

1 American Bar Association  
2 Model Code of Judicial Conduct

3 **JUNE 2004 DRAFT**

4  
5 **CANON 2**

6  
7 **JUDICIAL CONDUCT : A JUDGE SHALL PERFORM THE**  
8 **DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND**  
9 **DILIGENTLY<sup>1</sup>**

10 **A. ~~Judicial Duties~~ In General**

11 **2.01 Giving Precedence to the Duties of Judicial Office.** The  
12 ~~judicial duties of a judge~~ **judicial office shall take precedence**  
13 ~~over all the judge's other activities~~ **other activities of the judge.**  
14 The ~~judge's judicial duties~~ **of judicial office** include all the  
15 ~~duties of responsibilities of~~ **the judge's office** prescribed by  
16 ~~law\*.<sup>2</sup> In the performance of these duties, the following~~  
17 ~~standards apply.~~

18 **Commentary:**

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

25 **B. Adjudication ~~Adjudicative~~ Responsibilities**

26 **2.02 The Duty to Decide.** A judge shall hear and decide  
27 matters assigned to the judge except those in which  
28 disqualification is required or recusal is appropriate under  
29 Canon 2.<sup>3</sup>

30 **Commentary:**

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<sup>1</sup> Canon 3

<sup>2</sup> Canon 3A

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

1 [1] To protect the rights of litigants and preserve public confidence  
2 in the integrity, independence and impartiality of the judiciary, there  
3 will be times when disqualification or recusal is required or  
4 appropriate. A judge must be mindful, however, that a fundamental  
5 obligation of the judicial office is to be available to decide the  
6 matters that come before the court or tribunal. A judge must not  
7 use recusal or disqualification to avoid difficult or controversial  
8 issues.

9 **2.03 Competence in the Law. A judge shall be faithful to the**  
10 **law\* and maintain professional competence in it the law\*.**<sup>4</sup>

11 **Commentary:**

12 [1] In order to uphold the law, a judge must possess the legal  
13 knowledge, skills, and preparation necessary for the effective  
14 administration of justice.

15 [2] When applying and upholding the law in the course of judicial  
16 decision-making, a judge may on occasion make a mistake of fact  
17 or law. An error of this kind does not violate this rule. Willful  
18 disregard of the law, however, is another matter and in appropriate  
19 circumstances may constitute misconduct by the judge.

20 [3] Judicial competence may be diminished and compromised when  
21 a judge is impaired by drugs, alcohol or other mental or physical  
22 impairments.

23 **2.04 Impartiality and Fairness A Judge shall apply the law**  
24 **without regard to the judge's personal views and shall decide**  
25 **all cases with impartiality and fairness.**

26 **Commentary**

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

34 **2.05 Bias and Discrimination.**

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

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

11           **(b) A judge shall require\* lawyers in proceedings**  
12           **before the judge to refrain from manifesting ~~by~~**  
13           **~~words or conduct~~, bias or prejudice based upon**  
14           **race, sex, religion, national origin, disability, age,**  
15           **sexual orientation or socioeconomic status,**  
16           **against parties, witnesses, counsel or others.**  
17           **This Section ~~3B(6)~~ does not preclude legitimate**  
18           **advocacy when race, sex, religion, national origin,**  
19           **disability, age, sexual orientation or**  
20           **socioeconomic status, or other similar factors,**  
21           **are issues in the proceeding.<sup>6</sup>**

22           **Commentary:**

23           [1] A judge must refrain from speech, gestures or other conduct  
24           that could reasonably be perceived as ~~sexual~~ harassment and must  
25           require the same standard of conduct of others subject to the  
26           judge's direction and control.<sup>7</sup>

27           [2] A judge must perform judicial duties impartially and fairly. A  
28           judge who manifests bias ~~on any basis~~ in a proceeding impairs the  
29           fairness of the proceeding and brings the judiciary into disrepute.  
30           Even facial expression and body language ~~in addition to oral~~  
31           ~~communication~~ can ~~give~~ convey to parties or lawyers in the  
32           proceeding, jurors, the media and others an appearance of ~~judicial~~  
33           bias. A judge must ~~be alert to avoid behavior~~ conduct that may be  
34           perceived as prejudicial or biased.<sup>8</sup>

