

**28th opinion, of 20 March 2024, of the Ibero-American Commission on Judicial Ethics on the ethical management of judicial hearings.  
Reporting judge: Commissioner Elena Martinez Rosso**

**I. Introduction**

1. Judicial hearings can reveal a judge's attitudes in a way that would not be apparent in a purely written process.
2. Predominantly written processes barely allow a view, not only of certain attitudinal aspects, but often of the judge themselves.
3. Evidentiary hearings, at which the judge could, of course, be present, were generally delegated in most countries to officials wherever the absence of the judge did not invalidate the proceedings, and there were very few opportunities for the judge to come into contact with the parties, lawyers, witnesses, experts and other judicial officers.
4. In a file processed as part of a written process, certain characteristics of a judge's 'judicial personality' can be perceived through their actions - such as their timeliness or delay in ruling, their competence in resolving procedural problems to avoid delaying any decisions that could already have been made, or their diligence - but little more than that.
5. It is during hearings, especially in the processes that have been developed since the approval of the Model Code for Civil Procedures in Ibero-America and pursuant to its bases, where judges' attitudes, both positive and negative, become unusually visible, not only to others but even to themselves, revealing both the degree of professionalism and the very spirit of the judge.
6. In the following paragraphs, we will attempt to analyse the aspects that we consider most important, taking note in general of the peculiarities of each country and the specific details of both civil and criminal proceedings.

## **II. Judges' powers (prudence and moderation)**

7. Proceedings based on the Model Code for Civil Procedures in Ibero-America endow the judge with the power to direct the proceedings and to apply the appropriate sanctions to those who unduly impede their implementation or behave in a way incompatible with the decorum and dignity of justice.
8. This dual power/duty both to direct the process and to be responsible for any omission in the fulfilment of duties is the determining factor in bringing the attitudinal aspect into the focus of action.
9. Certain powers - such as the right to deny a claim when it is manifestly inappropriate, or the right to reject inadmissible, unnecessary, inconducive or inappropriate evidence - demand extreme caution and restraint so as not to risk compromising the right of access to justice, in the first case, or the right to a defence, in the second.
10. Only in very clearly defined situations can these powers be exercised without committing an abuse of authority that compromises their functional responsibility.
11. The same can be said of the power to sanction in the event of improper conduct on the part of litigants. The hearing, with all its vicissitudes, may not be the appropriate environment in which to meditate on any sanctions to be imposed.
12. Powers of such magnitude must go hand in hand not only with the corresponding responsibility but also with the virtues that pertain to the judge as a person, such as prudence and restraint. Yet hearings, due to the degree of exposure they entail and the potential for decision-making without the necessary prior reflection, make these attitudes still more important.

## **III. Preparation for the hearing (diligence and foresight, certainty, humility)**

13. It is during the stage prior to the hearing when a judge's attitudes begin to emerge, and this will determine, at least partially, whether the outcome of this procedural step will be the best possible.
14. During the process of the hearing, the judge is not only the director but also the producer and lead actor in the production.
15. As a producer, they must be concerned, well in advance, that all material resources are organised, that the chamber can accommodate all participants, that everyone has a place to sit and that the seating arrangement is adequate to ensure, among other things, that everyone can observe the witness when they testify.
16. They must also verify, in the days leading up to the hearing, whether the notices have been complied with, when not only the parties and their lawyers but also witnesses or experts must appear.
17. While this does not mean that these tasks are the responsibility solely of the judge, they must be assigned to a suitable, trustworthy person, to ensure that they are fulfilled in a timely and appropriate manner.
18. Attending to all these considerations will enable the hearing to run smoothly and free of any avoidable inconveniences.
19. If this is the case, this will project the image of a diligent judge who cares whether the hearing progresses as well as possible. If otherwise, to a greater or lesser degree depending on the circumstances, the image projected may be one of negligence, carelessness or lack of foresight.
20. In addition to determining whether there are sufficient and appropriate material resources for a proper hearing, the judge must also ensure there are suitable human resources to run and record the proceedings in a smooth and reliable manner.
21. Finally, the judge's most important work - and one which cannot be delegated - is their thorough knowledge of the case and their careful analysis of both the complaint and the answer, the points at issue and those that can be admitted,

the need for evidence and the means of evidence that must be examined, the possibilities for settlement, the decisions that may have to be made in court to resolve procedural issues and the remedies available against them.

