

AJS Comments on Final Draft Report

Submitted to the ABA Joint Commission to
Evaluate the Model Code of Judicial Conduct
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CANON 2

**A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE
IMPARTIALLY, COMPETENTLY, AND DILIGENTLY.**

IN GENERAL

RULE 2.01: GIVING PRECEDENCE TO THE DUTIES OF JUDICIAL OFFICE

The duties of judicial office shall take precedence over extrajudicial activities of the judge. The duties of judicial office include all the responsibilities of the judge's office prescribed by law.*

RULE 2.02: BIAS, PREJUDICE, AND HARASSMENT

(A) A judge shall perform judicial duties without bias or prejudice, and shall not engage in harassment.

(B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias, or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, parenthood, language, or socioeconomic status, and shall not permit staff, court officials, and others subject to the judge's direction and control to do so. This does not preclude legitimate references to those factors when relevant to an issue in the proceeding.

(C) A judge shall require lawyers in proceedings before the judge to refrain from manifesting bias, or prejudice, or engaging in harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, parenthood, language, or socioeconomic status, against parties, witnesses, counsel, or others. This does not preclude legitimate advocacy when these or other similar factors are issues in the proceeding.

COMMENT

[1] A judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Even facial expression and body language can convey to parties or lawyers in the proceeding, jurors, the media, and others

an appearance of bias. A judge must avoid conduct that may reasonably be perceived as prejudiced or biased.

[2] Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; suggesting a connection between race, ethnicity, or nationality and crime; irrelevant references to personal characteristics; and insensitive statements about crimes against women

[3] Harassment is verbal or physical conduct that denigrates or shows hostility or aversion toward an individual on bases such as race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, or socioeconomic status.

[4] Sexual harassment includes but is not limited to sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that is unwelcome, regardless of gender.

RULE 2.03: DILIGENCE

A judge shall diligently perform all of his or her judicial duties, disposing of all judicial matters promptly and efficiently.

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.

[2] In disposing of matters promptly and efficiently, 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. A judge should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.

RULE 2.04: COMPETENCE

A judge shall perform the duties of judicial office competently.

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

ADJUDICATION

RULE 2.05: 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 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 independence, integrity, and impartiality 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.

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

RULE 2.06: IMPARTIALITY* AND FAIRNESS

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

COMMENT

[1] When applying and interpreting the law, a judge may on occasion make a good faith mistake of fact or law. An error of this kind does not violate this Rule. ~~Intentional failure to follow the law, however, may constitute a violation of this Rule. Misconduct may be proven, however, by a pattern of legal error or a decision evidencing bad faith, bias, disregard for fundamental rights, or an intentional disregard of the law.~~

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

[3] To ensure impartiality and fairness to all parties, a judge must be objective and open-minded, and must not show favoritism toward anyone. It is not a violation of this Rule,

however, for a judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard.

RULE 2.07: EXTERNAL INFLUENCES ON JUDICIAL CONDUCT

(A) A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

(B) A judge shall not allow family, social, political, financial, or other relationships to influence the judge’s judicial conduct or judgment.

(C) A judge shall not convey or permit other persons to convey the impression that any persons are in a position to influence the judge.

COMMENT

[1] An independent judiciary requires that judges decide cases according to law and facts without regard to whether a particular 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 do not create a perception that their decisions could be colored by such influences.

[There are no appropriate outside influences.]

RULE 2.08: DEMEANOR, DECORUM, AND COMMUNICATION WITH JURORS

(A) A judge shall require order and decorum in proceedings before the judge.

(B) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, **judges**, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials, and others subject to the judge’s direction and control.

(C) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding.

COMMENT

[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.

[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.

[3] A judge should express appreciation to jurors for their service to the judicial system and the community. A judge who is not otherwise prohibited by law from doing so may meet with jurors who choose to remain after trial, but should not engage in any substantive discussion of the case. At such a meeting, a judge should not, for example, suggest or imply agreement or disagreement with the verdict, reveal matters that were not received into evidence, discuss the rulings on objections made at trial, or review any proceedings that took place outside the presence of the jury.

[While meeting with jurors to improve their involvement in the process is a laudable goal, unrestricted, off-the-record discussions by judges with jurors will frequently undermine the litigants' trust in the process. In a far-ranging discussion, a judge is likely to make statements that the jurors would view as criticism of their verdict or that might make jurors question whether they have reached the correct verdict (convicted an innocent defendant or acquitted a guilty one, for example). After a verdict, the case may still be pending before the judge who has to sentence a defendant in a criminal case following conviction and decide post-verdict motions in most cases. Therefore, in those cases, a discussion with the jury from which both the public and the parties are excluded is an ex parte communication on a pending case, and if there is a discussion that goes beyond expressing appreciation, explaining procedures, and soliciting suggestions for improving the court's treatment of jurors, the parties may question the fairness of the proceedings, and the discussions may create a basis for a motion for a new trial. The Idaho Supreme Court has prohibited trial judges from engaging jurors in a dialogue of questions and answers following a verdict, but before post trial matters, including sentencing, are heard and decided. Gillingham Construction v. Newby-Wiggins Construction, 121 P.3d 946 (Idaho 2005). Judicial ethics committees have not gone that far, but they have advised caution. Arizona Advisory Opinion 01-1; Georgia Advisory Opinion 231 (1998).]

