

1 American Bar Association
2 Model Code of Judicial Conduct

3 **MAY 2004 DRAFT**

4 **CANON 2**

5
6 **JUDICIAL CONDUCT : A JUDGE SHALL PERFORM THE**
7 **DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY**

8 **A. In General**

9 **2.01 Giving Precedence to the Duties of Judicial Office.** The
10 **duties of judicial office shall take precedence over all the other**
11 **activities of the judge. The duties of judicial office include all**
12 **the responsibilities of the judge's office prescribed by law.¹**

13 **Commentary:**

14 [1] While judges engage in a variety of activities, the defining
15 feature of their judicial role is the interpretation and application of
16 the law. For that reason, those official duties that further the judicial
17 function directly, through adjudication, or indirectly, through
18 administration or discipline, are of primary importance relative to
19 the judge's other activities.

20 **B. Adjudication**

21 **2.02 The Duty to Decide.** A judge shall hear and decide
22 **matters assigned to the judge except those in which**
23 **disqualification is required or recusal is appropriate under**
24 **Canon 2.²**

25 **Commentary:**

26 [1] To protect the rights of litigants and preserve public confidence
27 in the integrity, independence, and impartiality of the judiciary, there
28 will be times when disqualification or recusal is required or
29 appropriate. A judge must be mindful, however, that a fundamental
30 obligation of the judicial office is to be available to decide the
31 matters that come before the court or tribunal. A judge must not

¹ Canon 3A

² Canon 3B(1)

1 use recusal or disqualification to avoid difficult or controversial
2 issues.

3 **2.03 Competence in the Law.** A judge shall maintain
4 **professional competence in the law.**³

5 **Commentary:**

6 [1] In order to uphold the law, a judge must possess the legal
7 knowledge, skills, and preparation necessary for the effective
8 administration of justice.

9 [2] When applying and upholding the law in the course of judicial
10 decision-making, a judge may on occasion make a mistake of fact
11 or law. An error of this kind does not violate this rule. Willful
12 disregard of the law, however, is another matter and in appropriate
13 circumstances may constitute misconduct by the judge.

14 [3] Judicial competence may be diminished and compromised when
15 a judge is impaired by drugs, alcohol or other mental and/or
16 physical impairments.

17 **2.04 Impartiality and Fairness** A Judge shall apply the law
18 **without regard to the judge's personal views and shall decide**
19 **all cases with impartiality and fairness.**

20 **Commentary:**

21 [1] A judge must be objective and free of favoritism to ensure
22 impartiality and fairness to all parties. While a judge's background
23 and philosophy may influence the way in which the judge analyzes,
24 interprets, and applies the law, the judge's personal views, by
25 themselves, should not be controlling. Thus, a judge must uphold
26 the law without regard to whether the judge personally approves or
27 disapproves of the law in question.

28 **2.05 Bias and Discrimination.**

29 **(a) A judge shall perform judicial duties without**
30 **bias or prejudice. A judge shall not, in the**
31 **performance of judicial duties, by words or**
32 **conduct manifest bias or prejudice, including but**
33 **not limited to bias or prejudice based upon race,**
34 **sex, religion, national origin, disability, age,**

³ Canon 3B(2)

1 **sexual orientation or socioeconomic status, and**
2 **shall not permit staff, court officials, and others**
3 **subject to the judge's direction and control to do**
4 **so.**⁴

5 **(b) A judge shall require* lawyers in proceedings**
6 **before the judge to refrain from manifesting bias**
7 **or prejudice based upon race, sex, religion,**
8 **national origin, disability, age, sexual orientation**
9 **or socioeconomic status, against parties,**
10 **witnesses, counsel or others. This Section does**
11 **not preclude legitimate advocacy when race, sex,**
12 **religion, national origin, disability, age, sexual**
13 **orientation, socioeconomic status or other similar**
14 **factors, are issues in the proceeding.**⁵

15 **Commentary:**

16 [1] A judge must refrain from speech, gestures or other conduct that
17 could reasonably be perceived as harassment and must require the
18 same standard of conduct of others subject to the judge's direction
19 and control.⁶

20 [2] A judge must perform judicial duties impartially and fairly. A
21 judge who manifests bias in a proceeding impairs the fairness of
22 the proceeding and brings the judiciary into disrepute. Facial
23 expression and body language can convey to parties or lawyers in
24 the proceeding, jurors, the media and others an appearance of
25 bias. A judge must avoid conduct that may be perceived as
26 prejudicial or biased.⁷

