

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 HOUSE BILL 2857

By: Roberts (Sean)

4
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 extrajudicial activities;
19 prohibiting certain extrajudicial 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.

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

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

23 This act shall be known and may be cited as the "Code of
24 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 anyone to convey, the impression that others are
22 in a special position to influence the judge. A judge should not
23 testify voluntarily as a character witness.

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
13 before 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
21 duties, by words or conduct manifest bias or prejudice, including
22 but not limited to bias or prejudice based upon race, sex, religion,
23 national origin, disability, age, sexual orientation or
24

1 socioeconomic status, and shall not permit staff, court officials
2 and others subject to the judge's direction and control to do so;

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

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

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

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

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

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

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

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

1 This section does not apply to proceedings in which the judge is a
2 litigant in a personal capacity;

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

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

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

17 c. Media personnel shall not distract participants or
18 impair the dignity of the proceedings.

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

23 e. There shall be no photographing or broadcasting of:
24

1 (1) any proceeding which under the laws of this state
2 is required to be held in private, or

3 (2) any portion of any criminal proceedings until the
4 issues have been submitted to the jury for
5 determination unless all accused persons who are
6 then on trial shall have affirmatively, on the
7 record, given their consent to the photographing
8 or broadcasting.

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

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

1 11. A judge shall not commend or criticize jurors for their
2 verdict other than in a court order or opinion in a proceeding, but
3 may express appreciation to jurors for their service to the judicial
4 system and the community.

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

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

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

19 4. A judge shall not make unnecessary appointments. A judge
20 shall exercise the power of appointment impartially and on the basis
21 of merit. A judge shall avoid nepotism and favoritism. A judge
22 shall not approve compensation of appointees beyond the fair value
23 of services rendered.
24

1 D. A judge shall report to the appropriate disciplinary
2 authority any unprofessional conduct of a judge or lawyer of which
3 the judge may become aware.

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

7 a. the judge has a personal bias or prejudice concerning
8 a party or a party's lawyer, or personal knowledge of
9 disputed evidentiary facts concerning the proceeding,

10 b. the judge served as a lawyer in the matter in
11 controversy, or a lawyer with whom the judge
12 previously practiced law served during such
13 association as a lawyer concerning the matter, or the
14 judge has been a material witness concerning the
15 matter,

16 c. the judge knows that he or she, individually or as a
17 fiduciary, or the judge's spouse, parent or child
18 wherever residing, or any other member of the judge's
19 family residing in the judge's household, has an
20 economic interest in the subject matter in controversy
21 or has an interest more than de minimis that could be
22 substantially affected by the proceeding, and
23
24

1 d. the judge or the judge's spouse, or a person within
2 the third degree of affinity or consanguinity to
3 either of them, or the spouse of such a person:

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

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

7 (3) is known by the judge to have an interest more
8 than de minimis that could be substantially
9 affected by the proceeding, and

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

12 2. A judge shall keep informed about the judge's personal and
13 fiduciary economic interests, and make a reasonable effort to keep
14 informed about the personal economic interests of the judge's spouse
15 and minor children residing in the judge's household.

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

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

4 A. A judge shall conduct all of the judge's extrajudicial
5 activities so that the activities do not:

6 1. Cast reasonable doubt on the judge's capacity to act
7 impartially as a judge;

8 2. Demean the judicial office; or

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

10 B. A judge may speak, write, lecture, teach and participate in
11 other extrajudicial activities concerning the law, the legal system,
12 the administration of justice and nonlegal subjects, subject to the
13 requirements of the Code of Judicial Conduct.

14 C. 1. A judge may appear at a public hearing before or consult
15 with an executive or legislative body or official on matters
16 concerning the law, the legal system or the administration of
17 justice.

18 2. A judge shall not accept appointment to a governmental
19 committee or commission or other governmental position that is
20 concerned with issues of fact or policy on matters other than the
21 improvement of the law, the legal system or the administration of
22 justice unless with specific approval of the Supreme Court. A judge
23 may, however, represent a country, state or locality on ceremonial
24

1 occasions or in connection with historical, educational or cultural
2 activities.

3 3. A judge may serve as an officer, director, trustee or
4 nonlegal advisor of an organization or governmental agency devoted
5 to the improvement of the law, the legal system or the
6 administration of justice or of an educational, religious,
7 charitable, fraternal or civic organization not conducted for
8 profit, subject to the following limitations and the other
9 requirements of the Code of Judicial Conduct.

