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**CANON 2**

**A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE  
IMPARTIALLY AND DILIGENTLY<sup>1</sup>**

**IN GENERAL**

**RULE 2.01: GIVING PRECEDENCE TO THE DUTIES OF JUDICIAL OFFICE**

**A judge shall not allow other activities to take precedence over the duties of judicial office. The duties of judicial office include all the responsibilities of the judge's office prescribed by law\*.<sup>2</sup>**

**COMMENT**

[1] Although judges engage in a variety of activities, the most fundamental feature of their judicial role is the interpretation and application of the law. For that reason, those official duties that further the judicial function directly, through adjudication, or indirectly, through the performance of administrative or reporting responsibilities, are of paramount significance.

**ADJUDICATION**

**Rule 2.02: THE RESPONSIBILITY TO DECIDE**

**A judge shall hear and decide matters assigned to the judge except those in which disqualification is required by Rule 2.12<sup>3</sup> or other applicable law.**

**COMMENT**

[1] Judges must be available to decide the matters that come before the court. To protect the rights of litigants and preserve public confidence in the integrity, impartiality, and independence of the judiciary, however, there will be times when disqualification is necessary. On the other hand, unwarranted disqualification may bring public disfavor to the bench and to the judge personally. The dignity of the bench, the judge's respect for fulfillment of judicial duties and a proper concern for the burdens that may be imposed upon the judge's colleagues require that a judge not use disqualification simply to avoid cases that present difficult, controversial, or distasteful issues.

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<sup>1</sup> Canon 3

<sup>2</sup> Canon 3A

<sup>3</sup> Canon 3B(1)

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[2] A judge’s obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify has been filed.

[3] To ensure that judges remain available to fulfill their judicial duties, a judge must conduct his or her extrajudicial activities to minimize the risk of conflicts that would result in frequent disqualification. See Canon 4.

**RULE 2.03: COMPETENCE**

**A judge shall perform the duties of judicial office competently.<sup>4</sup>**

**COMMENT**

[1] Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness and preparation reasonably necessary to perform the judge’s responsibilities of office.

[2] When applying and interpreting the law a judge may on occasion make a mistake of fact or law. An error of this kind does not violate this rule. Willful disregard of the law, however, may in some circumstances constitute a violation of this Rule.

[3] Judicial competence may be diminished and compromised when a judge is impaired by drugs, alcohol or other mental or physical impairments. See Rule 2.19.

**RULE 2.04: IMPARTIALITY AND FAIRNESS**

**A judge shall uphold and apply the law, and decide all cases with impartiality and fairness.**

**COMMENT**

[1] To ensure impartiality and fairness to all parties, a judge must be objective and open-minded, and must not demonstrate favoritism toward anyone.

[2] Although a judge’s background and personal philosophy may influence the way in which the judge analyzes and interprets a legal issue, a judge must interpret and apply the law without regard to whether the judge personally approves or disapproves of the law in question.

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<sup>4</sup> Canon 3B(2)(partial)

1           **RULE 2:05     BIAS AND DISCRIMINATION**

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3           **A.     A judge shall perform judicial duties without bias or prejudice.**  
4           **A judge shall not, in the performance of judicial duties, by words or**  
5           **conduct manifest bias or prejudice, including but not limited to bias or**  
6           **prejudice based upon race, gender, religion, national origin, ethnicity,**  
7           **disability, age, sexual orientation or socioeconomic status, and shall not**  
8           **permit staff, court officials and others subject to the judge’s direction**  
9           **and control to do so.<sup>5</sup>**

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11           **B.     A judge shall require lawyers in proceedings before the judge to**  
12           **refrain from manifesting bias or prejudice based upon race, gender,**  
13           **religion, national origin, ethnicity, disability, age, sexual orientation or**  
14           **socioeconomic status, against parties, witnesses, counsel or others. This**  
15           **Rule does not preclude legitimate advocacy when these or other similar**  
16           **factors are issues in the proceeding.<sup>6</sup>**

17  
18           **COMMENT**

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20           [1]     A judge who manifests bias in a proceeding impairs the fairness of  
21           the proceeding and brings the judiciary into disrepute. Even facial  
22           expression and body language can convey to parties or lawyers in the  
23           proceeding, jurors, the media and others an appearance of bias. A judge  
24           must avoid conduct that may be perceived as prejudiced or biased.<sup>7</sup>

25  
26           [2]     Examples of manifestations of bias include but are not limited to  
27           epithets, slurs, demeaning nicknames, negative stereotyping, attempted  
28           humor based on stereotypes, threatening, intimidating or hostile acts,  
29           suggesting a connection between race or nationality and crime, and  
30           irrelevant references to personal characteristics. This rule does not preclude  
31           legitimate references to those factors when relevant to an issue in a  
32           proceeding.