RULE 2.09: ENSURING THE RIGHT TO BE HEARD

(A) 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.*

(B) A judge may encourage parties to a proceeding and their lawyers to settle matters in dispute, but shall not act in a manner that coerces any party into settlement.

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 any party's right to be heard according to law. The judge should keep in mind the effect that the judge's participation in settlement discussions may have, not only on the judge's own views of the case, but also on the perceptions of the lawyers and the parties if the case remains with the judge after settlement efforts fail. Among the factors that a judge should consider when deciding on an appropriate settlement practice for a particular case are (1) whether the parties have requested or voluntarily consented to a certain level of participation by the judge in settlement discussions; (2) the relative sophistication of the parties and their counsel; (3) whether the case will be tried by judge or jury; and (4) whether the parties themselves or only their counsel will be involved in settlement discussions.

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* matter, except as follows:

(1) Where circumstances require, ex parte communications for scheduling, administrative purposes, or emergencies that do not deal with substantive matters are permitted, provided:

(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
(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.

(2) 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, provided that the judge does not abrogate the responsibility personally to decide the case and takes reasonable steps to avoid receiving factual information that is not part of the record.

(3) 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.

(4) A judge may initiate, permit, or consider any ex parte communications when expressly authorized by law* to do so.

(B) A judge shall not independently investigate facts in a case, and shall consider only the evidence presented.

(C) If a judge inadvertently receives an unauthorized ex parte communication **bearing on the substance of a matter**, the judge shall make provision by delegation or otherwise promptly to notify all other parties of the substance of the communication and give the parties an opportunity to respond.

(D) A judge shall make reasonable efforts, including the provision of appropriate supervision, to ensure that this Rule is not violated through law clerks or other personnel on the judge's staff.

COMMENT

[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 this Rule, 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 teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted by this Rule.

[4] Certain ex parte communications are permitted by this Rule to facilitate scheduling and other administrative purposes and to accommodate emergencies. A judge must disclose to all parties, in a manner that ensures notice, all ex parte communications described in paragraph (A)(1) regarding a proceeding pending or impending before the judge.

[5] A judge may initiate, permit, or consider any ex parte communications when expressly authorized by law to do so, such as in therapeutic or problem-solving courts, for example mental health courts or certain drug courts, where judges may assume a more active role than they assume in a traditional court setting, involving greater interaction with parties, treatment providers, probation officer, social workers, and others.

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

[7] **If a judge does not have the information necessary to make a decision, the appropriate remedy is to direct the parties to present further evidence or to rule against the party who was unable to sustain the burden of proof, not for the judge to investigate the facts independently.** The prohibition against a judge investigating the facts in a case

independently or through a member of the judge's staff extends to information available in all mediums, including electronic ones. The prohibition on independent investigation does not prevent a judge from taking judicial notice of facts where allowed by law.

[8] An ex parte communication with other judges and court personnel is not appropriate if the judge knows the other judge or member of court staff has a disqualifying interest in the proceeding. Similarly, a judge should not consult with a member of a subordinate or appellate court that may hear the matter. The exception for consultation with court personnel is not intended to authorize ex parte consultation with court staff whose function is to provide evidence or act as an advocate in a proceeding.

[9] Even when an ex parte request is authorized by law, a judge should scrupulously examine the facts and the principles of law upon which it is based, granting the request only when fully satisfied when the law permits it.

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

RULE 2.11: JUDICIAL STATEMENTS ON PENDING* AND FUTURE CASES

(A) A judge shall not make any public comment on statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending* in any court except in the course of official duties, to explain the procedures of the court for public information, or as part of a legal education program. A judge shall not discuss the rationale for a decision outside the record unless the judge is repeating what was already made part of the public record.

(B) The judge shall require similar abstention on the part of staff, court officers, and others subject to the judge's direction and control.

(C) A judge shall not, with respect to cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial* performance of the ~~adjudicative~~ duties of judicial office.

(D) This Rule does not prohibit public statements made in the course of a judge's official duties or an explanation of court procedures, nor does it preclude a judge from commenting on proceedings in which the judge is a litigant in a personal capacity.

COMMENT

[1] This Rule's restrictions on judicial speech are essential maintaining the maintenance of the integrity, impartiality and independence of the judiciary. By refraining from public comment, judges reassure the public that cases are being tried, not in the press, but in the public forum devoted to that purpose.

