

1 STATE OF OKLAHOMA

2 1st Session of the 55th Legislature (2015)

3 SENATE BILL 766

By: Sykes

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5
6 AS INTRODUCED

7 An Act relating to judicial conduct; stating duties
8 and obligations of judges; establishing adjudicative
9 responsibilities of judges; establishing standards
10 and requirements for extrajudicial, avocational,
11 governmental, civic, charitable, financial and
12 fiduciary activities of judges; prohibiting the
13 practice of law by judges; stating applicability of
14 act; providing for codification; and providing an
15 effective date.

16 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

17 SECTION 1. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 101 of Title 5, unless there is
19 created a duplication in numbering, reads as follows:

20 A. A judge shall respect and comply with the law and act at all
21 times in a manner that promotes public confidence in the integrity
22 and impartiality of the judiciary.

23 B. A judge shall not allow family, social, political or other
24 relationships to influence the judge's judicial conduct or judgment.

A judge shall not lend the prestige of judicial office to advance
the private interests of the judge or others; nor shall a judge

1 convey or permit others to convey the impression that they are in a
2 special position to influence the judge. A judge shall not testify
3 voluntarily as a character witness.

4 SECTION 2. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 102 of Title 5, unless there is
6 created a duplication in numbering, reads as follows:

7 A. Judicial Duties in General. The judicial duties of a judge
8 take precedence over all the judge's other activities. The judge's
9 judicial duties include all the duties of the judge's office
10 prescribed by law. In performance of those duties, the following
11 standards apply.

12 B. Adjudicative Responsibilities.

13 1. A judge shall be faithful to the law and maintain
14 professional competence in it. A judge shall not be swayed by
15 partisan interests, public clamor or fear of criticism.

16 2. A judge shall require order and decorum in proceedings
17 before the judge.

18 3. A judge shall be patient, dignified and courteous to
19 litigants, jurors, witnesses, lawyers and others with whom the judge
20 deals in official capacity, and shall require similar conduct of
21 lawyers, and of his or her staff, court officials and others subject
22 to the judge's direction and control.

23 4. A judge shall perform judicial duties without bias or
24 prejudice. A judge shall not, in the performance of judicial

1 duties, by words or conduct manifest bias or prejudice, including
2 but not limited to bias or prejudice based upon race, sex, religion,
3 national origin, disability, age, sexual orientation or
4 socioeconomic status, and shall not permit staff, court officials
5 and others subject to the judge's direction and control to do so.

6 5. A judge shall require lawyers in proceedings before the
7 judge to refrain from manifesting, by words or conduct, bias or
8 prejudice based upon race, sex, religion, national origin,
9 disability, age, sexual orientation or socioeconomic status, against
10 parties, witnesses, counsel or others. This paragraph does not
11 preclude legitimate advocacy when race, sex, religion, national
12 origin, disability, age, sexual orientation or socioeconomic status,
13 or other similar factors, are issues in the proceeding.

14 6. A judge shall accord to every person who has a legal
15 interest in a proceeding, or that person's lawyer, the right to be
16 heard according to law. A judge shall not initiate, nor consider ex
17 parte communications, or consider other communications made to the
18 judge outside the presence of the parties concerning a pending or
19 impending proceeding except that:

20 a. Where circumstances require, ex parte communications
21 for scheduling, administrative purposes or emergencies
22 that do not deal with substantive matters or issues on
23 the merits are authorized; provided that the judge
24 reasonably believes that no party will gain a

1 procedural or tactical advantage as a result of the ex
2 parte communication.

3 b. A judge may obtain the advice of a disinterested
4 expert on the law applicable to a proceeding before
5 the judge if the judge gives notice to the parties of
6 the person consulted and the substance of the advice,
7 with a record being made, and affords the parties
8 reasonable opportunity to respond.

9 c. A judge may consult with court personnel whose
10 function is to aid the judge in carrying out the
11 judge's adjudicative responsibilities or with other
12 judges.

13 d. A judge may initiate or consider any ex parte
14 communications when expressly authorized by law to do
15 so.