33  
34           [3]     A judge must refrain from speech, gestures or other conduct that  
35           could reasonably be perceived as harassment and must require the same  
36           standard of conduct of others subject to the judge’s direction and control.<sup>8</sup>

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38           **RULE 2.06:     DILIGENCE**

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40           **A judge shall act diligently in the performance of all his or her judicial**  
41           **duties, disposing of all judicial matters promptly, efficiently and fairly.<sup>9</sup>**

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<sup>5</sup> Canon 3B(5)

<sup>6</sup> Canon 3B(6)

<sup>7</sup> Canon 3B(5)

<sup>8</sup> Canon 3B(5)

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**COMMENT**

[1] Prompt disposition of the court’s business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants and their lawyers cooperate with the judge to that end.<sup>10</sup>

[2] In disposing of matters promptly, efficiently and fairly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. Containing costs while preserving fundamental rights of parties also protects the interests of witnesses and the general public. A judge should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays and unnecessary costs.

**RULE 2.07: EXTERNAL INFLUENCES ON JUDICIAL CONDUCT**

**A. A judge shall not be swayed by partisan interests, public clamor or fear of criticism.<sup>11</sup>**

**B. A judge shall not allow family, social, political or other relationships to influence the judge’s judicial conduct or judgment.<sup>12</sup>**

**C. A judge shall not convey or permit other persons to convey the impression that such persons are in a position to influence the judge.<sup>13</sup>**

**COMMENT**

[1] An independent judiciary requires that judges decide cases according to law and facts without regard to whether the law or the litigants are popular or unpopular with the public, the media, government officials, or the judge’s own friends or family.

[2] Confidence in the judiciary is eroded if judicial decision-making is perceived to be subject to inappropriate outside influences. It is essential to judicial independence, impartiality and maintaining the public’s confidence in the justice system that judges not create a perception that their decisions could be colored by such influences.

**RULE 2.08: DEMEANOR AND DECORUM**

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<sup>9</sup> Canon 3B(8)  
<sup>10</sup> Canon 3B(8) Commentary (paragraphs reversed in order)  
<sup>11</sup> Canon 3B(2) second sentence  
<sup>12</sup> Canon 2B first sentence  
<sup>13</sup> Canon 2B (partial)

1           **A. A judge shall require order and decorum in proceedings before**  
2 **the judge.**<sup>14</sup>

3  
4           **B. A judge shall be patient, dignified and courteous to litigants,**  
5 **jurors, witnesses, lawyers and others with whom the judge deals in an**  
6 **official capacity, and shall require similar conduct of lawyers, and of**  
7 **staff, court officials and others subject to the judge’s direction and**  
8 **control.**<sup>15</sup>

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10           **C. A judge shall not commend or criticize jurors for their verdict**  
11 **other than in a court order or opinion in a proceeding, but may express**  
12 **appreciation to jurors for their service to the judicial system and the**  
13 **community.**<sup>16</sup>

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15           **COMMENT**

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17           [1] The duty to hear all proceedings fairly and with patience is not  
18 inconsistent with the duty to dispose promptly of the business of the court.  
19 Judges can be efficient and businesslike while being patient and deliberate.<sup>17</sup>

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21           [2] Commending or criticizing jurors for their verdict may imply a  
22 judicial expectation in future cases and may impair a juror’s ability to be fair  
23 and impartial in a subsequent case.<sup>18</sup>

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25           [3] If a judge exercises caution and is not otherwise prohibited by law, a  
26 judge may meet with jurors after trial to answer questions about and discuss  
27 ways to improve the jury process, but should not engage in any substantive  
28 discussion of the case. At such a meeting, a judge should not, for example,  
29 suggest or imply to a jury that he or she agrees or disagrees with the verdict,  
30 reveal evidence that had been suppressed or the subject of a motion in  
31 limine, discuss the rulings on objections made at trial, or review any  
32 proceedings that took place outside the presence of the jury.