[2] This Rule does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity. However, in cases in which the judge is a litigant in an official capacity, such as a writ of mandamus, the judge must not comment publicly.

[3] This Rule does not prohibit judges from making public statements in the course of their official duties or from explaining the procedures of the court to the public, or from responding directly or through a third party to allegations in the media or elsewhere concerning the judge's conduct in a matter. This prohibition does not preclude a judge from making a public comment reiterating without elaboration what is set forth in the public record in a case, including pleadings, documentary evidence, and the transcript of proceedings held in open court.

[Allowing a judge to respond without limitation to allegations “in the media or elsewhere concerning the judge’s conduct in a matter” will result in litigants having to read the paper or watch TV to find out the judge’s thinking about their case, a distortion of the administration of justice that will inevitably undermine confidence in the courts as the public see judges deciding cases in the media rather than the courtroom and the media manipulating that process. AJS’s suggestions limit a judge’s response to reiterating without elaboration what is set forth in the public record in a case, including pleadings, documentary evidence, and the transcript of proceedings held in open court, a limitation that protects the integrity of the judicial process while allowing for public education about the process.]

[4] Speaking to a journalist is a public comment even where it is agreed that the statements are “off the record.” Even in legal education programs and materials, a judge should not discuss a pending case in which the judge is personally participating or has participated.

~~[4] As long as it will not affect the outcome or impair the fairness of a proceeding, candidates for judicial office may respond to unjust criticism. See Rule 5.01, Comment [12].~~

RULE 2.12: DISQUALIFICATION

(A) A judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality* might reasonably be questioned, including but not limited to circumstances where:

(1) the judge has a personal bias or prejudice concerning a party or a party’s lawyer, or personal knowledge* of facts that are in dispute in the proceeding;

(2) the judge knows that the judge, the judge's spouse* or domestic partner,* a person within the third degree of relationship* to either of them, or the spouse or domestic partner of such a person is:

- (a) a party to the proceeding, or an officer, director, or trustee of a party;
- (b) acting as a lawyer in the proceeding;
- (c) a person who has more than a de minimis* interest that could be substantially affected by the proceeding; or
- (d) likely to be a material witness in the proceeding;

(3) the judge knows that he or she, individually or as a fiduciary,* or the judge's spouse, domestic partner, parent 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;

(4) the judge knows or learns by means of a timely motion that a party, a party's lawyer, or the law firm of a 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];

(5) the judge, while a judge or a candidate for judicial office,* has made a public statement, other than in a prior judicial decision or opinion, that commits, or appears to commit, the judge to reach a particular result with respect to an issue in the proceeding or a controversy in the proceeding; or

[AJS supports including statements that “appears to commit” as a grounds for disqualification. Requiring disqualification when a judge has made a statement that appears to commit the judge is necessary to implement litigants’ due process right to a judge who is both impartial and appears to be impartial. Even assuming judges and judicial candidates have a First Amendment right to make a statement that appears to make a commitment on an issue during an election campaign or other context, that right is subordinate to litigants’ due process rights in the context of a case. Disqualification under those circumstances cannot reasonably be viewed as a punishment. A judge has no right to sit in a case and disqualification results in no diminution of salary, privileges and benefits of office, or workload.]

(6) the judge:

(a) served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially in the matter during such association;

(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.

(b) served in governmental employment, and in such capacity participated as lawyer or advisor concerning the proceeding, or has expressed an opinion concerning the merits of the particular case in controversy;

- (c) was a material witness concerning the matter; or
- (d) previously presided as a judge over the proceeding in 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.

(C) A judge subject to disqualification under this Rule, other than for bias or prejudice under 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, outside the presence of the judge and court personnel, whether to waive disqualification. If, following the disclosure, the parties and lawyers, without participation by the judge or court personnel, all agree that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.

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 2.12(A)(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. If a judge's impartiality might reasonably be questioned under this Rule, the duty to disqualify takes priority over the responsibility to decide under Rule 2.05.

[2] That a party, attorney, or other participant is involved in a proceeding in an official or government capacity is irrelevant to the question whether the judge's relationship to that person requires disqualification.

[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] 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 possible disqualification and make reasonable efforts to transfer the matter to another judge as soon as practicable.

[4] The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not of itself disqualify the judge. If, however, the judge's impartiality might reasonably be questioned under paragraph (A), or the relative

is known by the judge to have an interest in the law firm that could be substantially affected by the proceeding under paragraph (A)(2)(c), the judge's disqualification is required.

[5] A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification.

