M.R. 3140

**IN THE
SUPREME COURT
OF
THE STATE OF ILLINOIS**

Order entered December 16, 2020.

(Deleted material is struck through, and new material is underscored.)

Effective immediately, Illinois Supreme Court Rule 44 is adopted, and Rule 63 is amended, as follows.

New Rule 44

Rule 44. Photography and Video in the Courtroom.

(a) Except as provided in paragraph (b) of this Rule, the taking of photographs in the courtroom during sessions of the court or recesses between proceedings and the broadcasting or televising of court proceedings are permitted only to the extent authorized by order of the Supreme Court. For the purposes of this rule, the use of the terms "photographs," "broadcasting," and "televising" includes the audio or video transmissions or recordings made by telephones, personal data assistants, laptop computers, and other wired or wireless data transmission and recording devices. This prohibition does not extend to areas immediately adjacent to the courtroom, but courts may by order regulate or restrict the use of those areas where the circumstances so warrant.

(b) The foregoing prohibition is not intended to prohibit local circuit courts from using security cameras to monitor their facilities. Additionally, photography and/or video in the following situations are explicitly permitted

(1) Where permitted pursuant to a court order under the Supreme Court's Extended Media Coverage Policy;

(2) In any proceeding conducted remotely pursuant to Rules 45 and 241 and any other rules governing remote appearances;

(3) To live broadcast any proceeding that is conducted remotely, or at which remote attendance is permitted;

(4) If permitted by the judge, and on such conditions as ordered by the judge, for ceremonial events such as marriages, investitures, and graduations in problem solving courts;

(5) If permitted by the judge, for parties and counsel to make a copy of a court order or other paperwork received in court;

(6) If permitted by the judge, to make a broadcast available to interested persons, such as victims of crime or persons who have a statutory right to be present during court proceedings but who do not wish to attend in person.

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SUPREME COURT
CLERK

(c) Nothing in this Rule permits the photographic recording, digital capturing, or other recording of a remote proceeding or a court broadcast of a proceeding except (1) a recording by the court or at the court's direction or (2) pursuant to the terms of an order approving extended media coverage.

Adopted December 16, 2020, eff. immediately.

Committee Comments
(December 16, 2020)

The prohibition against photographing courtroom proceedings was formerly part of Supreme Court Rule 63. It has been relocated and expanded for a number of reasons. First, Rule 63 is a part of the Canons of Judicial Ethics, and the matters covered by this Rule are not predominantly related to judicial ethics. Second, the increased use of remote court appearances required that the Court provide additional guidance for the use of live streaming court appearances to preserve public access to the courts. Finally, the process of revising the Rule brought to light other instances in which courtroom photography or video are already permitted or are otherwise desirable.

Amended Rule 63

Rule 63

CANON 3

A Judge Should Perform the Duties of Judicial Office Impartially and Diligently

The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's 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. A judge should be unswayed by partisan interests, public clamor, or fear of criticism.

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

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

(4) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge may make reasonable efforts, consistent with the law and court rules, to facilitate the ability of self-represented litigants to be fairly heard.

(5) A judge shall not initiate, permit, or consider *ex parte* communications, or consider

other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

(a) Where circumstances require, *ex parte* communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided:

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the *ex parte* communication, and

(ii) the judge makes provision promptly to notify all other parties of the substance of the *ex parte* communication and allows an opportunity to respond.

(b) A judge may consult with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.

(c) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

(d) A judge may initiate or consider any *ex parte* communications when expressly authorized by law to do so.

(e) A judge may consult with members of a Problem Solving Court Team when serving as a Judge in a certified Problem Solving Court as defined in the Supreme Court "Problem Solving Court Standards."

(6) A judge shall devote full time to his or her judicial duties, and should dispose promptly of the business of the court.

(7) 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 the judge's direction and control. This paragraph 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.

(8) Proceedings in court should be conducted with fitting dignity, decorum, and without distraction. ~~The taking of photographs in the courtroom during sessions of the court or recesses between proceedings, and the broadcasting or televising of court proceedings is permitted only to the extent authorized by order of the Supreme Court. This rule is not intended to prohibit local circuit courts from using security cameras to monitor their facilities. For the purposes of this rule, the use of the terms "photographs," "broadcasting," and "televising" include the audio or video transmissions or recordings made by telephones, personal data assistants, laptop computers, and other wired or wireless data transmission and recording devices.~~

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

(10) Proceedings before a judge shall be conducted without any manifestation, by words or conduct, of prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, by parties, jurors, witnesses, counsel, or others. This

section does not preclude legitimate advocacy when these or similar factors are issues in the proceedings.

B. Administrative Responsibilities.

(1) A judge should diligently discharge the judge's 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 staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge.

(3) (a) A judge having knowledge of a violation of these canons on the part of a judge or a violation of Rule 8.4 of the Rules of Professional Conduct on the part of a lawyer shall take or initiate appropriate disciplinary measures.