16 7. A judge shall dispose of all judicial matters promptly,
17 efficiently and fairly.

18 8. A judge shall not, while a proceeding is pending or
19 impending in any court, make any public comment that might
20 reasonably be expected to affect the outcome or impair its fairness
21 or make any nonpublic comment that might substantially interfere
22 with a fair trial or hearing. The judge shall require similar
23 abstention on the part of court personnel subject to the judge's
24 direction and control. This paragraph does not prohibit judges from

1 making public statements in the course of their official duties or
2 from explaining for public information the procedures of the court.
3 This paragraph does not apply to proceedings in which the judge is a
4 litigant in a personal capacity.

5 9. Except as permitted by the individual judge, the use of
6 cameras, television or other recording or broadcasting equipment is
7 prohibited in a courtroom or in the immediate vicinity of a
8 courtroom.

- 9 a. Before cameras, television or other recordings or
10 broadcasting equipment are used, express permission of
11 the judge shall be obtained.
- 12 b. The judge shall prescribe the conditions and specific
13 rules under which such equipment may be used.
- 14 c. Media personnel shall not distract participants or
15 impair the dignity of the proceedings.
- 16 d. No witness, juror or party who expresses any objection
17 to the judge shall be photographed nor shall the
18 testimony of such a witness, juror or party be
19 broadcast or telecast.
- 20 e. There shall be no photographing or broadcasting of:
 - 21 (1) any proceeding which under the laws of this State
22 are required to be held in private, or
 - 23 (2) any portion of any criminal proceedings until the
24 issues have been submitted to the jury for

1 determination unless all accused persons who are
2 then on trial shall have affirmatively, on the
3 record, given their consent to the photographing
4 or broadcasting.

5 f. No media representative shall offer, nor shall any
6 party, witness or juror accept, consideration in
7 exchange for consent to telecast, broadcast or
8 photograph the judicial proceeding.

9 g. Representatives of the news media shall conduct
10 themselves at all times in a professional manner
11 consistent with the spirit and intent of this rule.
12 In order to ensure such conduct, if such conduct of
13 the news media which violates any of these rules is
14 brought to the attention of any judge, the offending
15 person shall be notified to immediately cease and
16 desist such activity. If the offending party refuses
17 to comply with the order, the judge may act to end
18 such activity, including the seizure of the equipment
19 of such person. Any offender may be dealt with for
20 contempt of court.

21 10. A judge shall not commend or criticize jurors for their
22 verdict other than in a court order or opinion in a proceeding, but
23 may express appreciation to jurors for their service to the judicial
24 system and the community.

1 C. Managerial Responsibilities.

2 1. A judge shall diligently discharge the judge's managerial
3 responsibilities, without bias or prejudice and maintain
4 professional competence in judicial administration, and shall
5 cooperate with other judges and court officials in the
6 administration of court business.

7 2. A judge shall require staff, court officials and others
8 subject to the judge's direction and control to observe the
9 standards of fidelity and diligence that apply to the judge and to
10 refrain from manifesting bias or prejudice in the performance of
11 their official duties.

12 3. A judge with supervisory authority for the judicial
13 performance of other judges shall take reasonable measures to assure
14 the prompt disposition of matters before them and the proper
15 performance of their other judicial responsibilities.

16 4. A judge shall not make unnecessary appointments. A judge
17 shall exercise the power of appointment impartially and on the basis
18 of merit. A judge shall avoid nepotism and favoritism. A judge
19 shall not approve compensation of appointees beyond the fair value
20 of services rendered.

21 D. Disciplinary Responsibilities. A judge shall report to the
22 appropriate disciplinary authority any unprofessional conduct of a
23 judge or lawyer of which the judge may become aware.

