

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 HOUSE BILL 1611

By: Reynolds

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5
6 AS INTRODUCED

7 An Act relating to courts; creating the Code of
8 Judicial Conduct; stating legislative findings;
9 requiring judicial compliance with the law and
10 actions that promote public confidence; requiring
11 impartiality; prohibiting certain influences;
12 providing standards for performance of duties;
13 providing standards for supervision of staff, court
14 officials and certain other persons; prohibiting
15 unnecessary appointments; requiring the reporting of
16 unprofessional conduct; requiring disqualifications
17 under certain circumstances; providing requirements
18 and standards for extra-judicial activities;
19 prohibiting certain extra-judicial activities;
20 prohibiting acceptance of certain gifts, bequests,
21 favors or loans; providing exceptions; requiring
22 certain persons to comply with portions of the Code
23 of Judicial Conduct; providing penalty for
24 noncompliance with the Code of Judicial Conduct;
providing for codification; and providing an
effective date.

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

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 25.1 of Title 20, unless there
is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Code of
Judicial Conduct".

1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 25.2 of Title 20, unless there
3 is created a duplication in numbering, reads as follows:

4 An independent and honorable judiciary is indispensable to
5 justice in our society. A judge should participate in establishing,
6 maintaining and enforcing high standards of conduct, and should
7 personally observe those standards so that the integrity and
8 independence of the judiciary will be preserved. The provisions of
9 the Code of Judicial Conduct are to be construed and applied to
10 further that objective.

11 SECTION 3. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 25.3 of Title 20, unless there
13 is created a duplication in numbering, reads as follows:

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

17 B. A judge shall not allow family, social, political or other
18 relationships to influence the judge's judicial conduct or judgment.
19 A judge should not lend the prestige of judicial office to advance
20 the private interests of the judge or others; nor should a judge
21 convey or permit others to convey the impression that they are in a
22 special position to influence the judge. A judge should not testify
23 voluntarily as a character witness.

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1 SECTION 4. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 25.4 of Title 20, unless there
3 is created a duplication in numbering, reads as follows:

4 A. The judicial duties of a judge take precedence over all the
5 judge's other activities. The judge's judicial duties include all
6 the duties of the judge's office prescribed by law.

7 B. In performance of those duties, the following standards
8 apply:

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

12 2. A judge shall require order and decorum in proceedings before
13 the judge;

14 3. A judge shall be patient, dignified and courteous to
15 litigants, jurors, witnesses, lawyers and others with whom the judge
16 deals in official capacity, and shall require similar conduct of
17 lawyers, and of staff, court officials and others subject to the
18 judge's direction and control;

19 4. A judge shall perform judicial duties without bias or
20 prejudice. A judge shall not, in the performance of judicial duties,
21 by words or conduct manifest bias or prejudice, including but not
22 limited to bias or prejudice based upon race, sex, religion, national
23 origin, disability, age, sexual orientation or socioeconomic status,
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1 and shall not permit staff, court officials and others subject to the
2 judge's direction and control to do so;

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

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

- 17 a. if circumstances require, ex parte communications for
18 scheduling, administrative purposes or emergencies that
19 do not deal with substantive matters or issues on the
20 merits are authorized, if the judge reasonably believes
21 that no party will gain a procedural or tactical
22 advantage as a result of the ex parte communication,
- 23 b. a judge may obtain the advice of a disinterested expert
24 on the law applicable to a proceeding before the judge

1 if the judge gives notice to the parties of the person
2 consulted and the substance of the advice, with a
3 record being made, and affords the parties reasonable
4 opportunity to respond,

5 c. a judge may consult with court personnel whose
6 function is to aid the judge in carrying out the
7 judge's adjudicative responsibilities or with other
8 judges, and

9 d. a judge may initiate or consider any ex parte
10 communications when expressly authorized by law to do
11 so;

12 7. A judge shall dispose of all judicial matters promptly,
13 efficiently and fairly;

14 8. A judge shall not, while a proceeding is pending or impending
15 in any court, make any public comment that might reasonably be
16 expected to affect the outcome or impair its fairness or make any
17 nonpublic comment that might substantially interfere with a fair
18 trial or hearing. The judge shall require similar abstention on the
19 part of court personnel subject the judge's direction and control.
20 This section does not prohibit judges from making public statements
21 in the course of their official duties or from explaining for public
22 information the procedures of the court. This section does not apply
23 to proceedings in which the judge is a litigant in a personal
24 capacity;

