

**ALABAMA
CANONS OF JUDICIAL ETHICS**

(Includes amendments through May 31, 2006)

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PREAMBLE

The first Code of Legal Ethics in the United States was formulated and adopted by the Alabama State Bar Association in 1887. This first Code was adopted with only minor changes by Georgia, Virginia, Michigan, Colorado, North Carolina, Wisconsin, West Virginia, Maryland, Kentucky and Missouri between 1887 and 1906, and finally by the American Bar Association in 1908. Recognizing Alabama's leadership in the field of professional ethics and mindful that the character and conduct of a judge should never be objects of indifference and that declared ethical standards tend to become habits of life, the supreme court of Alabama deems it desirable to formulate and establish those principles which govern the conduct of members of the judiciary. The supreme court of Alabama accordingly adopts the following canons, as a Code for judges and a declaration of that which the people of the state of Alabama have a right to expect of them.

CANON 1.

A JUDGE SHOULD UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY.

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

Commentary

Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depends in turn upon their acting without fear or favor. A judiciary of integrity is one in which judges are known for their probity, fairness, honesty, uprightness, and soundness of character. An independent judiciary is one free of inappropriate outside influences when deciding cases. Although judges should be independent, they must comply with the law, including the provisions of these Canons. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of the Canons diminishes public confidence in the judiciary and thereby does injury to the system of government under the law. (Commentary adopted 8-25-2004.)

CANON 2.

A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL HIS ACTIVITIES.

A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge should at all times maintain the decorum and temperance befitting his office and should avoid conduct prejudicial to the administration of justice which brings the judicial office into disrepute.

C. A judge should not allow his family, social, political, or other relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interests of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him. He should not testify voluntarily as a character witness at any hearing before any court, or judicial or governmental commission.

(Amended 5-7-80; 8-25-2004.)

Commentary

Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. He must expect to be the subject of constant public scrutiny. He must, therefore, accept restrictions on his conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

The testimony of a judge as a character witness injects the prestige of his office into the proceeding in which he testifies and may be misunderstood to be an official testimonial. This Canon, however, does not exempt a judge from testifying if he is officially summoned. This Canon does not per se prohibit a judge from writing a letter of recommendation disclosing personal information of someone's experience, character or ability. Such letter, however, should not be written if the recipient is engaged in litigation before the judge or it is likely that the recipient will be engaged in proceedings that would ordinarily come before the court.

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, and 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.

(Amended 3-27-78, eff. 5-1-78; 6-5-79, eff. 7-2-79.)

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 photo-

graphing, 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 testify-

ing 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 values 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 policy holder 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.

(Amended 7-28-99, eff. 10-1-99.)

Commentary

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 concern-

ing 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 7-28-99, eff. 10-1-99.)

CANON 4.

A JUDGE MAY ENGAGE IN ACTIVITIES TO IMPROVE THE LAW, THE LEGAL SYSTEM, AND THE ADMINISTRATION OF JUSTICE.

A judge, subject to the proper performance of his judicial duties, may engage in the following quasi-judicial activities, if in doing so he does not cast doubt on his capacity to decide impartially any issue that may come before him:

A. He may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

B. He may appear at a public hearing before an executive or legislative body or official and may otherwise consult with an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice.

C. He may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. He may assist such an organization in raising funds and may participate in their management and investment. He may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

Commentary

As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that his time permits, he is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law.

Extra-judicial activities are governed by Canon 5.

CANON 5.

A JUDGE SHOULD REGULATE HIS EXTRA-JUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH HIS JUDICIAL DUTIES.

A. *Avocational activities.* A judge may write, lecture, teach, and speak on nonlegal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of his office or interfere with the performance of his judicial duties.

Commentary

Complete separation of a judge from extra-judicial activities is neither possible nor wise; he should not become isolated from the society in which he lives.