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34           **RULE 2.09: ENSURING THE RIGHT TO BE HEARD**

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36           **A judge shall accord to every person who has a legal interest in a**  
37 **proceeding, or that person’s lawyer, the right to be heard according to**  
38 **law\*.**<sup>19</sup>

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<sup>14</sup> Canon 3B(3)

<sup>15</sup> Canon 3B(4)

<sup>16</sup> Canon 3B(11)

<sup>17</sup> Canon 3B(4)

<sup>18</sup> Canon 3B(11)

<sup>19</sup> Canon 3B(7) (partial)

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**COMMENT**

[1] The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are respected.

[2] The judge has an important role to play in overseeing the settlement of disputes, but should be careful that efforts to further settlement do not undermine a party’s right to be heard according to law. A judge may therefore encourage parties to a proceeding and their lawyers to settle matters in dispute but should not act in a manner that coerces a party into settlement.

**RULE 2.10 : EX PARTE COMMUNICATIONS**

**A. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except as provided in sections (1) through (5), below:<sup>20</sup>**

**(1) Where circumstances require, ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters are authorized, provided:<sup>21</sup>**

**(a) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication, and<sup>22</sup>**

**(b) the judge makes provision by delegation or otherwise promptly to notify all other parties of the substance of the ex parte communication and allows them an opportunity to respond.<sup>23</sup>**

**(2) A judge may solicit information and opinions from a disinterested expert on the law in a proceeding before the judge if the judge first gives notice to the parties of the person to be consulted and the substance of the information or opinions sought, and affords the parties reasonable opportunity to respond.<sup>24</sup>**

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<sup>20</sup> Canon 3B(7) (partial)  
<sup>21</sup> Canon 3B(7)(a)  
<sup>22</sup> Canon 3B(7)(a)(i)  
<sup>23</sup> Canon 3B(7)(a)(ii)  
<sup>24</sup> Canon 3B(7)(b)

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**(3) A judge may consult with court personnel whose function is to aid the judge in carrying out the judge’s adjudicative responsibilities, or with other judges,<sup>25</sup> provided that the judge does not abrogate the responsibility to personally decide the case and takes all reasonable steps to avoid receiving factual information that is not part of the record.**

**(4) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to settle matters pending before the judge.<sup>26</sup>**

**(5) A judge may initiate or consider any ex parte communications when expressly authorized by law\* to do so.<sup>27</sup>**

**B. A judge shall not independently investigate facts in a case and shall consider only the evidence presented.<sup>28</sup>**

**C. A judge shall make reasonable efforts, including the provision of appropriate supervision, to ensure that Rule 2.10 is not violated through law clerks or other personnel on the judge’s staff.<sup>29</sup>**

**COMMENT<sup>30</sup>**

[1] To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

[2] Whenever the presence of a party or notice to a party is required by Rule 2.10, it is the party’s lawyer, or if the party is unrepresented, the party, who is to be present or to whom notice is to be given.

[3] The proscription against communications concerning a proceeding includes communications with lawyers, law professors, and other persons who are not participants in the proceeding, except to the limited extent permitted by this rule.

[4] Certain ex parte communication is approved by Rule 2.10 to facilitate scheduling and other administrative purposes and to accommodate emergencies. In general, however, a judge must discourage ex parte communication and allow it only if all the criteria stated in Rule 2.10 are

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<sup>25</sup> Canon 3B(7)(c)  
<sup>26</sup> Canon 3B(7)(d)  
<sup>27</sup> Canon 3B(7)(e)  
<sup>28</sup> Canon 3B(7)  
<sup>29</sup> Canon 3B(7)

1 clearly met. A judge must disclose to all parties, in a manner that ensures  
2 notice, all ex parte communications described in Rules 2.10A(1) and  
3 2.10A(2) regarding a proceeding pending or impending before the judge.  
4

5 [5] An appropriate and often desirable method of obtaining the advice of  
6 a disinterested expert on legal issues is to invite the expert to file a brief  
7 *amicus curiae*.  
8

9 [6] A judge may consult with other judges on pending matters, but must  
10 avoid ex parte discussions of a case with other judges who have previously  
11 been disqualified from hearing the matter.  
12