35           [3] Examples of manifestations of bias include but are not limited to  
36           epithets, slurs, demeaning nicknames, negative stereotyping,  
37           attempted humor based on stereotypes, threatening, intimidating or

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

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

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

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

1 hostile acts, suggesting a connection between race or nationality  
2 and crime, and irrelevant references to personal characteristics.  
3 This rule does not preclude legitimate references to those factors  
4 when relevant to an issue in a proceeding.  
5

6 **2.06 Diligence. A judge shall dispose of all judicial matters**  
7 **promptly, efficiently and fairly.**<sup>9</sup>

8 **Commentary:**

9 [1] Prompt disposition of the court's business requires a judge to  
10 devote adequate time to judicial duties, to be punctual in attending  
11 court and expeditious in determining matters under submission,  
12 and to insist that court officials, litigants and their lawyers cooperate  
13 with the judge to that end.<sup>10</sup>

14 [2] In disposing of matters promptly, efficiently and fairly, a judge  
15 must demonstrate due regard for the rights of the parties to be  
16 heard and to have issues resolved without unnecessary cost or  
17 delay. Containing costs while preserving fundamental rights of  
18 parties also protects the interests of witnesses and the general  
19 public. A judge should monitor and supervise cases so as to reduce  
20 or eliminate dilatory practices, avoidable delays and unnecessary  
21 costs. A judge should encourage and seek to facilitate settlement,  
22 but ~~parties should not feel coerced~~ coerce parties into surrendering  
23 the right to have their controversy resolved by the courts.<sup>11</sup>

24

25 **2.07 Demeanor and Decorum.**

26 **(a) A judge shall require\* order and decorum in**  
27 **proceedings before the judge.**<sup>12</sup>

28 **(b) A judge shall be patient, dignified and courteous to**  
29 **litigants, jurors, witnesses, lawyers and others with**  
30 **whom the judge deals in an official capacity, and shall**  
31 **require\* similar conduct of lawyers, and of staff, court**

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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(8) commentary (paragraphs reversed in order)

<sup>12</sup> Canon 3B(3)

1                   **officials and others subject to the judge's direction and**  
2                   **control.**<sup>13</sup>

3                   **(c) A judge shall not commend or criticize jurors**  
4                   **for their verdict other than in a court order or**  
5                   **opinion in a proceeding, but may express**  
6                   **appreciation to jurors for their service to the**  
7                   **judicial system and the community.**<sup>14</sup>

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9                   **Commentary:**

10                  [1] The duty to hear all proceedings fairly and with patience is not  
11                  inconsistent with the duty to dispose promptly of the business of the  
12                  court. Judges can be efficient and businesslike while being patient  
13                  and deliberate.<sup>15</sup>

14                  [2] Commending or criticizing jurors for their verdict may imply a  
15                  judicial expectation in future cases and may impair a juror's ability  
16                  to be fair and impartial in a subsequent case.<sup>16</sup>

17                  [3] Where not otherwise prohibited by law, judges may take the  
18                  opportunity to debrief jurors on their jury experience, after their jury  
19                  service is concluded.

20

21                  **2.08 Ensuring the Right to be Heard. A judge shall accord to**  
22                  **every person who has a legal interest in a proceeding, or that**  
23                  **person's lawyer, the right to be heard according to law\*.**<sup>17</sup>

24                  **Commentary:**

25                  [1] Ensuring the right to be heard is an essential component of a  
26                  fair and impartial system of justice. Substantive rights of litigants  
27                  can be protected only if procedures protecting the right to be heard  
28                  are respected.

29                  [2] The judge has an important role to play in overseeing the  
30                  settlement of disputes, but should be careful that efforts to further

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<sup>13</sup> Canon 3B(4)

<sup>14</sup> Canon 3B(11)

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

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

<sup>17</sup> Canon 3B(7) partial

1 settlement not undermine a party's right to be heard according to  
2 law. A judge may therefore encourage parties to a proceeding and  
3 their lawyers to settle matters in dispute but should not act in a  
4 manner that coerces a party into settlement.