24 E. Disqualification.

1 1. A judge shall disqualify himself or herself in a proceeding
2 in which the judge's impartiality might reasonably be questioned,
3 including but not limited to instances where:

4 a. the judge has a personal bias or prejudice concerning
5 a party or a party's lawyer, or personal knowledge of
6 disputed evidentiary facts concerning the proceeding;

7 b. the judge served as a lawyer in the matter in
8 controversy, or a lawyer with whom the judge
9 previously practiced law served during such
10 association as a lawyer concerning the matter, or the
11 judge has been a material witness concerning it;

12 c. The judge knows that he or she, individually or as a
13 fiduciary, or the judge's spouse, parent or child
14 wherever residing, or any other member of the judge's
15 family residing in the judge's household, has an
16 economic interest in the subject matter in controversy
17 or has an interest more than de minimis that could be
18 substantially affected by the proceeding;

19 d. The judge or the judge's spouse, or a person within
20 the third degree of relationship to either of them, or
21 the spouse of such a person:

22 (1) is a party to the proceeding, or an officer,
23 director or trustee of a party,

24 (2) is acting as a lawyer in the proceeding,

1 (3) is known by the judge to have an interest more
2 than de minimis that could be substantially
3 affected by the proceeding,

4 (4) is to the judge's knowledge likely to be a
5 material witness in the proceeding.

6 2. A judge shall keep informed about the judge's personal and
7 fiduciary economic interests, and make a reasonable effort to keep
8 informed about the personal economic interests of the judge's spouse
9 and minor children residing in the judge's household.

10 F. Remittal of Disqualification. A judge disqualified by the
11 terms of subsection E of this section may disclose on the record the
12 basis of the judge's disqualification. If following disclosure of
13 any basis for disqualification other than personal bias or prejudice
14 concerning a party, the parties and lawyers, without participation
15 by the judge, all agree that the judge shall not be disqualified,
16 and the judge is then willing to participate, the judge may
17 participate in the proceeding. The agreement shall be incorporated
18 in the record of the proceeding.

19 SECTION 3. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 103 of Title 5, unless there is
21 created a duplication in numbering, reads as follows:

22 A. Extrajudicial Activities in General. A judge shall conduct
23 all of the judge's extrajudicial activities so that they do not:
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1 1. Cast reasonable doubt on the judge's capacity to act
2 impartially as a judge;

3 2. Demean the judicial office; or

4 3. Interfere with the proper performance of judicial duties.

5 B. Avocational Activities. A judge may speak, write, lecture,
6 teach and participate in other extrajudicial activities concerning
7 the law, the legal system, the administration of justice and
8 nonlegal subjects, subject to the requirements of this act.

9 C. Governmental, Civic or Charitable Activities.

10 1. A judge may appear at a public hearing before or consult
11 with an executive or legislative body or official on matters
12 concerning the law, the legal system, or the administration of
13 justice.

14 2. A judge shall not accept appointment to a governmental
15 committee or commission or other governmental position that is
16 concerned with issues of fact or policy on matters other than the
17 improvement of the law, the legal system or the administration of
18 justice unless with specific approval of the Supreme Court. A judge
19 may, however, represent a country, state or locality on ceremonial
20 occasions or in connection with historical, educational or cultural
21 activities.

22 3. A judge may serve as an officer, director, trustee or
23 nonlegal advisor of an organization or governmental agency devoted
24 to the improvement of the law, the legal system or the

1 administration of justice or of an educational, religious,
2 charitable, fraternal or civic organization not conducted for
3 profit, subject to the following limitations and the other
4 requirements of this act.

5 a. A judge shall not serve as an officer, director,
6 trustee or nonlegal advisor if it is likely that the
7 organization:

8 (1) will be engaged in proceedings that would
9 ordinarily come before the judge, or

10 (2) will be engaged frequently in adversary
11 proceedings in the court of which the judge is a
12 member or in any court subject to the appellate
13 jurisdiction of the court of which the judge is a
14 member.

