

**AMERICAN BAR ASSOCIATION
CPR POLICY IMPLEMENTATION COMMITTEE**

COMPARISON OF ABA MODEL JUDICIAL CODE AND STATE VARIATIONS

RULE 2.15 <i>Responding to Judicial and Lawyer Misconduct</i>	
	<p>(A) A judge having knowledge* that another judge has committed a violation of this Code that raises a substantial question regarding the judge’s honesty, trustworthiness, or fitness as a judge in other respects shall inform the appropriate authority.*</p> <p>(B) A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question regarding the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate authority.</p> <p>(C) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code shall take appropriate action.</p> <p>(D) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct shall take appropriate action.</p> <p>COMMENT</p> <p>[1] Taking action to address known misconduct is a judge’s obligation. Paragraphs (A) and (B) impose an obligation on the judge to report to the appropriate disciplinary authority the known misconduct of another judge or a lawyer that raises a substantial question regarding the honesty, trustworthiness, or fitness of that judge or lawyer. Ignoring or denying known misconduct among one’s judicial colleagues or members of the legal profession undermines a judge’s responsibility to participate in efforts to ensure public respect for the justice system. This Rule limits the reporting obligation to those offenses that an independent judiciary must vigorously endeavor to prevent.</p> <p>[2] A judge who does not have actual knowledge that another judge or a lawyer may have committed misconduct, but receives information indicating a substantial likelihood of such misconduct, is required to take appropriate action under paragraphs (C) and (D). Appropriate action may include, but is not limited to, communicating directly with the judge who may have violated this Code, communicating with a supervising judge, or reporting the suspected violation to the appropriate authority or other agency or body. Similarly, actions to be taken in response to information indicating that a lawyer has committed a violation of the Rules of Professional Conduct may include but are not limited to communicating directly with the lawyer who may have committed the violation, or reporting the suspected violation to the appropriate authority or other agency or body.</p> <p>Eight (8) states have identical language (CO, MS, MT, NV, NH, NY, OK, WY) Twelve (12) states have similar language (AZ, AR, HI, IN, IA, KS, MD, MN, MO, NE, TN, UT) Three (3) states have different language (DE, OH, WA)</p>
AL	
AK	
AZ effective 9/1/09	Adds (E): <i>Acts of a judge, in the discharge of disciplinary responsibilities, required or permitted by Rule 2.15 are part of a judge’s judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.</i>
AR Effective 7/1/09	Adds [3A]: <i>This rule does not apply to a member of the Lawyer Assistance Committee of the Arkansas Lawyer Assistance Program (ArLAP) or a volunteer acting pursuant to the Rules regarding information received in one’s capacity as a Committee member or volunteer, acting in good faith, unless it appears to the member or volunteer that the lawyer or judge in question, after entry into the ArLAP, is failing to desist from said violation, or is failing to cooperate with a program of assistance to which said lawyer or judge has agreed, or is engaged in the sale of a controlled substance or theft of property constituting a felony under Arkansas law, or the equivalent thereof if the offense is not within the State’s jurisdiction.</i>