27 [3] Examples of manifestations of bias include but are not limited to
28 epithets, slurs, demeaning nicknames, negative stereotyping,
29 attempted humor based on stereotypes, threatening, intimidating or
30 hostile acts, suggesting a connection between race or nationality
31 and crime, and irrelevant references to personal characteristics.
32 This rule does not preclude legitimate references to those factors
33 when relevant to an issue in a proceeding.
34

⁴ Canon 3B(5)

⁵ Canon 3B(6)

⁶ Canon 3B(5) Commentary

⁷ Canon 3B(5) Commentary

1 **2.06 Diligence. A judge shall dispose of all judicial matters**
2 **promptly, efficiently, and fairly.⁸**

3 **Commentary:**

4 [1] Prompt disposition of the court's business requires a judge to
5 devote adequate time to judicial duties, to be punctual in attending
6 court, expeditious in determining matters under submission, and to
7 insist that court officials, litigants and their lawyers cooperate with
8 the judge to that end.⁹

9 [2] In disposing of matters promptly, efficiently and fairly, a judge
10 must demonstrate due regard for the rights of the parties to be
11 heard and to have issues resolved without unnecessary cost or
12 delay. Containing costs while preserving fundamental rights of
13 parties protects the interests of witnesses and the general public. A
14 judge should monitor and supervise cases to reduce or eliminate
15 dilatory practices, avoidable delays and unnecessary costs. A judge
16 should encourage and seek to facilitate settlement, but should not
17 coerce parties into surrendering the right to have their controversy
18 resolved by the courts.¹⁰

19 **2.07 Demeanor and decorum.**

20 **(a) A judge shall require* order and decorum in**
21 **proceedings before the judge.¹¹**

22 **(b) A judge shall be patient, dignified and courteous to**
23 **litigants, jurors, witnesses, lawyers and others with**
24 **whom the judge deals in an official capacity, and shall**
25 **require* similar conduct of lawyers, staff, court officials**
26 **and others subject to the judge's direction and control.¹²**

27 **(c) A judge shall not commend or criticize jurors for**
28 **their verdict other than in a court order or opinion in a**
29 **proceeding, but may express appreciation to jurors for**
30 **their service to the judicial system and the community.¹³**

31

⁸ Canon 3B(8)

⁹ Canon 3B(8) Commentary

¹⁰ Canon 3B(8) Commentary

¹¹ Canon 3B(3)

¹² Canon 3B(4)

¹³ Canon 3B(11)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33

Commentary:

[1] The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.¹⁴

[2] Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case.¹⁵

[3] Where not otherwise prohibited by law, judges may take the opportunity to debrief jurors on their jury experience after their jury service is concluded.

2.08 Ensuring the Right to be Heard. A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law*.¹⁶

Commentary:

[1] Ensuring 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 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.

2.09 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:

(1) Where circumstances require ex parte communications for scheduling, administrative purposes

¹⁴ Canon 3B(4) Commentary
¹⁵ Canon 3B(11) Commentary
¹⁶ Canon 3B(7)

1 or emergencies that do not deal with
2 substantive matters are authorized;
3 provided:

4 (i) the judge reasonably
5 believes that no party
6 will gain a procedural,
7 substantive, or tactical
8 advantage as a result of
9 the ex parte
10 communication, and

11 (ii) the judge promptly
12 gives notice to all other
13 parties of the substance
14 of the ex parte
15 communication and
16 allows an opportunity to
17 respond.

18 (2) A judge may obtain information
19 and opinions from a disinterested
20 expert in a proceeding before the
21 judge if, before the record is closed,
22 the judge gives notice to the parties
23 of the person consulted and the
24 substance of the advice obtained and
25 affords the parties reasonable
26 opportunity to respond.

27 (3) A judge may consult with court
28 personnel* whose function is to aid
29 the judge in carrying out the judge's
30 adjudicative responsibilities or with
31 other judges and the judge does not
32 abrogate the responsibility to
33 personally decide the case and takes
34 all reasonable steps to avoid
35 receiving factual information that is
36 not part of the record.

37 (4) A judge may, with the consent of
38 the parties, confer separately with the
39 parties and their lawyers in an effort
40 to settle matters pending before the
41 judge.