B. *Civic and charitable activities.* A judge may participate in civic and charitable activities that do not reflect adversely upon his impartiality or interfere with the performance of his judicial duties. A judge may serve as an officer, director, trustee, or nonlegal advisor of an educational, religious, charitable, fraternal, or civic organization or institution not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge should not serve if it is likely that the organization or institution will be engaged in proceedings that would ordinarily come before him or will be regularly engaged in adversary proceedings in any court.

Commentary

The changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to re-examine the activities of each organization with which he is affiliated to determine if it is proper for him to continue his relationship with it.

(2) It is desirable that a judge not solicit funds for any educational, religious, charitable, fraternal, or civic organization or institution, or use or permit the use of the prestige of his office for that purpose, but he may be listed as an officer, director, or trustee of such an organization or institu-

tion.

(3) A judge should not give investment advice to such an organization or institution, but he may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

Commentary

A judge's participation in an organization devoted to quasi-judicial activities is governed by Canon 4.

C. Financial activities.

(1) A judge should refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, or exploit his judicial position.

(2) Subject to the requirements of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity including the operation of a business.

(3) A judge should manage his investments and other financial interests to minimize the number of cases in which he is disqualified.

(4) Neither a judge nor a member of his family residing in his household should accept a gift, bequest, favor, or loan from anyone if it reflects expectation of judicial favor.

(5) For the purposes of this section “member of his family residing in his household” means any relative of a judge by blood or marriage, or a person treated by a judge as a member of his family, who resides in his household.

(6) Information acquired by a judge in his judicial capacity should not be used or disclosed by him in financial dealings or for any purpose not related to his judicial duties.

D. Fiduciary activities. A judge should not serve as executor, administrator, trustee, guardian, or other fiduciary, if such service will interfere with the proper performance of his judicial duties. As a fiduciary, a judge is subject to the following restrictions:

(1) He should not serve if it is likely that as a fiduciary he will be engaged in proceedings that would ordinarily come before him.

(2) While acting as a fiduciary, a judge is subject to the same restrictions on financial activities that apply to him in his personal capacity.

E. *Arbitrator.* A judge should not act as an arbitrator or mediator.

F. *Practice of law.* A judge should not practice law.

G. *Extra-judicial appointments.* It is desirable that a judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice or unless required by law. A judge, however, may represent his country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

CANON 6.

A JUDGE SHOULD REGULARLY FILE REPORTS OF HIS FINANCIAL INTERESTS.

A judge may receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by these canons, if the source of such payments does not give the appearance of influencing the judge in his judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

A. COMPENSATION. Compensation should not exceed a reasonable amount, nor should it exceed what a person who is not a judge would receive for the same activity.

B. EXPENSE REIMBURSEMENT. Expense reimbursement should be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his spouse. Any payment in excess of such an amount is compensation.

C. A judge, at the time he or she takes the oath of office, or a candidate for judicial office, within 10 days after qualifying, shall file as a public document with the clerk of the supreme court a "statement of economic interests" on the form prepared and prescribed by the state ethics commission or its successor and shall disclose his or her economic interests as other state officers or candidates are required to disclose by any state ethics law. All judges who have not filed such a statement of economic interests previously shall file the same on or before the thirtieth day of March, 1976. After the original filing of said statement of economic interests a judge shall file a current statement of his economic interests with the clerk of the supreme court on or before the thirtieth day of April of each year thereafter.

In addition to the statement of economic interests a judge shall file at the same time a "disclosure statement of financial interests." The disclosure statement of financial interests shall be filed with the clerk of the supreme court who shall keep such envelope sealed in a safe and secure place. The disclosure statement of financial interests shall contain a list of names of proprietorships, companies, corporations and/or partnerships in which he owns a financial interest and a list of the names of creditors to whom he owes money.

Any lawyer or litigant desiring to inquire as to a judge's possible conflict of interests in a case in which the lawyer or litigant is involved may do so by contacting the clerk of the supreme court for a determination of whether a conflict of interests exists. The clerk of the supreme court shall examine such disclosure statement of financial interests in camera and reseal it after examination. Should no conflict exist, this fact should be made known to the party or lawyer making the inquiry. Should a conflict exist, this fact shall be made known to the party or litigant making the inquiry and be brought to the attention of the judge, who shall forthwith recuse himself.