1 9. A judge shall not, with respect to cases, controversies or
2 issues that are likely to come before the courts, make pledges,
3 promises or commitments that are inconsistent with the impartial
4 performance of the adjudicative duties of the office;

5 10. a. Except as permitted by the individual judge, the use of
6 cameras, television or other recording or broadcasting
7 equipment is prohibited in a courtroom or in the
8 immediate vicinity of a courtroom. Before cameras,
9 television or other recordings or broadcasting
10 equipment are used, express permission of the judge
11 shall be obtained.

12 b. The judge shall prescribe the conditions and specific
13 rules under which cameras, television or other
14 recording or broadcast equipment may be used.

15 c. Media personnel shall not distract participants or
16 impair the dignity of the proceedings.

17 d. No witness, juror or party who expresses any objection
18 to the judge shall be photographed nor shall the
19 testimony of such a witness, juror or party be
20 broadcast or telecast.

21 e. There shall be no photographing or broadcasting of:

22 (1) any proceeding which under the laws of this state
23 is required to be held in private, or
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1 (2) any portion of any criminal proceedings until the
2 issues have been submitted to the jury for
3 determination unless all accused persons who are
4 then on trial shall have affirmatively, on the
5 record, given their consent to the photographing
6 or broadcasting.

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

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

23 11. A judge shall not commend or criticize jurors for their
24 verdict other than in a court order or opinion in a proceeding, but

1 may express appreciation to jurors for their service to the judicial
2 system and the community.

3 C. 1. A judge shall diligently discharge the judge's managerial
4 responsibilities, without bias or prejudice and maintain professional
5 competence in judicial administration, and shall cooperate with other
6 judges and court officials in the 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 shall
19 not approve compensation of appointees beyond the fair value of
20 services rendered.

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

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

4 a. the judge has a personal bias or prejudice concerning a
5 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 previously
9 practiced law served during such association as a
10 lawyer concerning the matter, or the judge has been a
11 material witness concerning the matter,

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, and

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, and

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

19 SECTION 5. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 25.5 of Title 20, unless there
21 is created a duplication in numbering, reads as follows:

22 A. A judge shall conduct all of the judge's extra-judicial
23 activities so that the activities 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. A judge may speak, write, lecture, teach, and participate in
6 other extra-judicial activities concerning the law, the legal system,
7 the administration of justice and nonlegal subjects, subject to the
8 requirements of the Code of Judicial Conduct.

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

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

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

1 civic organization not conducted for profit, subject to the following
2 limitations and the other requirements of the Code of Judicial
3 Conduct.

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

- 7 (1) will be engaged in proceedings that would
8 ordinarily come before the judge, or
9 (2) will be engaged frequently, in adversary
10 proceedings in the court of which the judge is a
11 member or in any court subject to the appellate
12 jurisdiction of the court of which the judge is a
13 member.

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

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

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

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

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

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

20 2. A judge may, subject to the requirements of the Code of
21 Judicial Conduct, hold and manage investments of the judge and members
22 of the judge's family, including real estate, and engage in other
23 remunerative 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 the Code of Judicial
4 Conduct, manage 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 should 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, tapes
20 and other resource materials supplied by publishers on
21 a complimentary basis for official use, or an
22 invitation to the judge and the judge's spouse or guest
23 to attend a bar-related function or an activity devoted
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1 to the improvement of the law, the legal system or the
2 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 the
7 use of both the spouse or other family member and the
8 judge, provided the gift, award or benefit could not
9 reasonably be perceived as intended to influence the
10 judge in the performance of judicial duties,

11 c. ordinary social hospitality,

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

16 e. a gift, bequest, favor or loan from a relative or close
17 personal friend whose appearance or interest in a case
18 would in any event require disqualification under
19 subsection E of Section 4 of this act,

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

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

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

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

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

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

22 F. A judge shall not act as an arbitrator or mediator. A
23 retired judge who is eligible for recall may act as an arbitrator or
24 mediator except while serving as a judge. A retired judge who acts

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

8 G. A judge shall not practice law. A judge may, without
9 compensation, give legal advice to and draft or review documents for
10 a member of the judge's family. A judge may appear pro se in a
11 matter in which the judge is a litigant.