1 (5) A judge may initiate or consider
2 any ex parte communications when
3 expressly authorized by law* to do
4 so.¹⁷

5 (b) A judge shall not independently investigate
6 facts in a case.¹⁸

7 (c) A judge shall make reasonable efforts,
8 including the provision of appropriate
9 supervision, to ensure that Section 2.09 is not
10 violated through law clerks or other personnel on
11 the judge's staff.¹⁹

12 **Commentary:**²⁰

13 [1] To the extent reasonably possible, all parties or their lawyers
14 shall be included in communications with a judge.

15 [2] Whenever the presence of a party or notice to a party is
16 required by Section 2.09, it is the party's lawyer, or if the party is
17 unrepresented the party, who is to be present or to whom notice is
18 to be given.

19 [3] The proscription against communications concerning a
20 proceeding includes communications with lawyers, law professors,
21 and other persons who are not participants in the proceeding,
22 except to the limited extent permitted by this rule.

23 [4] Certain ex parte communication is approved by Section 2.09 to
24 facilitate scheduling and other administrative purposes and to
25 accommodate emergencies. In general, however, a judge must
26 discourage ex parte communication and allow it only if all the
27 criteria stated in Section 2.09 are clearly met. A judge must
28 disclose to all parties, in a manner that ensures notice, all ex parte
29 communications described in Sections 2.09(a) and 2.09(b)
30 regarding a proceeding pending or impending before the judge.

¹⁷ Canon 3B(7)

¹⁸ Canon 3B(7) Commentary

¹⁹ Canon 3B(7) Commentary

²⁰ The Comment to this Rule is taken entirely from Canon 3B(7) Commentary.

1 [5] An appropriate and often desirable method of obtaining the
2 advice of a disinterested expert on legal issues is to invite the
3 expert to file a brief amicus curiae.

4 [6] A judge may request a party to submit proposed findings of fact
5 and conclusions of law, so long as the other parties are apprised of
6 the request and are given an opportunity to respond to the
7 proposed findings and conclusions.

8 [7] If communication between the trial judge and the appellate
9 court with respect to a proceeding is permitted, a copy of any
10 written communication or the substance of any oral communication
11 should be provided to all parties.

12 [8] The prohibition against a judge investigating the facts of a case
13 independently or through a member of the judge's staff extends to
14 information available in all mediums including electronic access.

15 **2.10 External influences on judicial conduct.**

16 **(a) A judge shall not be swayed by partisan**
17 **interests, public clamor or fear of criticism.²¹**

18 **(b) A judge shall not allow family, social, political**
19 **or other relationships to influence the judge's**
20 **judicial conduct or judgment.²²**

21 **(c) A judge shall not convey or permit other**
22 **persons to convey the impression that such**
23 **persons are in a special position to influence the**
24 **judge.²³**

25 **Commentary:**

26 [1] An independent judiciary requires that judges decide cases
27 according to law without regard to whether the law or the litigants
28 are popular or unpopular with the media, the public, government
29 officials, or the judge's own friends or family.

30 [2] Confidence in the judiciary is eroded if judicial decision-making
31 is perceived to be subject to inappropriate outside influences thus
32 giving rise to an appearance of impropriety (see Rule 1.02/03) It is
33 therefore essential to judicial independence and impartiality* that

²¹ Canon 3B(2)

²² Canon 2B

²³ Canon 2B

1 judges create no perception that their decision-making could be
2 colored by such influences.

3 **2.11 Judicial Statements on Pending and Future Cases.**

4 (a) A judge shall not, while a proceeding is
5 pending or impending in any court, make any
6 public comment that might reasonably be
7 expected to affect its outcome or impair its
8 fairness or make any nonpublic comment that
9 might substantially interfere with a fair trial or
10 hearing. The judge shall require* similar
11 abstention from public comment on the part of
12 staff, court officers, and others subject to the
13 judge's direction and control.²⁴

14 (b) A judge shall not, with respect to cases,
15 controversies or issues that are likely to come
16 before the court, make pledges, promises or
17 commitments that are inconsistent with the
18 impartial performance of the adjudicative duties
19 of the office.²⁵

20 **Commentary:**

21 [1] Section 2.11 restrictions on judicial speech are essential to the
22 maintenance of the integrity, independence, and impartiality of the
23 judiciary.