15 b. A judge as an officer, director, trustee or nonlegal
16 advisor, or as a member or otherwise:

17 (1) may assist such an organization in planning fund-
18 raising and may participate in the management and
19 investment of the organization's funds, but shall
20 not personally participate in the solicitation of
21 funds or other fund-raising activities,

22 (2) may make recommendations to public and private
23 fund-granting organizations on projects and
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1 programs concerning the law, the legal system or
2 the administration of justice,

3 (3) shall not personally participate in membership
4 solicitation if the solicitation might reasonably
5 be perceived as coercive or, except as permitted
6 in division (1) of this subparagraph, if the
7 membership solicitation is essentially a fund-
8 raising mechanism,

9 (4) shall not use or permit the use of the prestige
10 of judicial office for fund-raising or membership
11 solicitation.

12 D. Financial Activities.

13 1. A judge shall not engage in financial and business dealings
14 that:

15 a. may reasonably be perceived to exploit the judge's
16 judicial position, or

17 b. involve the judge in frequent transactions or
18 continuing business relationships with those lawyers
19 or other persons likely to come before the court on
20 which the judge serves.

21 2. A judge may, subject to the requirements of this act, hold
22 and manage investments of the judge and members of the judge's
23 family, including real estate, and engage in other remunerative
24 activity.

1 3. A judge shall not serve as an officer, director, manager,
2 general partner, advisor or employee of any business entity except
3 that a judge may, subject to the requirements of this act, manage
4 and participate in:

5 a. a business closely held by the judge or members of the
6 judge's family, or

7 b. a business entity primarily engaged in investment of
8 the financial resources of the judge or members of the
9 judge's family.

10 4. A judge shall manage the judge's investments and other
11 financial interests to minimize the number of cases in which the
12 judge is disqualified. As soon as the judge can do so without
13 serious financial detriment, the judge shall divest himself or
14 herself of investments and other financial interests that might
15 require frequent disqualifications.

16 5. A judge shall not accept, and shall urge members of the
17 judge's family residing in the judge's household, not to accept, a
18 gift, bequest, favor or loan from anyone except for:

19 a. a gift incidental to a public testimonial, books,
20 tapes and other resource materials supplied by
21 publishers on a complimentary basis for official use,
22 or an invitation to the judge and the judge's spouse
23 or guest to attend a bar-related function or an

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1 activity devoted to the improvement of the law, the
2 legal system or the administration of justice,

3 b. a gift, award or benefit incident to the business,
4 profession or other separate activity of a spouse or
5 other family member of a judge residing in the judge's
6 household, including gifts, awards and benefits for
7 the use of both the spouse or other family member and
8 the judge, as spouse or family member, provided the
9 gift, award or benefit could not reasonably be
10 perceived as intended to influence the judge in the
11 performance of judicial duties,

12 c. ordinary social hospitality,

13 d. a gift from a relative or friend, for a special
14 occasion, such as a wedding, anniversary or birthday,
15 if the gift is fairly commensurate with the occasion
16 and the relationship,

17 e. a gift, bequest, favor or loan from a relative or
18 close personal friend whose appearance or interest in
19 a case would in any event require disqualification
20 under subsection E of this section,

21 f. a loan from a lending institution in its regular
22 course of business on the same terms generally
23 available to persons who are not judges,

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1 g. a scholarship or fellowship award on the same terms
2 and based on the same criteria applied to other
3 applicants, or

4 h. any other gift, bequest, favor or loan, but only if
5 the donor is not a party or other person who has come
6 or is likely to come or whose interests have come or
7 likely to come before the judge; and the judge reports
8 it as may be required by law.

9 E. Fiduciary Activities.

10 1. A judge shall not serve as executor, administrator or other
11 personal representative, trustee, guardian, attorney in fact or
12 other fiduciary, except for the estate, trust or person of a member
13 of the judge's family, and then only if such service will not
14 interfere with the proper performance of judicial duties.

15 2. A judge shall not serve as fiduciary if it is likely that
16 the judge as a fiduciary will be engaged in proceedings that would
17 ordinarily come before the judge, or if the estate, trust or ward
18 becomes involved in adversary proceedings in the court on which the
19 judge serves or one under its appellate jurisdiction.

20 3. The same restrictions on financial activities that apply to
21 a judge personally also apply to the judge while acting in a
22 fiduciary capacity.