5 **2.09 Ex Parte Communications**

6 (a) A judge shall not initiate, permit, or consider  
7 ex parte communications, or consider other  
8 communications made to the judge outside the  
9 presence of the parties concerning a pending or  
10 impending proceeding except that:<sup>18</sup>

11 (1) Where circumstances require, ex  
12 parte communications for  
13 scheduling, administrative purposes  
14 or emergencies that do not deal with  
15 substantive matters ~~or issues on the~~  
16 ~~merits~~ are authorized; provided:<sup>19</sup>

17 (i) the judge reasonably  
18 believes that no party  
19 will gain a procedural,  
20 substantive, or tactical  
21 advantage as a result of  
22 the ex parte  
23 communication, and<sup>20</sup>

24 (ii) the judge makes  
25 ~~provision~~ promptly gives  
26 notice to notify all other  
27 parties of the substance  
28 of the ex parte  
29 communication and  
30 allows an opportunity to  
31 respond.<sup>21</sup>

32 (2) A judge may obtain ~~the advice of a~~  
33 information and opinions from a  
34 disinterested expert on the law  
35 applicable to in a proceeding before  
36 the judge if, before the record is

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<sup>18</sup> Canon 3B(7) partial

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

<sup>20</sup> Canon 3B(7)(a)(i)

<sup>21</sup> Canon 3B(7)(a)(ii)

1 **closed, the judge gives notice to the**  
2 **parties of the person consulted and**  
3 **the substance of the advice obtained,**  
4 **and affords the parties reasonable**  
5 **opportunity to respond.<sup>22</sup>**

6 **(3) A judge may consult with court**  
7 **personnel\* whose function is to aid**  
8 **the judge in carrying out the judge's**  
9 **adjudicative responsibilities or with**  
10 **other judges<sup>23</sup> [provided that and ?]**  
11 **the judge does not abrogate the**  
12 **responsibility to personally decide**  
13 **the case and takes all reasonable**  
14 **steps to avoid receiving factual**  
15 **information that is not part of the**  
16 **record.**

17 **(4) A judge may, with the consent of**  
18 **the parties, confer separately with the**  
19 **parties and their lawyers in an effort**  
20 **to ~~mediate or~~ settle matters pending**  
21 **before the judge.<sup>24</sup>**

22 **(5) A judge may initiate or consider**  
23 **any ex parte communications when**  
24 **expressly authorized by law\* to do**  
25 **so.<sup>25</sup>**

26 **(b) A judge ~~must~~ shall not independently**  
27 **investigate facts in a case ~~and must consider only~~**  
28 **~~the evidence presented.~~<sup>26</sup>**

29 **(c) A judge ~~must~~ shall make reasonable efforts,**  
30 **including the provision of appropriate**  
31 **supervision, to ensure that Section 2.09 is not**  
32 **violated through law clerks or other personnel on**  
33 **the judge's staff.<sup>27</sup>**

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<sup>22</sup> Canon 3B(7)(b)

<sup>23</sup> Canon 3B(7)(c)

<sup>24</sup> Canon 3B(7)(d)

<sup>25</sup> Canon 3B(7)(e)

<sup>26</sup> Canon 3B(7) commentary

<sup>27</sup> Canon 3B(7) commentary

1           **Commentary:**<sup>28</sup>

2           [1] To the extent reasonably possible, all parties or their lawyers  
3           shall be included in communications with a judge.

4           [2] Whenever the presence of a party or notice to a party is required  
5           by Section ~~3B(7)~~ 2.09, it is the party's lawyer, or if the party is  
6           unrepresented the party, who is to be present or to whom notice is  
7           to be given.

8           [3] The proscription against communications concerning a  
9           proceeding includes communications ~~from~~ with lawyers, law  
10          ~~teachers-professors~~, and other persons who are not participants in  
11          the proceeding, except to the limited extent permitted by this rule.

12          [4] Certain ex parte communication is approved by Section ~~3B(7)~~  
13          2.09 to facilitate scheduling and other administrative purposes and  
14          to accommodate emergencies. In general, however, a judge must  
15          discourage ex parte communication and allow it only if all the  
16          criteria stated in Section ~~3B(7)-2.09~~ are clearly met. A judge must  
17          disclose to all parties, in a manner that ensures notice, all ex parte  
18          communications described in Sections ~~3B(7)(a)-2.09(a)(1)~~ and  
19          2.09(a)(2) regarding a proceeding pending or impending before the  
20          judge.

21          [5] An appropriate and often desirable ~~procedure for a court to~~  
22          ~~obtain~~ method of obtaining the advice of a disinterested expert on  
23          legal issues is to invite the expert to file a brief *amicus curiae*.