22. In the case of evidentiary hearings, they must be clear about the subject matter of each testimony and have the relevant expertise to be able to ask pertinent questions and avoid those that are unnecessary or inappropriate.
23. An exhaustive preparation for the hearing will prove invaluable to the judge by providing certainty and reinforcing the parties' confidence in the proceedings.
24. Insecurity can lead to the emergence of authoritarian or even arrogant attitudes.
25. In situations that cannot be resolved immediately, due to lack of knowledge of either the case or procedural knowledge (substantive issues are resolved through decisions that always have reasonable deadlines) a judge might either resort to arguments that invoke their authority or - in order not to reveal their doubts about how to proceed - make a decision with little or even no substantiation. In this case, the image projected to the parties and society as a whole would be that of an authoritarian judge, a judge who deviates from the basic rule that must always be upheld: authority must not be confused with authoritarianism.
26. Even judges who prepare their hearings thoroughly may find themselves facing unforeseen situations, since new issues can arise at any time (for example, the introduction of new facts) and there may be discussion about aspects that could not be anticipated.
27. When this occurs, taking the decision to suspend the hearing for a reasonable period of time until a well-founded solution can be found does not imply any kind of weakness.
28. A judge who takes time to justify their decisions when in doubt will always seem more respectable than one who considers that they should always appear omniscient and makes decisions with little thought.

29. It should not be forgotten that one of the attributes of a good judge is humility, without which we are not fully capable of judging others.

#### **IV. Courtesy (respect, cordiality, timeliness, appearance of impartiality)**

30. It seems obvious to note that judges should treat those attending the hearing with civility.
31. As stated in the Ibero-American Code of Judicial Ethics, courtesy is the judge's external expression of the respect due to those involved in the administration of justice.
32. The first way of demonstrating courtesy is through timeliness. Not making people wait, beyond a few minutes' grace, creates a favourable atmosphere for the hearing.
33. Hearings, especially long processes such as evidentiary hearings, can exhaust people's capacity for tolerance and patience over time. Judges must, therefore, be careful that this does not affect the way in which they address or interact with others.
34. A friendly and cordial attitude, and openness to dialogue, especially with lawyers, paves the way to a harmonious hearing.
35. It should be borne in mind that in addressing the judge, one of the parties or their lawyers may provoke irritation through over-familiarity based on their prior knowledge of the judge, whether as a neighbour, fellow student or other connection.
36. In these circumstances, judges should be particularly conscious of the fact that this might affect the appearance of impartiality. This will, however, depend predominantly on how the judge responds.
37. If the judge explains to the others why a person present at the hearing may have spoken to them in such a way, describing their connection as a neighbour or fellow student, and ensuring that everyone is addressed in a formal manner from this point forward, as corresponds to a court hearing, it will undoubtedly

mitigate the effect that this familiarity may have caused, as well as its impact on the appearance of impartiality.

38. It should always be borne in mind, with a view to avoidance, that certain attitudes may raise doubts, in the view of a reasonable observer, about a judge's impartiality.