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

[7] "Economic interest" denotes ownership of more than a de minimis legal or equitable interest, but does not extend to such holdings or interests as a judge might have, for example, in mutual or common investment funds, non-convertible debt instruments such as municipal or corporate bonds, deposits a judge might maintain in financial institutions, mutual savings associations or credit unions, or government securities owned by a judge, unless a proceeding pending or impending before the judge could substantially affect the value of such holdings or interests, or the judge is involved in the management of such entities' holdings. The fact that securities might be held by an educational, charitable, fraternal, or civic organization in whose service a judge or the judge's spouse or domestic partner, parent, or child may serve as a director, officer, advisor, or other participant does not thereby give a judge an economic interest in such an organization for the purposes of this Rule.

ADMINISTRATION

RULE 2.13: ADMINISTRATIVE COMPETENCE AND DILIGENCE

A judge shall discharge the judge's administrative responsibilities promptly, competently, fairly, and without bias or prejudice, and shall cooperate with other judges and court officials in the administration of court business.

RULE 2.14: SUPERVISION OF STAFF

A judge shall require staff, court officials, and others subject to the judge's direction and control to act in a manner compatible with the judge's obligations under this Code.

COMMENT

[1] Staff and court officials deal regularly with lawyers, parties, and the public on behalf of the judge. Although the Code applies only to judges, it is especially important that judges ensure that the conduct of personnel subject to their direction and control is consistent with the standards of conduct embodied in this Code. See, e.g., Rule 2.02(B).

[2] Judges are responsible for their own conduct and for the conduct of others, such as staff, when those individuals are acting at the judge's direction or control. A judge may not direct staff to engage in conduct on the judge's behalf or as the judge's representative when such conduct would violate the Code if undertaken by the judge himself or herself.

[3] Staff separately should be subject to similar and compatible rules of conduct.

RULE 2.15: SUPERVISION OF OTHER JUDGES

A judge with supervisory authority for the performance of other judges shall take reasonable measures to assure that those judges properly discharge their judicial responsibilities, including the prompt and efficient disposition of matters before them.

COMMENT

[1] Public confidence in the courts depends on timely justice. To promote the efficient administration of justice, judges with supervisory authority must take the steps needed to ensure that judges under their supervision administer their workloads expeditiously.

RULE 2.16: ADMINISTRATIVE APPOINTMENTS

(A) A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism, favoritism, and unnecessary appointments. A judge shall not approve compensation of appointees beyond the fair value of services rendered.

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

- (1) the position is substantially uncompensated;
- (2) the lawyer has been selected in rotation from a list of qualified and available lawyers compiled without regard to their having made political contributions; or
- (3) the judge or another presiding or administrative judge affirmatively finds that no other lawyer is willing, competent, and able to accept the position.

COMMENT

[1] Appointees of a judge include assigned counsel, officials such as referees, commissioners, special masters, receivers, and guardians, and personnel such as clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by paragraph (A).

[2] Unless otherwise defined by law, nepotism is the appointment or hiring of any relative within the third degree of relationship of either the judge or the judge's spouse or domestic partner, or the spouse or domestic partner of such a person.

[3] The rule against making administrative appointments to lawyers who have contributed in excess of a specified dollar amount to a judge's election campaign includes an exception for positions that are substantially uncompensated, which permits appointments where the lawyer's compensation is limited to reimbursement for out-of-pocket expenses.

RULE 2.17: RESPONDING TO JUDICIAL MISCONDUCT

(A) A judge having knowledge* that another judge has committed a violation of this Code that raises a substantial question as to the judge's honesty, trustworthiness, or fitness as a judge in other respects shall inform the appropriate authority.*

(B) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code shall take appropriate action.

COMMENT

[1] Ignoring or denying known misconduct among one's judicial colleagues undermines the responsibility each judge has to participate in efforts to ensure public respect for the justice system. Taking affirmative action to address known misconduct is therefore a judge's obligation. Appropriate action may include direct communication with the judge who may have committed the violation, communication with a supervising judge, and reporting the violation to the appropriate authority or other agency or body.

RULE 2.18: RESPONDING TO LAWYER MISCONDUCT

(A) A judge having knowledge* that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate authority.*

(B) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct shall take appropriate action.

COMMENT

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

RULE 2.19: DISABILITY AND IMPAIRMENT

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

COMMENT

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

[2] Taking or initiating corrective action by way of referral to an assistance program can fulfill several laudable purposes. For example, an intervention can be the first step toward a successful recovery program. That action alone may satisfy the mandates expressed in this Rule. Depending on the gravity of the conduct that has come to the judge’s attention, the judge may be required to take action in addition to or in lieu of a referral to a relevant assistance program.

RULE 2.20: COOPERATION WITH DISCIPLINARY AUTHORITIES

(A) During disciplinary proceedings, a judge shall cooperate and be candid and honest with the judicial conduct commission or lawyer discipline agency.

(B) A judge shall not retaliate, directly or indirectly, against anyone known* or suspected to have assisted or cooperated with an investigation of a judge.