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

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

15 (2) will be engaged frequently in adversary
16 proceedings in the court of which the judge is a
17 member or in any court subject to the appellate
18 jurisdiction of the court of which the judge is a
19 member.

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

22 (1) may assist such an organization in planning
23 fundraising and may participate in the management
24 and investment of the organization's funds, but

1 shall not personally participate in the
2 solicitation of funds or other fund-raising
3 activities,

4 (2) may make recommendations to public and private
5 fund-granting organizations on projects and
6 programs concerning the law, the legal system or
7 the administration of justice,

8 (3) shall not personally participate in membership
9 solicitation if the solicitation might reasonably
10 be perceived as coercive or, except as permitted
11 in division (1) of this subparagraph, if the
12 membership solicitation is essentially a fund-
13 raising mechanism, and

14 (4) shall not use or permit the use of the prestige
15 of judicial office for fund-raising or membership
16 solicitation.

17 D. 1. A judge shall not engage in financial and business
18 dealings that:

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

21 b. involve the judge in frequent transactions or
22 continuing business relationships with those lawyers
23 or other persons likely to come before the court on
24 which the judge serves.

1 2. A judge may, subject to the requirements of the Code of
2 Judicial Conduct, hold and manage investments of the judge and
3 members of the judge's family, including real estate, and engage in
4 other remunerative activity.

5 3. A judge shall not serve as an officer, director, manager,
6 general partner, advisor or employee of any business entity except
7 that a judge may, subject to the requirements of the Code of
8 Judicial Conduct, manage and participate in:

9 a. a business closely held by the judge or members of the
10 judge's family, or

11 b. a business entity primarily engaged in investment of
12 the financial resources of the judge or members of the
13 judge's family.

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

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

23 a. a gift incidental to a public testimonial, books,
24 tapes and other resource materials supplied by

1 publishers on a complimentary basis for official use,
2 or an invitation to the judge and the judge's spouse
3 or guest to attend a bar-related function or an
4 activity devoted to the improvement of the law, the
5 legal system or the administration of justice,

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

14 c. ordinary social hospitality,

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

19 e. a gift, bequest, favor or loan from a relative or
20 close personal friend whose appearance or interest in
21 a case would in any event require disqualification
22 under subsection E of Section 4 of this act,
23
24

- 1 f. a loan from a lending institution in its regular
2 course of business on the same terms generally
3 available to persons who are not judges,
4 g. a scholarship or fellowship award on the same terms
5 and based on the same criteria applied to other
6 applicants, or
7 h. any other gift, bequest, favor or loan, but only if
8 the donor is not a party or other person who has come
9 or is likely to come or whose interests have come or
10 are likely to come before the judge and the judge
11 reports it as may be required by law.

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

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

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

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

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

14 SECTION 6. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 25.6 of Title 20, unless there
16 is 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, and all judges shall
21 comply with the Code of Judicial Conduct except as provided in
22 subsections B, C, D and E of this section.

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

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

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

4 C. A continuing part-time judge:

5 1. Is not required to comply:

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

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

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

18 D. 1. A periodic part-time judge is a municipal judge who
19 serves on a continuing or periodic basis but is permitted by law to
20 devote time to some other profession or occupation and whose
21 compensation for that reason is less than that of a full-time judge.
22 A periodic part-time judge is not required to comply:

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

1 b. at any time, with subsection B of Section 3 of this
2 act, paragraph 2 of subsection C of Section 5 of this
3 act, subparagraph a of paragraph 3 of subsection C of
4 Section 5 of this act, subparagraph b of paragraph 1
5 of subsection D of Section 5 of this act, paragraphs
6 3, 4 and 5 of subsection D of Section 5 of this act,
7 and subsections E, F and G of Section 5 of this act.

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

12 E. 1. A pro tempore part-time judge is a person who is
13 appointed to act temporarily as a judge. A pro tempore part-time
14 judge is not required to comply:

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

19 b. at any time with subsection B of Section 3 of this
20 act, paragraph 2 of subsection C of Section 5 of this
21 act, subparagraphs a and b of paragraph 3 of
22 subsection C of Section 5 of this act, subparagraph b
23 of paragraph 1 of subsection D of Section 5 of this
24 act, paragraphs 3, 4 and 5 of subsection D of Section

1 5 of this act, and subsections E, F and G of Section 5
2 of this act.

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

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

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

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

18 SECTION 8. This act shall become effective November 1, 2016.

19
20 55-2-7682 SD 01/15/16
21
22
23
24