24 [2] A pending proceeding is one that has commenced and
25 continues during any appellate process and until final disposition.
26 An impending proceeding is one that is anticipated but not yet
27 commenced. A proceeding is "impending where there is reason to
28 believe a case may be filed, for example, if a crime is being
29 investigated but no charges have been brought or if someone has
30 been arrested, but not yet charged.

31 [3] This Section does not prohibit a judge from commenting on
32 proceedings in which the judge is a litigant in a personal capacity,
33 but in cases such as a writ of mandamus where the judge is a
34 litigant in an official capacity, the judge must not comment publicly.
35 The conduct of lawyers relating to trial publicity is governed by

²⁴ Canon 3B(9)

²⁵ Canon 3B(10)

1 [Rule 3.6 of the ABA Model Rules of Professional Conduct]. (Each
2 jurisdiction should substitute an appropriate reference to its rule.)²⁶

3 [4] This Section does not prohibit judges from making public
4 statements in the course of their official duties or from explaining
5 the procedures of the court to the public. Nor does it prohibit judges
6 from responding directly, or through a third party, to allegations in
7 the media or elsewhere concerning the judge's conduct in a matter,
8 provided that any such response meets the requirements of 2.11(a)
9 and (b).

10 **2.12 Disqualification.**

- 11
- 12 **A. General Rule.** In addition to disqualifying himself or herself in
13 any of the circumstances in paragraphs (B) through (I) below, a
14 judge shall disqualify himself or herself in a proceeding in which
15 the judge's impartiality might reasonably be questioned.
- 16 **B. Personal Bias or Knowledge.** A judge shall disqualify himself or
17 herself when the judge has a personal bias or prejudice
18 concerning a party or a party's lawyer, or personal knowledge of
19 disputed evidentiary facts concerning the proceeding.
- 20 **C. Roles in a Proceeding.** A judge shall disqualify himself or herself
21 when the judge, the judge's spouse or domestic partner, a person
22 within the third degree of relationship to either of them, or the
23 spouse or domestic partner of such a person:
- 24 1. is a party to the proceeding, or an officer, director, or
25 trustee of a party;
- 26 2. is acting as a lawyer in the proceeding; or
- 27 3. is to the judge's knowledge likely to be a material
28 witness in the proceeding.
- 29 **D. Economic and other Personal Interests.** A judge shall disqualify
30 himself or herself when the judge knows that:
- 31 1. he or she, individually or as a fiduciary, or the judge's
32 spouse, domestic partner, child, or any other member
33 of the judge's family residing in the judge's household,
34 has an economic interest in the subject matter in
35 controversy or in a party to the proceeding or has any
36 other more than a de minimis interest that could be
37 substantially affected by the proceeding; or
- 38 2. a person within the third degree of relationship to the
39 judge or the judge's spouse or domestic partner, or
40 the spouse or domestic partner of such a person, has
41 a more than de minimis interest that could be
42 substantially affected by the proceeding.

²⁶ Canon 3B(9) Commentary

- 1 **E. Campaign Contributions.** A judge shall disqualify himself or
2 herself when the judge knows or learns by means of a timely
3 motion that a party or a party’s lawyer has within the previous []
4 year[s] made aggregate contributions to the judge’s campaign in
5 an amount that is greater than [[\$] for an individual or [\$] for an
6 entity]]] [[is reasonable and appropriate for an individual or an
7 entity]].²⁷
- 8 **F. Public Statements.** A judge shall disqualify himself or herself if
9 the judge, while a judge or a candidate for judicial office, has
10 made a public statement that commits, or appears to commit, the
11 judge with respect to an issue in the proceeding or the
12 controversy in the proceeding.
- 13 **G. Prior Affiliations.** A judge shall disqualify himself or herself
14 where the judge:
- 15 1. served as a lawyer in the matter in controversy, or a
16 lawyer with whom the judge previously practiced law
17 served during such association as a lawyer
18 concerning the matter;
- 19 2. served as a material witness concerning the matter; or
- 20 3. served in governmental employment and in such
21 capacity participated as lawyer, advisor, or material
22 witness concerning the proceeding or has expressed
23 an opinion concerning the merits of the particular case
24 in controversy.
- 25 **H. Monitoring Economic Interests.** A judge shall keep informed
26 about the judge’s personal and fiduciary economic interests and
27 make a reasonable effort to keep informed about the personal
28 economic interests of the judge’s spouse or domestic partner,
29 and minor children residing in the judge’s household.
- 30 **I. Remittal of Disqualification.** A judge subject to disqualification by
31 the terms of this Section, other than paragraph B, may disclose
32 on the record the basis of the judge’s disqualification and may
33 ask the parties and their lawyers to consider, out of the presence
34 of the judge, whether to waive disqualification. If the parties and
35 lawyers, without participation by the judge, agree that the judge
36 should not be disqualified, the judge may participate in the
37 proceeding. Such a remittal agreement shall be written and shall
38 be incorporated in the record of the proceeding.
- 39