	<p>Adds [4A]: <i>Except as provided by this Code or the Rules of ArLAP, no information received, gathered, or maintained by the Committee, its members or volunteers, or by an employee of the ArLAP in connection with the work of the Committee may be disclosed to any person nor be subject to discovery or subpoena in any administrative or judicial proceeding, except upon the express written release of the subject lawyer or judge. However, the Committee may refer any lawyer or judge to a professional assistance entity, and may, in good faith, communicate information to the entity in connection with the referral. If information obtained by a member of the Committee, a volunteer, or an employee of the ArLAP gives rise to reasonable suspicion of a direct threat to the health or safety of the subject lawyer, judge or other person, then the obligation of confidentiality shall not apply, and the Committee member, volunteer, or ArLAP employee may make such communications as are necessary for the purpose of avoiding or preventing said threat.</i></p>
<p>CA (as proposed)</p>	<p>(A) and (B) – CA Canons 3D(1) and (2): The Committee proposes changes to make these canons parallel (D) – CA Canon 3D(2): Based on the CA Commission on the Fair Administration of Justice report, the Committee proposes adding a phrase “or concludes that a lawyer has committed misconduct” to ensure that an appellate court takes action against a lawyer under the circumstances.</p>
<p>CO Effective 7/1/10</p>	<p>Identical</p>
<p>CT Effective 1/1/11</p>	<p>Adds: <i>(E) A judge is not required to disclose information gained by the judge while serving as a member of a committee that renders assistance to ill or impaired judges or lawyers or while serving as a member of a bar association professional ethics committee or the Judicial Branch Committee on Judicial Ethics.</i></p> <p>Comment (1) Deletes first sentence and adds instead, “Taking appropriate action under the circumstances to address known misconduct is a judge’s obligation. Except as otherwise provided in paragraph (E);” (3) is second half of Model Code Comment [2], starting with “Similarly.”</p>
<p>DE Effective 11/1/08</p>	<p>Replaces Rule with: <i>A judge should initiate appropriate action when the judge becomes aware of reliable evidence indicating the likelihood of unprofessional conduct by a judge or lawyer.</i> Comment: same as 1990 Model Code Canon 3D Commentary</p>
<p>DC</p>	
<p>FL</p>	
<p>HI Effective 1/1/09</p>	<p>(C), (D) and [2]: adds “credible” before “information”</p>
<p>ID</p>	
<p>IL</p>	
<p>IN Effective 1/1/09</p>	<p>(C) and (D): adds “credible” before “information” [2]: adds “credible” before “information” in first sentence Adds [3]: <i>The provisions of this Rule do not require the reporting of information received while acting on behalf of an impaired judges or lawyers assistance program approved by the Indiana Supreme Court.</i></p>

<p>IA Effective 5/3/10</p>	<p>Adds: <i>(E) This rule does not require disclosure of information gained by a judge while participating in an approved judges or lawyers assistance program.</i></p> <p>Adds: <i>[3] Information about a judge’s misconduct or fitness may be received by a judge in the course of that judge’s participation in an approved judges assistance program. In that circumstance, providing for an exception to reporting requirements of paragraphs (A) and (B) of this rule encourages judges to seek treatment through such a program. Conversely, without such an exception, judges may hesitate to seek assistance from these programs, which may then result in additional harm to their professional careers and additional injury to the welfare of the public. These rules do not otherwise address the confidentiality of information received by a judge participating in an approved judges assistance program; such an obligation, however, may be imposed by the rules of the program or other law.</i></p>
<p>KS Effective 3/1/09</p>	<p>[2]: deletes “or other agency or body”</p>
<p>KY</p>	
<p>MD Effective 7/1/10</p>	<p>Similar to MR Rule 2.15 but changes language to: <i>(a) A judge shall take or initiate appropriate corrective measures with respect to the unprofessional conduct of another judge or a lawyer.</i> <i>(b) If other corrective measures are not appropriate or, if attempted, were not successful, a judge shall inform the Commission on Judicial Disabilities of facts known to that judge that raise a substantial question as to another judge's fitness for office.</i> <i>(c) If other corrective measures are not appropriate or, if attempted, were not successful, a judge shall inform the Attorney Grievance Commission of facts known to the judge that raise a substantial question as to a lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects.</i> <i>(d) Acts of a judge required or permitted by paragraphs (a), (b), and (c) of this Rule shall be absolutely privileged.</i></p> <p>Deletes MR [1] and replaces with the following: <i>[1] Permitting a judge to take “corrective” measures gives the judge a wide range of options to deal with unprofessional conduct. Appropriate corrective measures may include direct communication with the judge or lawyer who is believed to have committed the violation or other direct action if available.</i> <i>There may be instances of professional misconduct that would warrant a private admonition or referral to a bar association counseling service.</i></p> <p>Deletes MR [2].</p>
<p>MA</p>	