13 [7] If communication between the trial judge and the appellate court  
14 with respect to a proceeding is permitted, a copy of any written  
15 communication or the substance of any oral communication should be  
16 provided to all parties.  
17

18 [8] The prohibition against a judge investigating the facts of a case  
19 independently or through a member of the judge's staff extends to  
20 information available in all mediums, including electronic ones.  
21

22 **RULE 2.11: JUDICIAL STATEMENTS ON PENDING AND FUTURE CASES**  
23

24 **A. A judge shall not make any comment that might reasonably be**  
25 **expected to affect the outcome or impair the fairness of a matter**  
26 **pending or impending in any court.**  
27

28 **B. The judge shall require similar abstention on the part of staff,**  
29 **court officers, and others subject to the judge's direction and control.**<sup>31</sup>  
30

31 **C. A judge shall not, with respect to cases, controversies or issues**  
32 **that are likely to come before the court, make pledges, promises or**  
33 **commitments that are inconsistent with the impartial performance of**  
34 **the adjudicative duties of judicial office.**<sup>32</sup>  
35

36 **COMMENT**  
37

38 [1] Rule 2.11 restrictions on judicial speech are essential to the  
39 maintenance of the integrity, impartiality, and independence of the  
40 judiciary.<sup>33</sup>  
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<sup>31</sup> Canon 3B(9)

<sup>32</sup> Canon 3B(10)

<sup>33</sup> Canon 3B(10)



1 [2] A pending matter is any one that has commenced; a matter remains  
2 pending and continues through any appellate process until final disposition.  
3 An impending proceeding is one that is anticipated but not yet commenced.  
4 A matter is impending when there is reason to believe a case may be filed,  
5 for example, when a crime is being investigated but no charges have been  
6 brought, or when someone has been arrested but not yet charged.<sup>34</sup>  
7

8 [3] This Rule does not prohibit a judge from commenting on  
9 proceedings in which the judge is a litigant in a personal capacity. In cases  
10 such as a writ of mandamus, however, in which the judge is a litigant in an  
11 official capacity, the judge must not comment publicly.  
12

13 [4] Provided that the judge complies with the requirements of 2.11A and  
14 B this Rule does not prohibit judges from making public statements in the  
15 course of their official duties, from explaining the procedures of the court to  
16 the public,<sup>35</sup> or from responding directly, or through a third party to  
17 allegations in the media or elsewhere concerning the judge's conduct in a  
18 matter.  
19

20 [5] Subject to the provisions of this Rule, candidates for judicial office  
21 may respond to unjust criticism. See Rule 5.01, Comment [12].  
22

23 **RULE 2.12: DISQUALIFICATION**  
24

25 **A. A judge shall disqualify himself or herself in any proceeding in**  
26 **which the judge's impartiality might be questioned by a reasonable**  
27 **person including but not limited to circumstances where:<sup>36</sup>**  
28

29 (1) **the judge has a personal bias or prejudice concerning a**  
30 **party or a party's lawyer, or personal knowledge of disputed**  
31 **evidentiary facts concerning the proceeding;<sup>37</sup>**  
32

33 (2) **the judge, the judge's spouse or domestic partner, a**  
34 **person within the third degree of relationship to either of them,**  
35 **or the spouse or domestic partner of such a person is**  
36

37 (a) **a party to the proceeding, or an officer, director or**  
38 **trustee of a party;**  
39

40 (b) **acting as a lawyer in the proceeding;**  
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<sup>34</sup>Canon 3B(10)

<sup>35</sup>Canon 3B(9) portion of the black letter

<sup>36</sup>Canon 3E(1)

<sup>37</sup>Canon 3E(1)(a)

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(c) known by the judge to be a person who has more than a de minimis interest that could be substantially affected by the proceeding; or

(d) to the judge’s knowledge likely to be a material witness in the proceeding;

(3) the judge knows that he or she, individually or as a judge’s spouse, domestic partner or child, or any other member of the judge’s family residing in the judge’s household\*, has an economic interest\* in the subject matter in controversy or in a party to the proceeding or has any other more than de minimis interest that could be substantially affected by the proceeding;<sup>38</sup>

(4) the judge knows or learns by means of a timely motion that a party or party’s lawyer has within the previous [1 year] made aggregate contributions to the judge’s campaign in an amount that is greater than [[\\$] for an individual or [\\$] for an entity] [is reasonable and appropriate for an individual or an entity];<sup>39</sup>