24          [6] A judge may request a party to submit proposed findings of fact  
25          and conclusions of law, so long as the other parties are apprised of  
26          the request and are given an opportunity to respond to the  
27          proposed findings and conclusions.

28          [7] If communication between the trial judge and the appellate  
29          court with respect to a proceeding is permitted, a copy of any  
30          written communication or the substance of any oral communication  
31          should be provided to all parties.

32          [8] The prohibition against a judge investigating the facts of a case  
33          independently or through a member of the judge's staff, extends to  
34          information available in all mediums including electronic access.

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<sup>28</sup> The commentary to this rule is taken entirely from Canon 3B(7) commentary



1           **2.10 External Influences on Judicial Conduct.**

2                   (a) A judge shall not be swayed by partisan  
3                   interests, public clamor or fear of criticism.<sup>29</sup>

4                   (b) A judge shall not allow family, social, political  
5                   or other relationships to influence the judge's  
6                   judicial conduct or judgment.<sup>30</sup>

7                   (c) ~~A judge shall not ; nor shall a judge convey or~~  
8                   ~~permit others persons to convey the impression~~  
9                   ~~that they such persons are in a special position to~~  
10                  influence the judge.<sup>31</sup>

11           **Commentary:**

12           [1] An independent judiciary requires that judges decide cases  
13           according to law without regard to whether the law or the litigants  
14           are popular or unpopular with the media, the public, government  
15           officials, or the judge's own friends or family.

16           [2] Confidence in the judiciary is eroded if judicial decision-making  
17           is perceived to be subject to inappropriate outside influences, thus  
18           giving rise to an appearance of impropriety (see Rule 1.02) It is  
19           therefore essential to judicial independence and impartiality that  
20           judges create no perception that their decision-making could be  
21           colored by such influences.

22

23           **2.11 Judicial Statements on Pending and Future Cases.**

24                   (a) A judge shall not, while a proceeding is  
25                   pending or impending in any court, make any  
26                   public comment that might reasonably be  
27                   expected to affect its outcome or impair its  
28                   fairness or make any nonpublic comment that  
29                   might substantially interfere with a fair trial or  
30                   hearing. The judge shall require\* similar  
31                   abstention from public comment on the part of  
32                   ~~court personnel\*~~ staff, court officers, and others  
33                   subject to the judge's direction and control. ~~This~~  
34                   ~~Section does not prohibit judges from making~~

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<sup>29</sup> Canon 3B(2) second sentence

<sup>30</sup> Canon 2B first sentence

<sup>31</sup> Canon 2B partial

1 ~~public statements in the course of their official~~  
2 ~~duties or from explaining for public information~~  
3 ~~the procedures of the court. This Section does~~  
4 ~~not apply to proceedings in which the judge is a~~  
5 ~~litigant in a personal capacity.~~<sup>32</sup>

6 (b) A judge shall not, with respect to cases,  
7 controversies or issues that are likely to come  
8 before the court, make pledges, promises or  
9 commitments that are inconsistent with the  
10 impartial performance of the adjudicative duties  
11 of the office.<sup>33</sup>

12 **Commentary:**

13 [1] ~~Sections 3B(9) and (10)~~ Section 2.11 restrictions on judicial  
14 speech are essential to the maintenance of the integrity, ~~impartiality~~  
15 ~~and independence~~ independence, [and?] impartiality of the  
16 judiciary.<sup>34</sup>

17 [2] A pending proceeding is one that has ~~begun but not yet reached~~  
18 ~~final disposition.~~ commenced and continues during any appellate  
19 process and until final disposition. An impending proceeding is one  
20 that is anticipated but not yet ~~begun~~ commenced. A proceeding is  
21 "impending" where there is reason to believe a case may be filed,  
22 for example, if a crime is being investigated but no charges have  
23 been brought, or if someone has been arrested but not yet charged.  
24 ~~The requirement that judges abstain from public comment~~  
25 ~~regarding a pending or impending proceeding continues during any~~  
26 ~~appellate process and until final disposition.~~<sup>35</sup>