²⁷ This provision is meant to be applicable wherever judges are subject to public election. Jurisdictions that adopt specific dollar limits on contributions in section 5(C)(3) should adopt the same limits in section 3(E)(1)(e). Where specific dollar amounts determined by local circumstances are not used, the “reasonable and appropriate” language should be used.

1 **Commentary:**²⁸

2
3 [1] Under this rule, a judge is disqualified whenever the judge's
4 impartiality might reasonably be questioned, regardless of whether
5 any of the specific provisions of Section 2.12(a) apply. For
6 example, if a judge were in the process of negotiating for
7 employment with a law firm, the judge would be disqualified from
8 any matters in which that law firm appeared, unless the
9 disqualification was waived by the parties after disclosure by the
10 judge.

11 [2] A judge should disclose on the record information that the judge
12 believes the parties or their lawyers might consider relevant to the
13 question of disqualification, even if the judge believes there is no
14 real basis for disqualification.

15 [3] By decisional law, the rule of necessity may override the rule of
16 disqualification. For example, a judge might be required to
17 participate in judicial review of a judicial salary statute, or might be
18 the only judge available in a matter requiring immediate judicial
19 action, such as a hearing on probable cause or a temporary
20 restraining order. In matters such as these latter two, that require
21 immediate action, the judge must disclose on the record the basis
22 for possible disqualification and use reasonable efforts to transfer
23 the matter to another judge as soon as practicable.

24 [4] A lawyer in a government agency does not ordinarily have an
25 association with other lawyers employed by that agency within the
26 meaning of Section 2.12(a)(2). A judge formerly employed by a
27 government agency, however, shall disqualify himself or herself in a
28 proceeding if the judge's impartiality might reasonably be
29 questioned because of such association.

30 [5] The fact that a lawyer in a proceeding is affiliated with a law firm
31 with which a relative of the judge is affiliated does not of itself
32 disqualify the judge. If, however, "the judge's impartiality might
33 reasonably be questioned" under Section 2.12(a)_or the relative is
34 known by the judge to have an interest in the law firm that could be
35 "substantially affected by the proceeding" under Section
36 2.12(a)(4)(iii) the judge's disqualification may be required.

²⁸ The Commentary to this Rule is taken from Canon 3F Commentary.

1 [6] A remittal procedure provides the parties an opportunity to
2 proceed without delay if they wish to waive the disqualification. To
3 assure that consideration of the question of remittal is made
4 independently of the judge, a judge must not solicit, seek or hear
5 comment on possible remittal or waiver of the disqualification
6 unless the lawyers jointly propose remittal after consultation as
7 provided in the rule. A party may act through counsel if counsel
8 represents on the record that the party has been consulted and
9 consents. As a practical matter, a judge may wish to have all
10 parties and their lawyers sign the remittal agreement.

11 **C. Administration.**

12 **2.13 Administrative Competence and Diligence.** A judge shall
13 discharge the judge's administrative responsibilities without
14 bias or prejudice and maintain professional competence in
15 judicial administration and should cooperate with other judges
16 and court officials in the administration of court business.²⁹

17 **Commentary:**

18 [1] The judge's obligation to perform adjudicative responsibilities
19 diligently, competently, and without bias or prejudice, applies
20 equally to the judge's administrative responsibilities.