(5) the judge, while a judge or a candidate for judicial office, has made a public statement that commits, or appears to commit the judge with respect to an issue in the proceeding or the controversy in the proceeding;<sup>40</sup>

(6) the judge

(a) served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter;<sup>41</sup>

(b) within the preceding [three] years, was associated in the private practice of law with any law firm or lawyer currently representing any party in the controversy.<sup>42</sup>

(c) served in governmental employment and in such capacity participated as lawyer, advisor, or material witness concerning the proceeding or expressed an

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<sup>38</sup> Canon 3E(1)(c)  
<sup>39</sup> Canon 3E(1)(e)  
<sup>40</sup> Canon 3E(1)(f)  
<sup>41</sup> Canon 3E(1)(b)  
<sup>42</sup> Canon 3E(1)(b)

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**opinion concerning the merits of the particular case in controversy; or**

**(d) served as a material witness concerning the matter**

**(e) previously presided as a judge over the proceeding in the same or another court.**

**B. A judge shall keep informed about the judge’s personal and fiduciary\* economic interests\*, and make a reasonable effort to keep informed about the personal economic interests of the judge’s spouse or domestic partner and minor children residing in the judge’s household.<sup>43</sup>**

**C. A judge subject to disqualification by the terms of this Rule, other than paragraph A(1), may disclose on the record the basis of the judge’s disqualification and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification if such waiver is permitted by law. If the parties and lawyers, without participation by the judge, subsequently agree that the judge should not be disqualified, the judge may participate in the proceeding. Such a remittal agreement shall be written and shall be incorporated in the record of the proceeding.<sup>44</sup>**

**COMMENT**

[1] Under this Rule, a judge is disqualified whenever the judge’s impartiality might reasonably be questioned, regardless of whether any of the specific provisions of Rule 2.12A (1) – (6) apply. For example, if a judge were in the process of negotiating for employment with a law firm, the judge would be disqualified from any matters in which that law firm was appearing, unless the disqualification was waived by the parties after disclosure by the judge.<sup>45</sup>

[2] By decisional law, the rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In matters that require immediate action, the judge must disclose on the record the basis for

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<sup>43</sup> Canon 3E(2)

<sup>44</sup> Canon 3F

<sup>45</sup> Canon 3E(1)

1 possible disqualification and make reasonable efforts to transfer the matter  
2 to another judge as soon as practicable.<sup>46</sup>  
3

4 [3] A lawyer in a government agency does not ordinarily have an  
5 association with other lawyers employed by that agency within the meaning  
6 of Rule 2.12A(6)(a); a judge formerly employed by a government agency,  
7 however, shall disqualify himself or herself in a proceeding if the judge's  
8 impartiality might reasonably be questioned because of such association.<sup>47</sup>  
9

10 [4] The fact that a lawyer in a proceeding is affiliated with a law firm  
11 with which a relative of the judge is affiliated does not of itself disqualify  
12 the judge. If, however, "the judge's impartiality might reasonably be  
13 questioned" under Rule 2.12A or the relative is known by the judge to have  
14 an interest in the law firm that could be "substantially affected by the  
15 proceeding" under Rule 2.12A(3) the judge's disqualification may be  
16 required.<sup>48</sup>  
17

18 [5] A judge should disclose on the record information that the judge  
19 believes the parties or their lawyers might consider relevant to the question  
20 of disqualification, even if the judge believes there is no basis for  
21 disqualification.<sup>49</sup> The procedure described in Rule 2.12C provides the  
22 parties an opportunity to proceed without delay if they wish to waive the  
23 disqualification. A party may act through counsel if counsel represents on  
24 the record that the party has been consulted and consents. As a practical  
25 matter, a judge may wish to have all parties and their lawyers sign any  
26 remittal agreement.<sup>50</sup>  
27

28 [6] "Fiduciary" includes such relationships as executor, administrator,  
29 trustee and guardian.  
30

31 [7] An "economic interest" does not extend to such holdings or interests  
32 as a judge might have, for example, in mutual or common investment funds,  
33 deposits a judge might maintain in financial institutions, mutual savings  
34 associations or credit unions, or government securities owned by a judge,  
35 unless a proceeding pending or impending before the judge could  
36 substantially affect the value of such holdings or interests, or the judge is  
37 involved in the management of such entities' holdings. The fact that  
38 securities might be held by an educational, charitable, fraternal or civic  
39 organization in whose service a judge or the judge's spouse, parent or child  
40 may serve as a director, officer, advisor or other participant does not thereby

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<sup>46</sup> Canon 3E(1)

<sup>47</sup> Canon 3E(1)(b)

<sup>48</sup> Canon 3E(1)(f)

<sup>49</sup> Canon 3E(1)

<sup>50</sup> Canon 3F

1 give a judge an economic interest in such an organization for the purposes of  
2 this Rule.