## **V. Time and scheduling (respect, consideration of other people's time)**

39. The scheduling of hearings is, of course, strictly the concern of the judge. Neither the parties nor the lawyers can have any influence on the timing of the initial hearing.
40. For successive hearings, however, it is advisable, as a mark of consideration and respect for all participants in the proceedings, to try to schedule these by mutual agreement, whenever this is possible within the judge's agenda.
41. Simply attempting to do so shows respect for the parties.
42. With respect to the duration of hearings, we must also consider the other participants, as not everyone is able to concentrate over many hours at a time.
43. The duration of evidentiary hearings, when substantive issues are highly complex and involve technical aspects, is quite unpredictable.
44. All those involved in the process must be mentally capable of participating in the hearing, with the necessary faculties and clarity of mind to ensure that their part in the proceedings is performed to the best of their abilities.
45. It shows respect and tolerance to consider a request for a suspension of the hearing favourably when its duration exceeds a reasonable time, even if the judge may view it as unnecessary.

## **VI. The atmosphere of the hearing (civility, firmness of direction)**

46. Judicial hearings usually take place in an atmosphere of respect and civility.
47. Nevertheless, depending on the human conflict that has given rise to the judicial process, the chances of an unexpected development may increase significantly.

48. This is often the case with family matters and with some, albeit rare, civil or labour matters.
49. A judge's work in directing the proceedings then becomes particularly relevant.
50. These cases require a great degree of firmness from the judge in directing the hearing and this attitude can acquire a decisive weight in bringing all stages of the proceedings to a successful conclusion.
51. It is not uncommon to hear that 'the hearing got out of control', reflecting a very negative image of a judge's performance.
52. The judge has sufficient powers both to demand that lawyers modify their behaviour, and that of the parties, in order to adhere to basic rules of respect, courtesy, good faith and consideration, without which a court hearing cannot take place, and, if they do not comply, to impose disciplinary sanctions.
53. Although it may seem obvious, it should be noted that while firmness is essential in ensuring the proper conduct of hearings, it should not be confused with an abuse of authority.
54. The atmosphere of a hearing can sometimes be decisive in obtaining the best outcome from the testimonial evidence, the questioning of a party, or the statement of an expert.
55. Any hostility or tension generated when these participants are questioned by a lawyer must be immediately corrected by the judge, since their statements can contribute much more to the process in terms of what they might know if they are given in a calm and civil atmosphere.
56. To this end, once again, firmness in directing the proceedings is the key to ensuring that the hearing is held in due form and allowing the procedural immediacy to bear fruit in the form of evidence. Nevertheless, it is appropriate to stress that a judge's attitude must be governed by civility, courtesy, calm and moderation, all of which grant their authority more respect. Arrogance and

haughtiness are not signs of firmness or authority but of authoritarianism in the context of a hearing.

57. A judge's ability to communicate respectfully and civilly with all participants, their willingness to listen with attention and interest to the issues and narratives that unfold at the hearing and ensure that, in the event of any incident, the parties are given the chance to be heard before a decision is made, all create a favourable atmosphere for the optimal conduct of the hearing, a better knowledge of the case on the part of the judge and, ultimately, a better decision.

## **VII. Conclusions**

58. Judges' attitudes have become much more apparent since hearings were approved for cases in various parts of Ibero-America.
59. It is from this point forward that we begin to talk about 'the ethics of attitudes', becoming more aware that the ethics corresponding to a 'good judge' are not solely dependent on their adherence to the principles of independence, impartiality or integrity, nor the technical quality of their decisions, but also their conduct when exposed to certain attitudes imposed on them by their functions.
60. A judge must fulfil their duty to be courteous, prudent, moderate, confident, firm in their direction of hearings, respectful, tolerant, humble, diligent, and attentive to the appearance of impartiality.
61. It is not possible to be a good judge without being a good person, with irreproachable ethical conduct with respect to the community that they serve. This is the basic premise for the ancient and wise Spanish expression '*omes buenos, sabedores de derecho*' ('good men, with knowledge of the law'), referring to judges.
62. Attitudinal aspects contribute as much to judges' legitimacy as the due justification of decisions in the eyes of the society that they serve.
63. At a time when this legitimacy is frequently called into question, judges' ethical management of hearings can help raise the standard of judicial conduct





and generate public trust in the community which they serve, thereby strengthening the independence of the judiciary.

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