

**AMERICAN BAR ASSOCIATION
CPR POLICY IMPLEMENTATION COMMITTEE**

COMPARISON OF ABA MODEL JUDICIAL CODE AND STATE VARIATIONS

RULE 2.14 Disability and Impairment

A judge having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take appropriate action, which may include a confidential referral to a lawyer or judicial assistance program.

COMMENT

[1] “Appropriate action” means action intended and reasonably likely to help the judge or lawyer in question address the problem and prevent harm to the justice system. Depending upon the circumstances, appropriate action may include but is not limited to speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a referral to an assistance program.

[2] Taking or initiating corrective action by way of referral to an assistance program may satisfy a judge’s responsibility under this Rule. Assistance programs have many approaches for offering help to impaired judges and lawyers, such as intervention, counseling, or referral to appropriate health care professionals. Depending upon the gravity of the conduct that has come to the judge’s attention, however, the judge may be required to take other action, such as reporting the impaired judge or lawyer to the appropriate authority, agency, or body. See Rule 2.15.

Fourteen (14) states have identical language (AZ, CO, DE, IN, IA, MN, MT, MO, NE, NV, NH, OK, TN, WY)

Nine (9) states have similar language (AR, CT, KS, MD, MS, NY, OH, UT, WA)

One (1) state did not adopt (HI)

AL	
AL	
AZ Effective 9/1/09	Identical
AR Effective 7/1/09	Adds [3A]: <i>Judges may exercise discretion in referring a lawyer or another judge to the Arkansas Lawyer Assistance Program.</i> See Rule 2.15.
CA (as pro- posed)	CA Commentary to Canon 3D(2): Besides the change addressing the CA law, the Committee proposes amendment based on the Model Rule indicating that appropriate action “may include a confidential referral to a lawyer or judicial assistance program.”
CO Effective 7/1/10	Identical
CT Effective 1/1/11	Adds “notifying appropriate judicial authorities, or” before “a confidential referral;” Comment (1) Deletes “and prevent...system;”

	<p>(2) Adds “notifying judicial administrators or” before “referral;” Adds: <i>(3) A client security fund has been established to promote public confidence in the judicial system and the integrity of the legal profession by, among other things, a lawyers assistance program providing crisis intervention and referral assistance to attorneys admitted to the practice of law in this state who suffer from alcohol or other substance abuse problems or gambling problems, or who have behavioral health problems. (See Practice Book Section 2-68.)</i></p>
DE Effective 11/1/08	Identical
DC	
FL	
HI Effective 1/1/09	Deletes
ID	
IL	
IN Effective 1/1/09	Identical
IA Effective 5/3/10	Identical
KS Effective 3/1/09	[2]: deletes “agency, or body”
KY	
MD Effective 7/1/10	Title: adds “IN OTHERS” after “IMPAIRMENT” [1] Deletes “but is not limited to” after “may include”
MA	

MI	
MN Effective 7/1/09	Identical
MO Effective 1/1/2012	[2] Adds “Rule 2-2.14” to “this Rule”
MS (as pro- posed)	Changes “a lawyer or judicial assistance program” to “the Lawyers’ and Judges’ Assistance Program of the Mississippi Bar” [1] Deletes “reasonably”
MT Effective 1/1/09	Rule 2.15 same as Model Code 2.14
NE Effective 1/1/2011	Identical
NV Effective 1/19/10	Identical
NH Effective 4/1/2011	Identical
NJ	
NM (as pro- posed)	<p>MC Rule corresponds to NM A, which changes the beginning of the sentence to: “A judge who has a reasonable belief” and Replaces “a lawyer or judicial assistance program” at the end with: “the Lawyer’s Assistance Committee of the State Bar, Alcoholics Anonymous, Narcotics Anonymous, or other support group recognized by the New Mexico Disciplinary Board or the New Mexico Judicial Standards Commission.”</p> <p>Adds:</p> <p><i>B. notwithstanding the provisions of Paragraph A of this rule, any incumbent judge who illegally sells, purchases, possesses, or uses drugs or any substance considered unlawful under the provisions of the Controlled Substances Act, shall be subject to discipline under the Code of Judicial Conduct.</i></p> <p><i>C. Any judge who has specific, objective, and articulable facts, or reasonable inferences that can be drawn from those facts, that a judge has engaged in the misconduct described in Paragraph B of this rule shall report those facts to the New Mexico Judicial Standards Commission. Reports of such misconduct shall include the following information:</i></p> <p><i>(1) the name of the person filing the report;</i></p> <p><i>(2) the address and telephone number where he person may be contacted;</i></p> <p><i>(3) a detailed description of the alleged misconduct; and</i></p> <p><i>(4) any supporting evidence or material that may be available to the reporting person.</i></p> <p><i>The Judicial Standards Commission shall review and evaluate reports of such misconduct to determine if the report warrants further review or investigation.</i></p> <p>[2] Changes reference at the end to corresponding Rule 21-215 NMRA.</p>

As of July 27, 2011

NY (as proposed)	Replaces “having a reasonable belief” with “having knowledge;” [2] Adds to end: “(requiring reporting to an “appropriate authority” if the judge has knowledge that conduct constitutes a violation of the Rules of Judicial Conduct or the Rules of Professional Conduct).”
NC	
ND (as proposed)	Identical
OH Effective 3/1/09	Adds (B): <i>Any information obtained by a member or agent of a committee or subcommittee of a bar or judicial association or by a member, employee, or agent of a nonprofit corporation established by a bar association, designed to assist lawyers and judges with substance abuse or mental health problems, shall be privileged for all purposes under this rule, provided the information was obtained while the member, employee, or agent was performing duties as a member, employee, or agent of the committee, subcommittee, or nonprofit corporation.</i>
OK Effective 4/15/2011	Identical
OR	
PA	
SD	
TN (as proposed)	Identical
TX	
UT Effective 4/1/10	Title: deletes “Disability and” in title
VT	
VA	
WA Effective 1/1/11	[1] First sentence adds “Depending upon the gravity of Appropriate action “ before “means action...”
WV	
WI	
WY Effective 7/1/09	Identical

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