeding, all accused persons who will be before the court during any such photographing, recording or broadcasting by television or radio, as well as the leading prosecuting attorney representing the state or the city, shall have affirmatively given their written consent to the photographing, recording or broadcasting by television or radio.

(c) Provided further, if the case is a civil proceeding, all litigants involved in the case and their respective leading attorneys shall have affirmatively given their written consent to the photographing, recording or broadcasting by television or radio.

However, the judge shall immediately suspend or stop any photographing, recording or broadcasting by television or radio at any time that a witness who is testifying, the parent or guardian of any testifying witness who is a minor, or a juror,

party or attorney expressly objects to the photographing, recording or broadcasting by television or radio.

(7B) An appellate court may authorize the broadcasting, televising, recording or taking of photographs in a courtroom during a judicial hearing;

(a) Provided, the Supreme Court of Alabama has authorized a plan for the courtroom which shall contain safeguards to ensure that the photographing, recording or broadcasting by television or radio shall not detract from the dignity of the court proceedings, degrade the court, distract any witness in giving testimony (if the case is one in which testimony is received), or otherwise interfere with the achievement of a fair and impartial hearing or trial, which plan shall set forth the location where cameras, lights, wires and transmitting devices may be located as well as other details, including the movement area for media personnel. Prior to the Supreme Court's approval of such a plan, a petition, signed by a majority of the members of the appellate court, shall be filed with the Supreme Court.

(b) Provided further, that the attorneys involved in the hearing or trial and the parties present shall have affirmatively given their written consent.

However, the appellate court shall immediately suspend or stop any photographing, recording or broadcasting by radio or television during any time that any witness who is testifying, the parent or guardian of a testifying witness who is a minor, attorney, party or judge, expressly objects to such photographing, recording or broadcasting by television or radio.

Commentary

"It is now universally recognized that the dignity of a church service is not affected in any degree by photographing or broadcasting by television or radio of a church service when sophisticated and advanced equipment and technology is used." "Photographing or broadcasting by television or radio of a church service will not distract any church participant or degrade the solemnity of the service if sophisticated and advanced technology is employed."

The above-quoted statements were part of the persuasive arguments made to the court at the hearing on the proposed canons of judicial ethics submitted by an advisory committee. The court was impressed with the arguments that modern, sophisticated equipment and technology are now available for broadcasting, televising, filming and photographing, which will not interfere with or detract from the dignity of a fair and impartial trial, and that instead of adopting absolute prohibitive language, the court should devise a canon by which photographing, recording or broadcasting by television or radio is permissible if such modern, sophisticated equipment and technology are used along with safeguards designed to prevent any interferences with the achievement of a fair and impartial trial.

In deliberating this canon, the court considered the First Amendment protection of the press, and the constitutional guarantees of a fair trial. Rather than deciding to completely prohibit all broadcasting, filming, recording, televising, and photographing the court has devised a system which would allow, under limited circumstances, the use of sophisticated equipment and advanced technology in photographing, filming, televising, recording and broadcasting of court proceedings.

The canon still vests in the trial judge the final decision as to whether or not photographing, recording or broadcasting by television or radio will be allowed. It authorizes the trial judge, in the exercise of his sound discretion, to allow photographing, recording or broadcasting by television or radio if the Supreme Court has authorized a plan for the courtroom after a petition has been filed with the Supreme Court, signed by the presiding circuit judge, district attorney, local bar association president, and chairman of the county governing body. It is contemplated that the plan approved by the Supreme Court will provide safeguards to ensure that such activities by the media shall not detract from the dignity of the court proceedings, distract any witness from giving testimony, degrade the court, or otherwise interfere with the achievement of a fair trial. The plan will set forth places where the cameras, lights, wires and transmitting devices may be located and describe the sophisticated equipment and advanced technology to be employed.

Even if the Supreme Court approves such a plan and the trial judge is willing to allow such photographing, recording or broadcasting by television or radio in accordance with said plan, nevertheless, there are further requirements, including acquisition of the advance written consent of parties and attorneys, that must be met.

The canon provides a further safeguard in that witnesses, jurors, parties or attorneys may, at any time, suspend or stop any photographing, recording or broadcasting by television or radio by expressly objecting to the same.

Language in the proposed canon which would prohibit broadcasting, televising, recording or photographing in areas immediately adjacent to the courtroom was deleted.

The canon allows photographing, recording or broadcasting by television or radio in an appellate court under similar circumstances. See (7B).

The provisions of (7) place within the sound discretion of the trial judge or the appellate court the decision as to whether or not photographing, recording and broadcasting by television and radio will be allowed under the circumstances and situations outlined in its provisions. The prior approval of a plan by the Supreme Court is not required.