(b) Acts of a judge in mentoring a new judge pursuant to M.R. 14618 (Administrative Order of February 6, 1998, as amended June 5, 2000) and in the discharge of disciplinary responsibilities required or permitted by Canon 3 or article VIII of the Rules of Professional Conduct are part of a judge's judicial duties and shall be absolutely privileged.

(c) Except as otherwise required by the Supreme Court Rules, information pertaining to the new judge's performance which is obtained by the mentor in the course of the formal mentoring relationship shall be held in confidence by the mentor.

(4) A judge should not make unnecessary appointments. A judge should exercise the power of appointment on the basis of merit, avoiding nepotism and favoritism. A judge should not approve compensation of appointees beyond the fair value of services rendered.

(5) A judge should refrain from casting a vote for the appointment or reappointment to the office of associate judge, of the judge's spouse or of any person known by the judge to be within the third degree of relationship to the judge or the judge's spouse (or the spouse of such a person).

C. Disqualification.

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

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;

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

(c) the judge was, within the preceding three years, associated in the private practice of law with any law firm or lawyer currently representing any party in the controversy (provided that referral of cases when no monetary interest was retained shall not be deemed an association within the meaning of this subparagraph) or, for a period of seven years following the last date on which the judge represented any party to the controversy while the judge was an attorney engaged in the private practice of law;

(d) the judge knows that he or she, individually or as a fiduciary, or the judge's spouse,

parent or child wherever residing, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding, or has any other more than *de minimis* interest that could be substantially affected by the proceeding; or

(e) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

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

(ii) is acting as a lawyer in the proceeding;

(iii) is known by the judge to have a more than *de minimis* interest that could be substantially affected by the proceeding; or,

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

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

D. Remittal of Disqualification.

A judge disqualified by the terms of Section 3C may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. This agreement shall be incorporated in the record of the proceeding.

Adopted December 2, 1986, effective January 1, 1987; amended June 12, 1987, effective August 1, 1987; amended November 25, 1987, effective November 25, 1987; amended August 6, 1993, effective immediately; amended October 15, 1993, effective immediately; amended March 26, 2001, effective immediately; amended April 1, 2003, effective immediately; amended December 5, 2003, effective immediately; amended April 16, 2007, effective immediately; amended June 18, 2013, eff. July 1, 2013; amended Dec. 8, 2015, eff. Jan. 1, 2016; amended Feb. 2, 2017, eff. immediately; amended Dec. 16, 2020, eff. immediately.

Committee Commentary

(April 1, 2003)

New subpart (B)(3)(b) is a modified version of the ABA Model Code of Judicial Conduct, Canon 3D(3) (1990).

New subpart (B)(3)(c) is the identical language currently contained in M.R. 14618 (Administrative Order of February 6, 1998, as amended June 5, 2000) subparagraph (b)(4) on confidentiality.

Committee Commentary

(Revised December 16, 2020)

The provisions of this canon relate to judicial performance of adjudicative responsibilities, judicial performance of administrative responsibilities and the circumstances and procedure for judicial disqualification.

Paragraph A(4) and subsections C and D were amended, effective August 6, 1993, to incorporate the provisions of the Model Code of Judicial Conduct adopted by the ABA in 1990.

Paragraphs A(1) through A(3). 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.

Paragraph A(5). This paragraph was amended, effective August 6, 1993, to adopt the provisions of Canon 3B(7) of the 1990 ABA Model Code of Judicial Conduct relating to *ex parte* communications. Paragraph A(5) differs in that it modifies ABA Canon 3B(7) by deleting the sentence which provides: "A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond." The committee believed that such a procedure would be too close to the former practice of using masters in chancery which was abolished by the 1962 amendment of the judicial article. Furthermore both bar association committees were concerned with the possibility of a judge seeking advice from a law professor. The committee does not believe that the deletion of this provision affects the obligation of a judge to disclose any extrajudicial communication concerning a case pending before the judge to the parties or their attorneys. The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding.

To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

Whenever presence of a party or notice to a party is required by paragraph A(5), it is the party's lawyer, or if the party is unrepresented the party, who is to be present or to whom notice is to be given.

Certain *ex parte* communication is approved by paragraph A(5) to facilitate scheduling and other administrative purposes and to accommodate emergencies. In general, however, a judge must discourage *ex parte* communication and allow it only if all the criteria stated in paragraph A(5) are clearly met. A judge must disclose to all parties all *ex parte* communications described in subparagraph A(5)(a) regarding a proceeding pending or impending before the judge.

A judge must not independently investigate facts in a case and must consider only the evidence presented.

A judge may request a party to submit proposed findings of fact and conclusions of law, so long as the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and conclusions.

A judge must make reasonable efforts, including the provision of appropriate supervision, to ensure that paragraph A(5) is not violated through law clerks or other personnel on the judge's staff.

Paragraph A(6). The ABA 1972 canon provides that "[a] judge should dispose promptly of the business of the court." The committee agreed with the ISBA/CBA joint committee recommendation that the language of the Illinois Constitution (art. VI, §13(b)) which requires that a judge should devote full time to his or her judicial duties should be incorporated into this paragraph. Prompt disposition of the court's business requires a judge to devote adequate time to judicial 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 the judge to that end.