27 [3] ~~Sections 3B(9) and (10) do~~ This Section does not prohibit a  
28 judge from commenting on proceedings in which the judge is a  
29 litigant in a personal capacity, but in cases such as a writ of  
30 mandamus where the judge is a litigant in an official capacity, the  
31 judge must not comment publicly. The conduct of lawyers relating  
32 to trial publicity is governed by [Rule 3.6 of the ABA Model Rules of  
33 Professional Conduct]. (Each jurisdiction should substitute an  
34 appropriate reference to its rule.)<sup>36</sup>

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<sup>32</sup> Canon 3B(9)

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

<sup>34</sup> Canon 3B(10) commentary

<sup>35</sup> Canon 3B(10) commentary

<sup>36</sup> Canon 3B(9) commentary

1 [4] This Section does not prohibit judges from making public  
2 statements in the course of their official duties or from explaining ~~for~~  
3 ~~public information~~ the procedures of the court to the public.<sup>37</sup> Nor  
4 does it prohibit judges from responding directly, or through a third  
5 party, to allegations in the media or elsewhere concerning the  
6 judge's conduct in a matter, provided that any such response meets  
7 the requirements of 2.11(a) and (b).

8 **2.12 Disqualification.**

- 9
- 10 **A. General Rule. In addition to disqualifying himself or herself in**  
11 **any of the circumstances in paragraphs (B) through (G) below, a**  
12 **judge shall disqualify himself or herself in a proceeding in which**  
13 **the judge's impartiality might reasonably be questioned.**  
14 **including but not limited to instances where:**<sup>38</sup>
- 15 **B. Personal Bias or Knowledge. A judge shall disqualify himself or**  
16 **herself when the judge has a personal bias or prejudice**  
17 **concerning a party or a party's lawyer, or personal knowledge\* of**  
18 **disputed evidentiary facts concerning the proceeding.**<sup>39</sup>
- 19 **C. Roles in a Proceeding. A judge shall disqualify himself or herself**  
20 **when the judge or the judge's spouse or domestic partner, or a**  
21 **person within the third degree of relationship to either of them, or**  
22 **the spouse or domestic partner of such a person:**<sup>40</sup>
- 23 1. is a party to the proceeding, or an officer, director, or  
24 trustee of a party;<sup>41</sup>
- 25 2. is acting as a lawyer in the proceeding; or<sup>42</sup>
- 26 3. is to the judge's knowledge\* likely to be a material  
27 witness in the proceeding.<sup>43</sup>
- 28 **D. Economic and other Personal Interests. A judge shall disqualify**  
29 **himself or herself when the judge knows that**
- 30 1. he or she, individually or as a fiduciary, or the judge's  
31 spouse, domestic partner, ~~parent~~ [is this deletion  
32 intentional?] or child ~~wherever residing~~ [is this  
33 deletion intentional?] or any other member of the  
34 judge's family residing in the judge's household\*, has  
35 an economic interest\* in the subject matter in  
36 controversy or in a party to the proceeding or has any

<sup>37</sup> Canon 3B(9) portion of the black letter

<sup>38</sup> Canon 3E(1)

<sup>39</sup> Canon 3E(1)(a)

<sup>40</sup> Canon 3E(1)(d)

<sup>41</sup> Canon 3E(1)(d)(i)

<sup>42</sup> Canon 3E(1)(d)(ii)

<sup>43</sup> Canon 3E(1)(d)(iv)

- 1 other more than de minimis\* interest that could be  
2 substantially affected by the proceeding;<sup>44</sup> or  
3 2. a person within the third degree of relationship to the  
4 judge or the judge’s spouse or domestic partner, or  
5 the spouse or domestic partner of such a person, is  
6 known by the judge to have has a more than de  
7 minimis\* interest that could be substantially affected  
8 by the proceeding.<sup>45</sup>
- 9 E. **Campaign Contributions.** A judge shall disqualify himself or  
10 herself when the judge knows or learns by means of a timely  
11 motion that a party or a party’s lawyer has within the previous [ ]  
12 year[s] made aggregate\* contributions to the judge’s campaign in  
13 an amount that is greater than [[ [\$ ] for an individual or [\$ ] for an  
14 entity] ] [[is reasonable and appropriate for an individual or an  
15 entity]].<sup>46</sup>
- 16 F. **Public Statements.** A judge shall disqualify himself or herself if  
17 the judge, while a judge or a candidate for judicial office, has  
18 made a public statement that commits, or appears to commit, the  
19 judge with respect to (i) an issue in the proceeding or (ii) the  
20 controversy in the proceeding.<sup>47</sup>
- 21 G. **Prior Affiliations.** A judge shall disqualify himself or herself  
22 where the judge  
23 1. served as a lawyer in the matter in controversy, or a  
24 lawyer with whom the judge previously practiced law  
25 served during such association as a lawyer  
26 concerning the matter;<sup>48</sup>  
27 2. ~~or the judge has been a~~ served as a material witness  
28 concerning it the matter; or<sup>49</sup>  
29 3. served in governmental employment and in such  
30 capacity participated as lawyer, advisor, or material  
31 witness concerning the proceeding or has expressed  
32 an opinion concerning the merits of the particular case  
33 in controversy.
- 34 H. **Monitoring Economic Interests.** A judge shall keep informed  
35 about the judge’s personal and fiduciary\* economic interests\*,  
36 and make a reasonable effort to keep informed about the personal