MI	
MN Effective 7/1/09	(C), (D) and [2]: adds “credible” before “information”
MO Effective 1/1/2012	(A) and (B) Adds “disciplinary” to the “appropriate authority” [1] Adds “Rule 2-2.15” to “this Rule” [2] Adds “disciplinary” to the “appropriate authority” throughout the comment; Deletes “or other agency or body” at the end
MS (as pro- posed)	Identical
MT Effective 1/1/09	Rule 2.16 same as Model Code 2.15
NE Effective 1/1/2011	(B) and (D): Adds “Nebraska” before “Rules of Professional Conduct;” Adds (E): <i>Members of the Nebraska Judicial Ethics Committee are excepted from Rule 2.15 (A) and (C) concerning information obtained from judges seeking an advisory opinion.</i> [2] Adds “Nebraska” before “Rules of Professional Conduct.”
NV Effective 1/19/10	Identical
NH Effective 4/1/2011	Identical
NJ	
NM (as pro- posed)	Changes “judge having knowledge” to a “judge who knows” throughout the Rule (A) Replaces “the appropriate authority” with “the Judicial Standards Commission” (B) Replaces “the appropriate authority” with “the Disciplinary Board”
NY (as pro- posed)	Identical
NC	
ND (as pro- posed)	(C) and (D) Adds “credible” before “information” [2] Adds “credible” before “information”
OH Effective 3/1/09	(A) and (B): deletes “substantial.” (B) adds: “Ohio” before “Rules of Professional Conduct.” Deletes (C) and (D). [1]: Deletes “substantial” [2]: <i>A judge who does not have actual knowledge, but who receives information indicating a substantial likelihood that another judge or a lawyer has committed misconduct, should take appropriate action. Appropriate action may include, but is not limited to, communicating directly with the judge or lawyer involved, communicating with a supervisor, partner, or colleague, or reporting the suspected violation to the appropriate disciplinary authority.</i>
OK Effective	Replaces “the Rules of Professional Conduct” with “the Oklahoma Rules of Professional Conduct”

4/15/2011	
OR	
SC	
SD	
TN (as pro- posed)	(C) Changes "...shall take appropriate action" to "...should take appropriate action" (D) Changes "...shall take appropriate action" to "...should take appropriate action" [2] Changes "is required to take appropriate action" to "should take appropriate action"
TX	
UT Effective 4/1/10	(C) and (D) Changes "shall" to "should" [1]: changes first sentence to " <i>A judge has an obligation to address a known violation by a judge or a lawyer of the Code or the Utah Rules of Professional Conduct.</i> " [2]: replaces "committed misconduct" with "violated the Code or the Utah Rules of Professional Conduct" and deletes "communicating with a supervising judge"
VT	
VA	
WA Effective 1/1/11	(A) State Code inserts "credible" before "information;" replaces "shall" with "should" before "inform the appropriate authority." (B) State Code inserts "credible" before "information;" replaces "shall" with "should" before "take appropriate action." [1] Does not adopt language, adds instead: <i>[1] Judges are not required to report the misconduct of other judges or lawyers. Self regulation of the legal and judicial professions, however, creates an aspiration that judicial officers report misconduct to the appropriate disciplinary authority when they know of a serious violation of the Code of Judicial Conduct or the Rules of Professional Responsibility. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary violation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.</i> [2] Does not adopt; adds instead: <i>[2] While judges are not obliged to report every violation of the Code of Judicial Conduct or the Rules of Professional Conduct, the failure to report may undermine the public confidence in legal profession and the judiciary. A measure of judgment is, therefore, required in deciding whether to report a violation. The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the judge is aware. A report should be made when a judge or lawyer's conduct raises a serious question as to the honesty, trustworthiness or fitness as a judge or lawyer.</i> Adds: <i>[3] Appropriate action under sections (C) and (D) may include communicating directly with the judge or lawyer who may have violated the Code of Judicial Conduct of the Rules of Professional Conduct, communicating with a supervising judge or reporting the suspected violation to the appropriate authority or other authority or other agency or body.</i> <i>[4] Information about a judge's or lawyer's conduct may be received by a judge in the course of that judge's participation in an approved lawyers or judges assistance program. In that circumstance there is no requirement or aspiration of reporting (APR 19(b) and DJR 14(e)).</i>
WV	

As of July 27, 2011

WI	
WY Effective 7/1/09	Identical

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