3  
4 **ADMINISTRATION**

5  
6 **RULE 2.13: ADMINISTRATIVE COMPETENCE AND DILIGENCE**

7  
8 **A judge shall discharge the judge’s administrative responsibilities**  
9 **promptly and without bias or prejudice, maintain competence in**  
10 **judicial administration, and shall cooperate with other judges and court**  
11 **officials in the administration of court business.**<sup>51</sup>

12  
13 **COMMENT**

14  
15 [1] The judge’s obligation to perform responsibilities diligently,  
16 competently, and without bias or prejudice, applies equally to the judge’s  
17 administrative responsibilities.

18  
19 **RULE 2.14: SUPERVISION OF STAFF**

20  
21 **A judge shall require staff, court officials and others subject to the**  
22 **judge’s direction and control to act in a manner consistent with this**  
23 **Code.**<sup>52</sup>

24  
25 **COMMENT**

26  
27 [1] The first contact that members of the public have with the judicial  
28 system is often with court staff. It is therefore especially important that  
29 judges ensure that the conduct of personnel subject to their direction and  
30 control is consistent with the standards of conduct embodied in this code.

31  
32 **RULE 2.15: SUPERVISION OF OTHER JUDGES**

33  
34 **A judge with supervisory authority for the performance of other judges**  
35 **shall take reasonable measures to assure the prompt, efficient and fair**  
36 **disposition of matters before them and the proper discharge of their**  
37 **other judicial responsibilities.**<sup>53</sup>

38  
39 **COMMENT**

40  
41 [1] Public confidence in the courts depends on timely justice. To  
42 promote the efficient administration of justice, judges with supervisory

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<sup>51</sup> Canon 3C(1)  
<sup>52</sup> Canon 3C(2)  
<sup>53</sup> Canon 3C(3)

1 authority must take the steps needed to ensure that judges under their  
2 supervision administer their workload expeditiously.

3  
4 **RULE 2.16: ADMINISTRATIVE APPOINTMENTS**  
5

6 **A. A judge shall exercise the power of appointment impartially and**  
7 **on the basis of merit. A judge shall avoid nepotism, favoritism, and**  
8 **unnecessary appointments. A judge shall not approve compensation of**  
9 **appointees beyond the fair value of services rendered.<sup>54</sup>**

10  
11 **B. A judge shall not appoint a lawyer to a position if the judge**  
12 **either knows that the lawyer has contributed more than [ \$ ] within the**  
13 **prior [ ] years to the judge's election campaign,<sup>55</sup> or learns of such a**  
14 **contribution by means of a timely motion by a party or other person**  
15 **properly interested in the matter, unless<sup>56</sup>**

16  
17 (1) **the position is substantially uncompensated;<sup>57</sup>**

18  
19 (2) **the lawyer has been selected in rotation from a list of**  
20 **qualified and available lawyers compiled without regard to their**  
21 **having made political contributions; or<sup>58</sup>**

22  
23 (3) **the judge or another presiding or administrative judge**  
24 **affirmatively finds that no other lawyer is willing, competent and**  
25 **able to accept the position.<sup>59</sup>**

26  
27 **COMMENT**  
28

29 [1] Appointees of a judge include assigned counsel, officials such as  
30 referees, commissioners, special masters, receivers and guardians, and  
31 personnel such as clerks, secretaries, and bailiffs. Consent by the parties to  
32 an appointment or an award of compensation does not relieve the judge of  
33 the obligation prescribed by Rule 2.16.<sup>60</sup>

34  
35 **Rule 2.17: REPORTING JUDICIAL MISCONDUCT**  
36

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<sup>54</sup> Canon 3C(4)

<sup>55</sup> The following footnote appears in the 1990 Code: This provision is meant to be applicable wherever judges are subject to public election; specific amount and time limitations, to be determined based on circumstances within the jurisdiction, should be inserted in the brackets.