Paragraph A(7). ABA Canon 3A(6) is adopted without substantive change. It was the view of the committee that, with regard to matters pending before the judge, a judicial officer should discuss only matters of public record, such as the filing of documents, and should not comment on a controversy not pending before the judge but which could come before the judge. "Court personnel" does not include the lawyers in a proceeding before a judge. The conduct of lawyers is governed by Rule 3.6 of the Illinois Rules of Professional Conduct.

~~Paragraph A(8). The Illinois Supreme Court allows extended media coverage of proceedings in the supreme and appellate courts subject to certain specified conditions. Except to the extent so authorized, however, the existing prohibition of the taking of photographs in the courtroom during sessions of the court or recesses between proceedings, and the broadcasting or televising of court proceedings, other than those of a ceremonial nature, is retained. While this prohibition does not extend to areas immediately adjacent to the courtroom, it does not preclude orders regulating or restricting the use of those areas by the media where the circumstances so warrant.~~

Paragraph A(9). A judge must refrain from speech, gestures or other conduct that could reasonably be perceived as sexual harassment and must require the same standard of conduct of others subject to the judge's direction and control.

A judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. A judge must be alert to avoid behavior that may be perceived as prejudicial.

Paragraph B(3). A modified version of the ABA canon was recommended even though Illinois Supreme Court Rule 61(c)(10) only referred to an obligation to refer an attorney's unprofessional conduct in matters before the judge to the proper authorities. Thus the rule here is broader, in that it is not limited to matters before the judge, and in that it extends the obligation to unprofessional conduct of other judges. In the case of misconduct by lawyers, the Rules of Professional Conduct, Rule 8.4, contains the circumstances of misconduct that are covered by paragraph B(3). This canon requires a judge to take or initiate appropriate disciplinary measures where he or she has knowledge of a violation of Rule 8.4. Where misconduct by an attorney is involved, a finding of contempt may, in appropriate circumstances, constitute the initiation of appropriate disciplinary measures. Furthermore, in both cases, the rule does not preclude a judge from taking or initiating more than a single appropriate disciplinary measure. Additionally, a judge may have a statutory obligation to report unprofessional conduct which is also criminal to an appropriate law enforcement official.

Paragraph B(4). It is the position of the committee that this ABA canon implicitly includes the provision of Illinois Supreme Court Rule 61(c)(11) that a judge "should not offend against the

spirit of this standard by interchanging appointments with other judges, or by any other device." Appointees of the judge include officials such as receivers and 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 paragraph.

Paragraphs C(1)(a) through C(l)(c). When originally adopted on December 2, 1986, the existing ABA canon was modified in two ways. The words "or his lawyer" were added to paragraph C(l)(a) to expressly mandate disqualification in the case of personal bias or prejudice toward an attorney rather than a party. This modification was later incorporated by the ABA into its 1990 revision. More significantly a new subparagraph, C(1)(c), was added in 1986 regulating disqualifications when one of the parties is represented by an attorney with whom the judge was formerly associated and when one of the parties was a client of the judge. These modifications were in substantial accord with the joint committee recommendations. Hence ABA subparagraphs (c) and (d) were renumbered and are now subparagraphs (d) and (e) respectively.

Paragraphs C(1)(d) and (1)(e). The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that "the judge's impartiality might reasonably be questioned" under Canon 3C(1), or that the relative is known by the judge to have an interest, or its equivalent, in the law firm that could be "substantially affected by the outcome of the proceeding" under Canon 3C(l)(e)(iii) may require the judge's disqualification.

Paragraph D. A remittal procedure provides the parties an opportunity to proceed without delay if they wish to waive the disqualification. To assure that consideration of the question of remittal is made independently of the judge, a judge must not solicit, seek or hear comment on possible remittal or waiver of the disqualification unless the lawyers jointly propose remittal after consultation as provided in the rule. A party may act through counsel if counsel represents on the record that the party has been consulted and consents. As a practical matter, a judge may wish to have all parties and their lawyers sign the remittal agreement.

APPENDIX

M.R. No. 2634.

Order entered April 16, 2007; amended February 2, 2017.

Any security cameras installed in the courtrooms in the various circuits shall be in accordance with the following standards; (1) security cameras are to be placed in areas of the courtroom such that there is no video recording of the jury or witnesses; (2) audio recordings of the proceedings are prohibited in connection with security cameras; (3) use of such cameras is limited to security purposes and any video tape produced therefrom shall remain the property of the court and may not be used for evidentiary purposes by the parties or included in the record on appeal; (4) security cameras shall be monitored by designated court personnel only; and (5) signs shall be posted in and outside of the courtroom notifying those present of the existence of the court surveillance.

All recordings from security cameras monitoring court facilities are the property of the local circuit courts and are deemed to be in the possession of the local circuit courts notwithstanding actual possession by another party.