23 F. Service as Arbitrator or Mediator. A judge shall not act as
24 an arbitrator or mediator. A retired judge who is eligible for

1 recall may act as an arbitrator or mediator except while serving as
2 a judge. A retired judge who acts as an arbitrator or mediator in a
3 matter may not thereafter act as a judge in the same matter. A
4 retired judge who acts as an arbitrator or mediator may receive
5 reasonable compensation to be paid by the parties. A retired judge,
6 as the term is used, is one who had been approved by the Supreme
7 Court for active service or otherwise perform judicial functions in
8 a private capacity unless expressly authorized by law.

9 G. Practice of Law. A judge shall not practice law.

10 Notwithstanding, a judge may, without compensation, give legal
11 advice to and draft or review documents for a member of the judge's
12 family. A judge may appear pro se in a matter in which he is a
13 litigant.

14 SECTION 4. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 104 of Title 5, unless there is
16 created a duplication in numbering, reads as follows:

17 A. Anyone, whether or not a lawyer, who is an officer of a
18 judicial system and who performs judicial functions, including an
19 officer such as an administrative law judge, magistrate, court
20 commissioners, special master or referee, is a judge within the
21 meaning of this act. All judges shall comply with this act except
22 as provided below.

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1 B. Retired Judge Subject to Recall. A retired judge subject to
2 recall who by law is not permitted to practice law is not required
3 to comply:

4 1. Except while serving as a judge, with subsection F of
5 Section 2 of this act; and

6 2. At any time with subsection E of Section 2 of this act.

7 C. Continuing Part-time Judge. A continuing part-time judge:

8 1. Is not required to comply:

9 a. except while serving as a judge, with paragraph 9 of
10 subsection B of Section 2 of this act, and

11 b. at any time with subsection C of Section 2 of this
12 act, and paragraph 2 of subsection C, paragraph 3 of
13 subsection D, paragraph 1 of subsection E, and
14 subsections F and G of Section 3 of this act.

15 2. Shall not practice law in the court on which the judge
16 serves and shall not act as a lawyer in a proceeding in which the
17 judge has served as a judge or in any other proceeding related
18 thereto.

19 D. Periodic Part-time Judge. A periodic part-time judge is a
20 municipal judge who serves on a continuing or periodic basis but is
21 permitted by law to devote time to some other profession or
22 occupation and whose compensation for that reason is less than that
23 of a full-time judge.

24 1. A periodic part-time judge is not required to comply:

- a. except while serving as a judge, with paragraph 9 of subsection B of Section 2 of this act,
- b. at any time, with subsection C of Section 2 of this act, and paragraph 2 of subsection C, subparagraph a of paragraph 3 of subsection C, subparagraph b of paragraph 1 of subsection D, paragraphs 3, 4 and 5 of subsection D, and subsections E, F and G of Section 3 of this act.

2. A periodic part-time judge shall not practice law in 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 other proceeding related thereto.

E. Pro Tempore Part-time Judge. A pro tempore part-time judge is a person who is appointed to act temporarily as a judge.

1. A pro tempore part-time judge is not required to comply:

- a. except while serving as a judge, with subsections A and B of Section 2 of this act, and paragraph 1 of subsection C of Section 3 of this act,
- b. at any time with subsection C of Section 2 of this act, and paragraph 2 of subsection C, subparagraphs a and b of paragraph 3 of subsection C, subparagraph b of paragraph 1 of subsection D, paragraphs 3, 4 and 5 of subsection D, and subsections E, F and G of Section 3 of this act.

1 2. A person who has been a pro tempore part-time judge shall
2 not act as a lawyer in a proceeding in which the judge has served as
3 a judge or in any other proceeding related thereto except as
4 otherwise permitted by Oklahoma Rules of Professional Conduct.

5 F. Time and Compliance. A person to whom this act becomes
6 applicable shall comply immediately with all provisions of this
7 Code.

8 SECTION 5. This act shall become effective November 1, 2015.

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