

JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 08-897

CASE MANAGEMENT: MEANING OF “CASES AND/OR MATTERS WHICH HAVE BEEN UNDER SUBMISSION OR ADVISEMENT,” CANON 3A(5)

ISSUE

What “cases and/or matters . . . under submission or advisement“ must a judge report in complying with the reporting requirement of Canon 3A(5)?

Answer: A judge should include, in his or her report, every case in which any matter (1) has been submitted in complete and final presentation for decision, i.e., ripe for decision, and (2) has been under advisement for a period of six months or longer.

FACTS

The judge is not certain of the scope of a judge’s ethical duty under the provision of Canon 3A(5) that requires the judge to report the “cases and/or matters which have been under submission or advisement for a period of six months or longer.”

DISCUSSION

Canon 3A(5) provides, “A judge should dispose promptly of the business of the court, being ever mindful of matters taken under submission.” To that end, the canon requires that a judge file a biannual report listing his or her “cases and/or matters which have been under submission or advisement for a period of six months or longer, . . . the date that the matter or case was taken under submission or advisement and the reasons for the failure of the judge to decide such matters or cases.” *See also* Canon 3B(1) (“A judge should diligently discharge his administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.”).

Canon 3A(5) does not provide a definition for the terms in the phrase “the cases and/or matters which have been under submission or advisement.” Thus, the Commission construes this phrase in accordance with the objectives of the reporting requirement: to facilitate the prompt disposal of the “business of the court,” i.e., to promote efficient and expeditious disposition of all matters submitted to a judge and to provide a system of accountability. It is imperative that those responsible for administering the judicial system be apprised of the status of each judge’s caseload so that, if necessary, remedial measures may be implemented to promptly address the specific challenges of a judge’s particular caseload.

Thus, “cases and/or matters” include any matter, at any stage of a case, that is submitted to the judge for decision or ruling. Such decision or ruling includes the grant or denial of a routine pretrial, post-trial, or post-sentence motion or petition; a non-jury verdict or decision; the entry of an order or judgment; imposition of a sentence; and the filing of a written opinion or order.

“[U]nder submission or advisement” occurs when the matter is ripe for decision, *see* E. Wayne Thode, *Reporter’s Notes to Code of Judicial Conduct* 54 (1973), i.e., when the judge accepts no further evidence, argument, or law, and the matter is in complete and final form for disposition. More specifically, a matter shall be deemed “under submission or advisement” when whichever of the following occurs first: (1) the parties rest, and the judge orders the matter submitted without additional evidence, arguments, or law; (2) the last of the depositions, documents, other evidence, argument, or briefs, authorized by the judge or the law, is filed or presented; or (3) the allowed time for presenting such evidence, argument, or law has expired.

Thus, a judge should include, in his or her report, every case in which any matter (1) has been submitted in complete and final presentation for decision, i.e., ripe for decision, and (2) has been under advisement for a period of six months or longer.

As a final cautionary note, disposing of a matter before the reporting threshold of six months does not necessarily preclude ethical concerns. Whether a judge has complied with the duty to dispose promptly of all aspects of the business of the court, not merely “cases and/or matters . . . under submission or advisement,” depends on whether the delay was reasonable under the particular facts and circumstances.

REFERENCES

Alabama Canons of Judicial Ethics, Canons 3A(5) and 3B(1).

E. Wayne Thode, *Reporter's Notes to Code of Judicial Conduct* 54 (1973).

This opinion is advisory only and is based on the specific facts and questions submitted by the judge who requested the opinion pursuant to Rule 17 of the Rules of Procedure of the Judicial Inquiry Commission. For further information, you may contact the Judicial Inquiry Commission, P.O. Box 303400, Montgomery, Alabama 36130-3400; tel.: (334) 242-4089; fax: (334) 353-4043.