12 SECTION 6. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 25.6 of Title 20, unless there
14 is created a duplication in numbering, reads as follows:

15 A. Anyone, whether or not a lawyer, who is an officer of a
16 judicial system and who performs judicial functions, including an
17 officer such as an administrative law judge, magistrate, court
18 commissioners, special master or referee, and all judges shall comply
19 with the Code of Judicial Conduct except as provided in subsections
20 B, C, D and E of this section.

21 B. A retired judge subject to recall who by law is not permitted
22 to practice law is not required to comply:

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

1 2. At any time with subsection E of Section 5 of this act.

2 C. A continuing part-time judge:

3 1. Is not required to comply:

4 a. except while serving as a judge, with paragraph 9 of
5 subsection B of Section 4 of this act, and

6 b. at any time with subsection B of Section 3 of this
7 act, paragraph 2 of subsection C of Section 5 of this
8 act, paragraph 3 of subsection D of Section 5 of this
9 act, paragraph 1 of subsection E of Section 5 of this
10 act, and subsections F and G of Section 5 of this act;
11 and

12 2. Shall not practice law in the court on which the judge serves
13 and shall not act as a lawyer in a proceeding in which the judge has
14 served as a judge or in any other proceeding related thereto.

15 D. 1. A periodic part-time judge is a municipal judge who
16 serves on a continuing or periodic basis but is permitted by law to
17 devote time to some other profession or occupation and whose
18 compensation for that reason is less than that of a full-time judge.

19 A periodic part-time judge is not required to comply:

20 a. except while serving as a judge, with paragraph 9 of
21 subsection B of Section 4 of this act, and

22 b. at any time, with subsection B of Section 3 of this
23 act, paragraph 2 of subsection C of Section 5 of this
24 act, subparagraph a of paragraph 3 of subsection C of

1 Section 5 of this act, subparagraph b of paragraph 1
2 of subsection D of Section 5 of this act, paragraphs
3 3, 4 and 5 of subsection D of Section 5 of this act,
4 and subsections E, F and G of Section 5 of this act.

5 2. A periodic part-time judge shall not practice law in the
6 court on which the judge serves and should not act as a lawyer in a
7 proceeding in which the judge has served as a judge or in any other
8 proceeding related thereto.

9 E. 1. A pro tempore part-time judge is a person who is
10 appointed to act temporarily as a judge. A pro tempore part-time
11 judge is not required to comply:

12 a. except while serving as a judge, with subsections A and
13 B of Section 3 of this act, paragraph 9 of subsection B
14 of Section 4 of this act, and paragraph 1 of subsection
15 C of Section 5 of this act, and

16 b. at any time with subsection B of Section 3 of this act,
17 paragraph 2 of subsection C of Section 5 of this act,
18 subparagraphs a and b of paragraph 3 of subsection C
19 of Section 5 of this act, subparagraph b of paragraph
20 1 of subsection D of Section 5 of this act, paragraphs
21 3, 4 and 5 of subsection D of Section 5 of this act,
22 and subsections E, F and G of Section 5 of this act.

23 2. A person who has been a pro tempore part-time judge shall not
24 act as a lawyer in a proceeding in which the judge has served as a

1 judge or in any other proceeding related thereto except as otherwise
2 permitted by Oklahoma Rules of Professional Conduct.

3 F. A person to whom the Code of Judicial Conduct becomes
4 applicable should comply immediately with all provisions of the Code
5 except paragraphs 2 and 3 of subsection D of Section 5 of this act
6 and subsection E of Section 5 of this act and shall comply with those
7 provisions as soon as reasonably possible and shall do so in any event
8 within the period of one (1) year.

9 SECTION 7. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 25.7 of Title 20, unless there
11 is created a duplication in numbering, reads as follows:

12 Any judge who violates a provision of the Code of Judicial
13 Conduct shall be subject to removal from office.

14 SECTION 8. This act shall become effective November 1, 2011.

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16 53-1-5148 SD 01/17/11
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