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<sup>44</sup> Canon 3E(1)(c)

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

<sup>46</sup> Canon 3E(1)(e) [The following note appears in the 1990 Code: 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 an appropriate” language should be used.]

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

<sup>48</sup> Canon 3E(1)(b) partial

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

1 **economic interests of the judge's spouse or domestic partner,**  
2 **and minor children residing in the judge's household.<sup>50</sup>**

3 **I. Remittal of Disqualification. A judge disqualified ~~subject to~~**  
4 **disqualification by the terms of Section E this Section, other than**  
5 **paragraph B, may disclose on the record the basis of the judge's**  
6 **disqualification and may ask the parties and their lawyers to**  
7 **consider, out of the presence of the judge, whether to waive**  
8 **disqualification. ~~If following disclosure of any basis for~~**  
9 **~~disqualification other than personal bias or prejudice concerning~~**  
10 **~~a party~~, the parties and lawyers, without participation by the**  
11 **judge, ~~all agree that the judge should not be disqualified, and the~~**  
12 **~~judge is then willing to participate~~, the judge may participate in**  
13 **the proceeding. Such a remittal The agreement shall be written**  
14 **and shall be incorporated in the record of the proceeding.<sup>51</sup>**  
15  
16

17 **Commentary:**

18 [1] Under this rule, a judge is disqualified whenever the judge's  
19 impartiality might reasonably be questioned, regardless of whether  
20 any of the specific provisions in ~~Section 3E(1)~~ of Section 2.12 A-G  
21 apply. For example, if a judge were in the process of negotiating for  
22 employment with a law firm, the judge would be disqualified from  
23 any matters in which that law firm appeared, unless the  
24 disqualification was waived by the parties after disclosure by the  
25 judge.<sup>52</sup>

26 [2] A judge should disclose on the record information that the judge  
27 believes the parties or their lawyers might consider relevant to the  
28 question of disqualification, even if the judge believes there is no  
29 real basis for disqualification.<sup>53</sup>

30 [3] By decisional law, the rule of necessity may override the rule of  
31 disqualification. For example, a judge might be required to  
32 participate in judicial review of a judicial salary statute, or might be  
33 the only judge available in a matter requiring immediate judicial  
34 action, such as a hearing on probable cause or a temporary  
35 restraining order. ~~In the latter case~~ matters such as these latter two,  
36 that require immediate action, the judge must disclose on the  
37 record the basis for possible disqualification and use reasonable

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<sup>50</sup> Canon 3E(2)

<sup>51</sup> Canon 3F

<sup>52</sup> Canon 3E(1) commentary.

<sup>53</sup> Canon 3E(1) commentary

1 efforts to transfer the matter to another judge as soon as  
2 practicable.<sup>54</sup>

3 [4] A lawyer in a government agency does not ordinarily have an  
4 association with other lawyers employed by that agency within the  
5 meaning of Section ~~3E(1)(b)~~ 2.12G; a judge formerly employed by  
6 a government agency, however, shall ~~should~~ disqualify himself or  
7 herself in a proceeding if the judge's impartiality might reasonably  
8 be questioned because of such association.<sup>55</sup>

