

**The New York State Lawyer Assistance Trust**  
**Barbara Smith**  
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The New York State Lawyer Assistance Trust recommends adoption of the proposed final draft of Rule 2.19 of Canon 2, which states:

Canon 2: A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY,  
COMPETENTLY AND DILIGENTLY

. . . .

**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 . . . . [2] Taking or initiating corrective action by way of referral to an assistance program can fulfill several laudatory 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.

While the Trust affirms that the proposed text will clarify options available for judges regarding lawyers or fellow judges who may be impaired for a variety of reasons, the Trust wishes to express its disappointment that the Commission chose not to adopt a process of diversion from discipline of judges who may be exhibiting the effects and behaviors related to alcoholism, chemical dependency or mental conditions. Successful completion of a period of monitoring (after treatment, if required) is an appropriate alternative to public sanction or removal in many circumstances.

Further, it is unclear under the last sentence of comment [2] what action a judge "may be required to take. . .in addition to or in lieu of a referral to a relevant assistance program." Additional explanatory language would be useful.

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