B. ADMINISTRATIVE RESPONSIBILITIES:

(1) A judge should diligently discharge his administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

(2) A judge should require his staff and court officials subject to his direction and

control to observe the standards of fidelity and diligence that apply to him.

(3) A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge has personal knowledge.

Commentary

Disciplinary measures may include reporting a lawyer's misconduct to an appropriate disciplinary body.

(4) A judge should not make unnecessary appointments. He should exercise his power of appointment only on the basis of merit, avoiding nepotism and favoritism. He should not approve compensation of appointees beyond the fair value of services rendered. He should consider himself the conservator of all estates under his jurisdiction.

Commentary

Appointees of the judge include officials such as referees, commissioners, special masters, receivers, guardians and personnel such as clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by this subsection.

C. DISQUALIFICATION:

(1) A judge should disqualify himself in a proceeding in which his disqualification is required by law or his impartiality might reasonably be questioned, including but not limited to instances where:

(a) He has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) He served as a lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer in the matter, or the judge or such lawyer has been a material witness concerning it.

Commentary

A lawyer in a governmental agency does not necessarily have an association with other lawyers employed by that agency within the meaning of this subsection; a judge formerly employed by a governmental agency, however, should disqualify himself in a proceeding if his impartiality might reasonably be questioned because of such association.

(c) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(d) He or his spouse, or a person within the fourth degree of relationship to either of them, or the spouse of such a person:

(i) Is named a party to the proceeding, or an officer, director, or trustee of a party;

Commentary

The fact that a lawyer in a proceeding is affiliated with a law firm with which a lawyer-relative of the judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that “his impartiality might be reasonably questioned” under Canon 3C(1), or that the lawyer-relative is known by the judge to have an interest in the law firm that could be “substantially affected by the outcome of the proceedings” under Canon 3C(1)(d)(ii) may require his disqualification.

(ii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iii) Is to the judge’s knowledge likely to be a material witness in the proceeding;

(2) A judge should inform himself about his personal and fiduciary financial interests and should make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

(3) For the purposes of this section:

(a) The degree of relationship is calculated according to the civil law system;

(b) “Fiduciary” includes such relationships as executor, administrator, trustee, and guardian;

(c) “Financial interest” means ownership of a legal or equitable interest, or a relationship as officer, director, advisor, or other active participant in the affairs of a party, except that:

(i) Ownership in a mutual or common investment fund that holds securities is not a “financial interest” in securities held by the organization or institution;

(ii) An office in an educational, religious, charitable, fraternal or civic organization or institution is not a “financial interest” in securities held by the organization or institution;

(iii) The proprietary interest of a policyholder in a mutual insurance company, or a depositor in a mutual savings association, or a similar proprietary interest is a “financial interest” in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) Ownership of government securities is a “financial interest” in the issuer only if the outcome of the proceeding could substantially affect the value of the securities;

(v) Ownership of a *de minimis* portion of the securities of a publicly traded corporation is not a “financial interest.” A “*de minimis*” portion is an interest that could not raise a reasonable question as to a judge’s impartiality.

**Commentary to Canon 3.C.(3)(C) as Amended
Effective October 1, 1999**

A judge may hold securities of a publicly traded corporation and not be considered to hold a “financial interest” in the corporation that would require the judge’s disqualification if the interest the judge holds is considered de minimis.

D. REMITTAL OF DISQUALIFICATION. A judge disqualified by the terms of Canon 3C(1)(c) or Canon 3C(1)(d) may, instead of withdrawing from the proceeding, disclose in the record the basis of his disqualification. If based on such disclosure, the parties and lawyers, independently of the judge’s participation, all agree in writing that the judge’s relationship is immaterial or that his financial interest is insubstantial, the judge is no longer disqualified, and may participate in the proceeding. The agreement signed by all parties and lawyers shall be incorporated in the record of the proceeding.

Commentary

This procedure is designed to minimize the chance that a party will feel coerced into an agreement. When a party is not immediately available, the judge without violating this section may proceed on the written assurance of the lawyer that his party’s consent will be subsequently filed.

E. DISCLOSURE OF OTHER INTERESTS OR RELATIONSHIPS: A judge who does not

deem himself or herself disqualified from a proceeding by the terms of Canon 3.C. may nonetheless make information concerning interests or relationships available, either by filing that information in the office of the clerk of the judge's court or by causing notice to be given to the parties to the proceeding. It shall be the duty of the parties to familiarize themselves with any materials available for inspection in the clerk's office.

[Amended 3-27-78, eff. 5-1-78; amended 6-5-79, eff. 7-2-79; amended 7-28-99, eff. 10-1-99.]

Note from the reporter of decisions: The order amending Canon 3.C. and adopting Canon 3.E., effective October 1, 1999, is published in that volume of *Alabama Reporter* that contains Alabama cases from 737 So.2d.