9 [5] The fact that a lawyer in a proceeding is affiliated with a law firm  
10 with which a relative of the judge is affiliated does not of itself  
11 disqualify the judge. ~~Under appropriate circumstances, the fact that~~  
12 If, however, "the judge's impartiality might reasonably be  
13 questioned" under Section ~~3E(1)~~ 2.12A or the relative is known by  
14 the judge to have an interest in the law firm that could be  
15 "substantially affected by the proceeding" under Section  
16 ~~3E(1)(d)(iii)~~ 2.12D(2) the judge's disqualification may be required  
17 may require the judge's disqualification.<sup>56</sup>

18 [6] A remittal procedure provides the parties an opportunity to  
19 proceed without delay if they wish to waive the disqualification. To  
20 assure that consideration of the question of remittal is made  
21 independently of the judge, a judge must not solicit, seek or hear  
22 comment on possible remittal or waiver of the disqualification  
23 unless the lawyers jointly propose remittal after consultation as  
24 provided in the rule. A party may act through counsel if counsel  
25 represents on the record that the party has been consulted and  
26 consents. As a practical matter, a judge may wish to have all  
27 parties and their lawyers sign the remittal agreement.<sup>57</sup>

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## 29 **C. Administration Administrative Responsibilities**

30 **2.13 Administrative Competence and Diligence. A judge shall**  
31 **diligently discharge the judge's administrative responsibilities**  
32 **without bias or prejudice and maintain professional**  
33 **competence in judicial administration, and should cooperate**

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<sup>54</sup> Canon 3E(1) commentary

<sup>55</sup> Canon 3E(1)(b) commentary

<sup>56</sup> Canon 3E(1)(f) commentary

<sup>57</sup> Canon 3F commentary

1           **with other judges and court officials in the administration of**  
2           **court business.**<sup>58</sup>

3           **Commentary:**

4           [1] The judge's obligation to perform adjudicative responsibilities  
5           diligently, competently and without bias or prejudice, applies  
6           equally to the judge's administrative responsibilities.

7

8           **2.14 Supervision of Staff. A judge shall require\* staff, court**  
9           **officials and others subject to the judge's direction and control**  
10           **~~to observe the standards of fidelity and diligence that apply to~~**  
11           **~~the judge and to refrain from manifesting bias or prejudice in~~**  
12           **~~the performance of their official duties act in a manner~~**  
13           **consistent with the high standards of conduct expressed in**  
14           **this code.**<sup>59</sup>

15           **Commentary:**

16           [1] The first contact that members of the public have with the  
17           judicial system is often with court staff. It is therefore especially  
18           important that judges take responsibility for ensuring that the  
19           conduct of personnel subject to their direction and control is  
20           consistent with the high standards of conduct embodied in this  
21           code.

22           **2.15 Supervision of Other Judges. A judge with supervisory**  
23           **authority ~~for the judicial performance of other judges~~ shall**  
24           **take reasonable measures to assure the prompt disposition of**  
25           **matters before them and the proper performance of their other**  
26           **~~judicial~~ administrative responsibilities.**<sup>60</sup>

27           **Commentary:**

28           [1] Public confidence in the courts depends on justice not being  
29           unduly delayed. To promote the efficient administration of justice,  
30           judges with supervisory authority must take the steps needed to  
31           ensure that judges under their supervision administer the workload  
32           of their courts expeditiously.

33           **2.16 Administrative Appointments.**

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<sup>58</sup> Canon 3C(1)

<sup>59</sup> Canon 3C(2)

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

1            ~~(a) A judge shall not make unnecessary~~  
2 ~~appointments.~~ A judge shall exercise the power  
3 of appointment impartially and on the basis of  
4 merit. A judge shall avoid nepotism, and  
5 favoritism and unnecessary appointments. A  
6 judge shall not approve compensation of  
7 appointees beyond the fair value of services  
8 rendered.<sup>61</sup>

9            (b) A judge shall not appoint a lawyer to a position  
10 if the judge either knows that the lawyer has  
11 contributed more than [\$ ] within the prior [ ]  
12 years to the judge's election campaign,<sup>62</sup> or learns  
13 of such a contribution by means of a timely  
14 motion by a party or other person properly  
15 interested in the matter, unless<sup>63</sup>

16            (1) the position is substantially  
17 uncompensated;<sup>64</sup>

18            (2) the lawyer has been selected in  
19 rotation from a list of qualified and  
20 available lawyers compiled without  
21 regard to their having made political  
22 contributions; or<sup>65</sup>