(Amended 6-5-79, eff. 6-30-79.)

CANON 7.

A JUDGE OR A JUDICIAL CANDIDATE SHALL REFRAIN FROM POLITICAL ACTIVITY INAPPROPRIATE TO JUDICIAL OFFICE.

Definitions: As used in this Canon:

(a) “Candidate” means a person who has made a public announcement of candidacy for judicial office, or declared or filed as a candidate for judicial office with the election authority, or authorized the solicitation or receipt of contributions or support for judicial office, whichever occurred first. The term “candidate” includes an incumbent judge or an attorney who is not a judge.

(b) “Shall” is employed in Canon 7 to indicate the mandatory.

A. Political Conduct in General:

(1) A judge or a candidate for election to a judicial office shall endeavor at all times to refrain from political activities inappropriate to the judicial office that he or she holds or seeks. It is desirable that a judge or a candidate for election to judicial office endeavor not to be involved in the internal workings of political organizations, engage in campaign activities in connection with a political candidate other than a candidate for a judicial office and not be involved in political fund solicitations other than for himself or herself. However, so long as judges are subject to nomination and election as candidates of a political party, it is realized that a judge or a candidate for election to a judicial office cannot divorce himself or herself completely from political organizations and campaign activities which, indirectly or directly, may be involved in his or her election or re-election. Nevertheless, should a judge or a candidate for a judicial position be directly or indirectly involved in the internal workings or campaign activities of a political organization, it is imperative that he or she at all times conduct himself or herself in a manner as to prevent any political considerations, entanglements, or influences from ever becoming involved in or from ever appearing to be involved in any judicial decision or in the judicial process.

(2) A judge shall resign his or her office when the judge becomes a candidate either in a political primary or in a general election for nonjudicial office, except that the judge may continue to hold judicial office while being a candidate for election to any judicial office or while being a candidate for election to a state constitutional convention or commission.

(3) A judge may engage in activity on behalf of measures to improve the law, the legal system, or the administration of justice.

B. Campaign conduct:

(1) A candidate for judicial office filled either by public election between competing candidates or on the basis of a merit system election:

(a) Shall maintain the dignity appropriate to judicial office.

(b) Shall not authorize or knowingly permit any other person to do for the candidate what the candidate is prohibited from doing under this or any other Canon. This shall not apply to B.(4)(a).

(c) Shall not make any promise of conduct in office other than the faithful and impartial performance of the duties of the office; shall not announce in advance the candidate's conclusions of law on pending litigation; and shall not knowingly misrepresent his or her identity, qualification, present position, or other fact.

(d) Shall not use or permit the use of campaign contributions for the private benefit of the candidate.

(2) **CAMPAIGN COMMUNICATIONS.** During the course of any campaign for nomination or election to judicial office, a candidate shall not, by any means, do any of the following:

Post, publish, broadcast, transmit, circulate, or distribute false information concerning a judicial candidate or an opponent, either knowing the information to be false or with reckless disregard of whether that information is false.

(3) **ACCOUNTABILITY.** A candidate, including an incumbent judge or a nonincumbent candidate, shall be responsible for the content of any statement communicated in any medium by his or her campaign committee and for compliance by his or her campaign committee with the limitations on campaign solicitations, contributions, and expenditures contained in this Canon and with the laws of this state if the candidate knew, or should have known through the exercise of due and reasonable diligence, of the statement, solicitation, contribution, or expenditure.

(4) **CAMPAIGN FINANCING.**

(a) A candidate is strongly discouraged from personally solicit-

ing campaign contributions. It is highly recommended that a candidate establish committees of responsible persons to solicit and accept campaign contributions, to manage the expenditure of funds for the candidate's campaign, and to obtain public statements of support for his or her candidacy. Such committees may solicit and accept campaign contributions and public support from lawyers.