<sup>56</sup> Canon 3C(5)

<sup>57</sup> Canon 3C(5)(a)

<sup>58</sup> Canon 3C(5)(b)

<sup>59</sup> Canon 3C(5)(c)

<sup>60</sup> Canon 3C(5)

1           **A judge having knowledge\* that another judge has committed a**  
2           **violation of this Code that raises a substantial question as to the judge’s**  
3           **honesty, trustworthiness or fitness as a judge in other respects shall**  
4           **inform the appropriate authority\*. A judge who receives information**  
5           **indicating a substantial likelihood that another judge has committed a**  
6           **violation of this Code should take appropriate action.**<sup>61</sup>

7  
8           **COMMENT**

9  
10          [1]       As an officer of the judicial system, each judge has a responsibility  
11          to participate in efforts to ensure public respect for the system’s operation.  
12          Ignoring or denying known misconduct among one’s fellow judges  
13          undermines that responsibility. Taking affirmative action to address known  
14          misconduct is therefore a judge’s obligation. Appropriate action may  
15          include direct communication with the judge who has committed the  
16          violation, other direct action if available, and reporting the violation to the  
17          appropriate authority or other agency or body.<sup>62</sup>

18  
19          **RULE 2.18:     REPORTING LAWYER MISCONDUCT**

20  
21          **A judge having knowledge\* that a lawyer has committed a violation of**  
22          **the [Rules of Professional Conduct] [other title for the jurisdiction’s**  
23          **rules for lawyer conduct] that raises a substantial question as to the**  
24          **lawyer’s honesty, trustworthiness or fitness as a lawyer in other**  
25          **respects shall inform the appropriate authority\*. A judge who receives**  
26          **information indicating a substantial likelihood that a lawyer has**  
27          **committed a violation of the [Rules of Professional Conduct] should**  
28          **take appropriate action.**<sup>63</sup>

29  
30          **COMMENT**

31  
32          [1]       Appropriate action may include direct communication with the  
33          lawyer who has committed the violation, and reporting the violation to the  
34          appropriate authority or other agency or body.<sup>64</sup>

35  
36          **RULE 2.19:     DISABILITY AND IMPAIRMENT**

37  
38          **A judge having knowledge that the performance of a lawyer or another**  
39          **judge is impaired by drugs, alcohol, or other mental, emotional or**  
40          **physical condition shall take appropriate action, which may include a**

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<sup>61</sup> Canon 3D(1) (order of sentences reversed)

<sup>62</sup> Canon 3D

<sup>63</sup> Canon 3D(2) (order of sentences reversed)

<sup>64</sup> Canon 3D

1 **confidential referral to a lawyer assistance program or a judicial**  
2 **assistance program.**

3  
4 **COMMENT**

5  
6 [1] Taking or initiating corrective action by way of referral to an  
7 assistance program can fulfill several laudable purposes. For example, an  
8 intervention can be the first step toward a successful recovery program. That  
9 action alone may satisfy the mandates expressed in this Rule. Depending on  
10 the gravity of the conduct, however (i.e., the conduct in response to which  
11 action is necessary), a judge having knowledge of such conduct may be  
12 required to take action in addition to or in lieu of a referral to a relevant  
13 assistance program.

14  
15 [2] “Appropriate action” means action intended and reasonably likely to  
16 help the judge or lawyer in question to correct the problem.

17  
18 **RULE 2.20: IMMUNITY FOR DISCHARGE OF DUTIES**

19  
20 **Acts of a judge in responding to judicial misconduct, lawyer**  
21 **misconduct, or disability and impairment under Rules 2.17, 2.18, and**  
22 **2.19 are part of a judge’s judicial duties and shall be absolutely**  
23 **privileged, and no civil action predicated thereon may be instituted**  
24 **against the judge.<sup>65</sup>**

25  
26 **COMMENT**

27  
28 [1] To encourage judges to report or otherwise act on evidence of lawyer  
29 and judicial misconduct as required by these Rules, it is important that  
30 judges be insulated from threats of civil action when they act in compliance  
31 with their obligations under such rules.  
32  
33

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<sup>65</sup> Canon 3D(3)