23            (3) the judge or another presiding or  
24 administrative judge affirmatively  
25 finds that no other lawyer is willing,  
26 competent and able to accept the  
27 position.<sup>66</sup>

28            **Commentary:**

29            [1] Appointees of a judge include assigned counsel, officials such  
30 as referees, commissioners, special masters, receivers and  
31 guardians and personnel such as clerks, secretaries and bailiffs.  
32            Consent by the parties to an appointment or an award of

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<sup>61</sup> Canon 3C(4)

<sup>62</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>63</sup> Canon 3C(5)

<sup>64</sup> Canon 3C(5)(a)

<sup>65</sup> Canon 3C(5)(b)

<sup>66</sup> Canon 3C(5)(c)



1 compensation does not relieve the judge of the obligation  
2 prescribed by Section 3C(4)-2.16.<sup>67</sup>

3 **D. Reporting**

4 **2.17 Judicial Misconduct** A judge having knowledge\* that  
5 another judge has committed a violation of this Code that  
6 raises a substantial question as to the other judge's fitness for  
7 office shall inform the appropriate authority\*. A judge who  
8 receives information indicating a substantial likelihood that  
9 another judge has committed a violation of this Code should  
10 take appropriate action.<sup>68</sup>

11 **Commentary:**

12 [1] Appropriate action may include direct communication with the  
13 judge or lawyer who has committed the violation, other direct action  
14 if available, and reporting the violation to the appropriate authority  
15 or other agency or body.<sup>69</sup>

16 **2.18 Lawyer Misconduct.** A judge having knowledge\* that a  
17 lawyer has committed a violation of the Rules of Professional  
18 Conduct [substitute correct title if the applicable rules of  
19 lawyer conduct have a different title] that raises a substantial  
20 question as to the lawyer's honesty, trustworthiness or fitness  
21 as a lawyer in other respects shall inform the appropriate  
22 authority\*. A judge who receives information indicating a  
23 substantial likelihood that a lawyer has committed a violation  
24 of the Rules of Professional Conduct [substitute correct title if  
25 the applicable rules of lawyer conduct have a different title]  
26 should take appropriate action.<sup>70</sup>

27 **Commentary:**

28 [1]Appropriate action may include direct communication with the  
29 judge or lawyer who has committed the violation, and reporting the  
30 violation to the appropriate authority or other agency or body.<sup>71</sup>

31 **2.19 Disability and Impairment.** A judge having knowledge that  
32 **the performance of a lawyer or another judge is impaired by**  
33 **drugs, alcohol, or other mental, emotional or physical**

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<sup>67</sup> Canon 3.C.5 commentary

<sup>68</sup> Canon 3D(1) (order of sentences reversed)

<sup>69</sup> Canon 3D commentary

<sup>70</sup> Canon 3D(2) (order of sentences reversed)

<sup>71</sup> Canon 3D commentary

1 **condition shall take appropriate action, which may include a**  
2 **confidential referral to a lawyer or judicial assistance program.**

3 **Commentary:**

4 [1] Taking or initiating corrective action by way of referral to an  
5 assistance program can fulfill several laudable purposes. For  
6 example, a resulting intervention can be the first step toward a  
7 successful recovery program. That action alone may satisfy the  
8 mandates expressed in this section. Depending on the gravity of  
9 the conduct, however (i.e., the conduct in response to which action  
10 is necessary), a judge having knowledge of such conduct may be  
11 required to take action in addition to or in lieu of a referral to the  
12 relevant assistance program.

13 **2.20 Immunity for Discharge of Duties . Acts of a judge, in the**  
14 **discharge of disciplinary responsibilities, required or**  
15 **permitted by Sections 3D(1) and 3D(2) in responding to judicial**  
16 **misconduct, lawyer misconduct, or disability and impairment**  
17 **under Rules 2.17, 2.18, and 2.19 are part of a judge's judicial**  
18 **duties and shall be absolutely privileged, and no civil action**  
19 **predicated thereon may be instituted against the judge.**<sup>72</sup>

20 **Commentary:**

21 [1] To encourage judges to report or otherwise act on evidence of  
22 lawyer and judicial misconduct as required by these Rules, it is  
23 important that judges be insulated from threats of civil action when  
24 they attempt to comply with their obligations under such rules.

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<sup>72</sup> Canon 3D(3)