(b) Contributions to a judge's or a candidate's campaign shall be neither solicited nor accepted more than one year prior to the election in which the candidate participates as a candidate for judicial office or more than 120 days after that election.

(c) Candidates shall file reports as required by the Alabama Fair Campaign Practice Act.

Commentary

Communications by a candidate concerning the cost of a campaign or the necessity of raising funds, and general comments about campaign expenses, are permitted conduct under this section. A candidate may appear and speak in his or her behalf at any function organized in support of his or her candidacy.

C. Reporting Violations of Canon 7.

(1) If such filing is permitted by law, a complaint alleging a violation of this Canon 7 shall be filed with the Judicial Inquiry Commission.

(2) A complaint, alleging a violation of Canon 7, filed with the Judicial Inquiry Commission or the Alabama State Bar during the course of a campaign for election shall be given priority by that institution, and every effort shall be made to render a decision on the complaint during the course of the election campaign.

(Amended eff. 10-1-90; Amended eff. 1-1-98; Amended eff. 7-1-98; Amended eff. 8-25-2004.)

COMPLIANCE WITH THE CANONS OF JUDICIAL ETHICS.

Judges whose duties are not exclusively judicial or who do not serve on a full-time basis cannot be subjected to a strict, literal compliance with the Canons of Ethics.

A. PART-TIME JUDGE. A part-time judge is a judge who serves on a continuing basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge. A part-time judge:

(1) Is not required to comply with Canon 5D, E, F, and G, and Canon 6C;

(2) Should not act as a lawyer in a proceeding in which he has served as a judge or in any other proceeding related thereto.

B. JUDGE PRO TEMPORE. A judge pro tempore is a person who is appointed to act temporarily as a judge.

(1) While acting as such, a judge pro tempore is not required to comply with Canon 5C(3), D, E, F, and G, and Canon 6C.

(2) A person who has been a judge pro tempore should not act as a lawyer in a proceeding in which he has served as a judge or in any other proceeding related thereto.

C. PROBATE JUDGE. Probate judges in Alabama are charged with many administrative and executive duties not judicial in nature. However, when a probate judge performs judicial duties then applicable canons should be followed. A probate judge is not expected to comply with the following:

5B(2), 5E and G, 6C, and 7.

In lieu of the provisions of 3A(5), the following shall be applicable to probate judges:

A probate judge should dispose promptly of the business of the court, being ever mindful of matters taken under submission.

In lieu of the provisions of 3B, the following shall be applicable to probate judges:

It is desirable that a probate judge should diligently discharge his administrative responsibilities, facilitate the performance of the administrative responsibilities of other judges and court officials, require his staff and court officials subject to his direction and control to observe the standards of fidelity and diligence that apply to him, initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the probate judge has personal knowledge, and not approve compensation for appointees beyond the fair value of services rendered.

A probate judge should consider himself the conservator of all estates under his jurisdiction.

D. RETIRED AND SUPERNUMERARY JUDGES.

(1) Retired and supernumerary justices or judges, who are not serving on the Supreme Court or on either of the courts of appeals or on any circuit court or district court in the state, in an active duty status, shall not be required to comply with any of these Canons.

(2) Retired and supernumerary justices or judges, who are serving parttime on the Supreme Court or on either of the courts of appeals or on any circuit court or district court in the state, in an active duty status, shall be required to comply with all of these Canons, except Canon 5C(3), D, E, F, G and Canon 6C.

(3) Retired and supernumerary justices and judges, who are serving fulltime at the request of the chief justice, on the Supreme Court or on either of the courts of appeals or on any circuit court or district court in the state, in an active duty status, shall be required to comply with all of these Canons.

(Amended 4-2-80.)

EFFECTIVE DATE OF COMPLIANCE.

These canons shall be binding as of the 1st day of February, 1976. A person to whom these canons become applicable should arrange his affairs as soon as reasonably possible to comply with them.

The amendment which added paragraph D was effective April 2, 1980.

Commentary

Retired and supernumerary justices or judges are not continuing in office under § 6.08 of Amendment 328, Constitution of Alabama of 1901.