21 **2.14 Supervision of Staff.** A judge shall require* staff, court
22 officials, and others subject to the judge's direction and
23 control to act in a manner consistent with the high standards
24 of conduct expressed in this Code.³⁰

25 **Commentary:**

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

31 **2.15 Supervision of Other Judges.** A judge with supervisory
32 authority for other judges shall take reasonable measures to
33 assure the prompt disposition of matters before them and the

²⁹ Canon 3C(1)

³⁰ Canon 3C(2)

1 proper performance of their other administrative
2 responsibilities.³¹

3 **Commentary:**

4 [1] Public confidence in the courts depends on justice not being
5 unduly delayed. To promote the efficient administration of justice,
6 judges with supervisory authority must take the steps needed to
7 ensure that judges under their supervision administer the workload
8 of their courts expeditiously.

9 **2.16 Administrative Appointments.**

10 (a) A judge shall exercise the power of
11 appointment impartially and on the basis of merit.
12 A judge shall avoid nepotism, favoritism, and
13 unnecessary appointments. A judge shall not
14 approve compensation of appointees beyond the
15 fair value of services rendered.³²

16 (b) A judge shall not appoint a lawyer to a position
17 if the judge either knows that the lawyer has
18 contributed more than [\$] within the prior []
19 years to the judge's election campaign,³ or learns
20 of such a contribution by means of a timely
21 motion by a party or other person properly
22 interested in the matter, unless:

23 (1) the position is substantially
24 uncompensated;

25 (2) the lawyer has been selected in
26 rotation from a list of qualified and
27 available lawyers compiled without
28 regard to their having made political
29 contributions; or

30 (3) the judge or another presiding or
31 administrative judge affirmatively
32 finds that no other lawyer is willing,
33 competent, and able to accept the
34 position.³³

³¹ Canon 3C(3)

³² Canon 3C(4)

³³ Canon 3C(5)

1 **Commentary:**

2 [1] Appointees of a judge include assigned counsel, officials such
3 as referees, commissioners, special masters, receivers and
4 guardians and personnel such as clerks, secretaries and bailiffs.
5 Consent by the parties to an appointment or an award of
6 compensation does not relieve the judge of the obligation
7 prescribed by Section 2.16(a).³⁴

8 **D. Reporting**

9 **2.17 Judicial Misconduct.** A judge having knowledge* that
10 another judge has committed a violation of this Code, which
11 raises a substantial question as to the other judge’s fitness for
12 office shall inform the appropriate authority*. A judge who
13 receives information indicating a substantial likelihood that
14 another judge has committed a violation of this Code should
15 take appropriate action.³⁵

16 **Commentary:**

17 [1] Appropriate action may include direct communication with the
18 judge who has committed the violation, other direct action if
19 available, and reporting the violation to the appropriate authority,
20 other agency or body.³⁶

21 **2.18 Lawyer Misconduct.** A judge having knowledge* that a
22 lawyer has committed a violation of the Rules of Professional
23 Conduct [substitute correct title if the applicable rules of
24 lawyer conduct have a different title], which raises a
25 substantial question as to the lawyer’s honesty,
26 trustworthiness or fitness as a lawyer in other respects shall
27 inform the appropriate authority*. A judge who receives
28 information indicating a substantial likelihood that a lawyer
29 has committed a violation of the Rules of Professional
30 Conduct [substitute correct title if the applicable rules of
31 lawyer conduct have a different title] should take appropriate
32 action.³⁷

33

³⁴ Canon 3C(5) Commentary

³⁵ Canon 3D(1)

³⁶ Canon 3D Commentary

³⁷ Canon 3D(2)

1 **Commentary:**

2 [1] Appropriate action may include direct communication with the
3 lawyer who has committed the violation, and reporting the violation
4 to the appropriate authority, other agency or body.³⁸

5 **2.19 Disability and Impairment. A judge having knowledge that**
6 **the performance of a lawyer or another judge is impaired by**
7 **drugs, alcohol, or other mental, emotional and/or physical**
8 **condition shall take appropriate action, which may include a**
9 **confidential referral to a lawyer or judicial assistance program.**

10 **Commentary:**

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

20 **2.20 Immunity for Discharge of Duties. Acts of a judge, in**
21 **responding to judicial misconduct, lawyer misconduct, or**
22 **disability and impairment under Rules 2.17, 2.18, and 2.19 are**
23 **part of a judge’s judicial duties and shall be absolutely**
24 **privileged and no civil action predicated thereon may be**
25 **instituted against the judge.**³⁹

26 **Commentary:**

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

31
32
33

³⁸ Canon 3D Commentary

³⁹ Canon 3D(3)