

# Ethical Guidelines for Judges in Dealing with the Press

## Canon 3

“A judge should not make public comment on the *merits of a matter* pending or impending in any court. A judge should require similar restraint by court personnel subject to the judge’s direction and control.”

But this prohibition does not extend to public statements made in the course of the judge’s official duties, to *explanations of court procedures, or to scholarly presentations made for purposes of legal education.* Canon 3(A)(6).

## Commentary:

- The prohibition “continues until the appellate process is complete.” Commentary to Canon 3(A).
- If the public comment involves a case from the judge’s own court, the judge should take particular care so that the comment does not denigrate public confidence in the judiciary’s integrity and impartiality, which would violate Canon 2A.” Commentary to Canon 3(A).
- The Committee has previously found that a judge’s intentional public disclosure of confidential, internal court communications may violate several provisions of the Code of Conduct, including Canon 4D(5) (“A judge should not disclose or use nonpublic information acquired in a judicial capacity for any purpose unrelated to the judge’s official duties.”). Compendium of Selected Opinions (“Compendium”) § 3.10-4 (d) (Aug. 2022).
- A judge should avoid the potential for exploitation of the judicial position when writing or speaking about a case, even after final disposition. Advisory Op. No. 55. For example, when writing about a criminal matter, the judge should consider whether the comments might afford a basis for collateral attack on the judgment. see also Compendium § 3.9-1 (c) (concluding that following the trial of a criminal case that is on appeal, the trial judge should not meet privately with the Justice Department Office of Professional Responsibility to discuss allegations of prosecutorial misconduct where the same issues may be raised in the appeal).
- A judge must avoid writings or speeches that are likely to lead to disqualifications. Advisory Op. No. 55; see also Compendium § 3.9-1 (d) (noting that Canon 3A(6) does not bar comment in final, completed cases, so long as

judges refrain from revealing deliberative processes and do not place in question their impartiality in similar future cases).

- The Committee has repeatedly advised judges to refrain from commenting on the merits of any pending or impending action which includes commenting on the deliberative process. Compendium Â§ 3.9-1 (f) (concluding that judges may respond to a congressional inquiry about pending cases by providing information about matters of public record and court procedure, but should avoid comment on the merits or discussion of the judges' deliberative process); Compendium § 3.9-1 (e) (noting that a court policy limiting press releases to announcing the caption, case number, and availability of an order or opinion is consistent with and should prevent inadvertent violation of Canon 3A(6)).
- Judges may speak or write about the procedural history of a case if the speech or writing is for educational purposes. Compendium § 3.9-1 (j) (noting that a judge may write a law review article discussing pending or impending matters under Canon 3A(6)'s exemption for "scholarly presentations made for purposes of legal education," so long as the discussion is limited to stating the procedural history and does not opine on the merits).
- Judges should consider whether their comments about a judicial decision could lead to disqualification in future cases on a related topic, or disqualification in current cases that may be affected by that judicial decision. See Compendium Â§ 3.9-1 (h) (advising that a judge should not agree to speak at a conference about the effect of a judicial decision in a pending case and how other judges might assist in the implementation of the decision in their courts; rather, any such comments should be made on the record in open court while the case is pending).
- In every case, judges should avoid sensationalism and comments that may result in confusion or misunderstanding of the judicial function or detract from the dignity of the office. Advisory Op. No. 55.