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2 **DISCIPLINE COMMITTEE DRAFT**
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4 **American Bar Association**
5 **Model Code of Judicial Conduct**
6 **MAY 2004 DRAFT**
7 **CANON 2**
8

9 **JUDICIAL CONDUCT: A JUDGE SHALL PERFORM THE**
10 **DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY**
11

12 **A. In General**

13 **Rule 2.01 Giving Precedence to the Duties of Judicial Office. A judge shall not let**
14 **other activities take precedence over the duties of judicial office.**
15

16 **Commentary:**
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18 [1] The primary responsibility of a judge is to perform the duties of judicial office. These
19 duties include all the responsibilities of the judge's office prescribed by law and court
20 rules.¹ While judges engage in a variety of activities, the defining feature of their judicial
21 role is the interpretation and application of the law. For that reason, those official duties
22 that further the judicial function directly, through adjudication, or indirectly, through
23 administration or control of their courtrooms and proceedings through applicable rules of
24 evidence and procedure, take precedence over the judge's other activities.
25

26 **B. Adjudication**
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28 **Rule 2.02 The Duty to Decide. A judge shall hear and decide matters assigned to**
29 **the judge except those in which disqualification is required or recusal is**
30 **appropriate under Rule 2.12.²**
31

32 **Commentary:**
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34 [1] A fundamental obligation of judicial office is to be available to decide the matters that
35 come before the judge. To protect the rights of litigants and preserve public confidence in
36 the integrity, independence and impartiality of the judiciary, there will be times when
37 disqualification or recusal is required or appropriate. A judge must not, however, use
38 recusal or disqualification to avoid cases that present difficult or controversial issues or
39 engage in conduct that would result in frequent recusal or disqualification. See also, Rule
40 2.12.
41

42 **Rule 2.03 Competence in the Law. A judge shall perform his/her duties**
43 **competently. Competence in the performance of judicial duties requires the legal**
44 **knowledge, skill, thoroughness and preparation reasonably necessary to perform**
45 **the judge's responsibilities of office.**
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47 **Commentary:**
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49 [1] When applying and upholding the law in the course of judicial decision-making, a
50 judge may on occasion make a mistake of fact or law. Whether an error of law, mistake
51 of fact or abuse of discretion committed by a judge constitutes a violation of this Rule
52 depends upon the specific circumstances under which such error, mistake or abuse
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54 ¹ Canon 3.A

55 ² Canon 3.B.1.

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occurs. While not limited to the following examples, misconduct may be proven by evidence demonstrating a judge's intentional disregard of the law or facts of a case, a pattern of decision making that demonstrates bad faith, evidence of bias, abuse of authority or the performance of judicial duties in violation of the other Rules and Canons set forth in this Code.

Rule 2.04 Impartiality and Fairness. A Judge shall apply the law and decide all cases with impartiality and fairness.

Commentary

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

Rule 2.05 Bias and Discrimination.

(a) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, gender, religion, national origin, ethnicity, disability, age, sexual orientation or socioeconomic status, and shall not permit staff, court officials and others subject to the judge's direction and control to do so.⁴

(b) A judge shall require* lawyers in proceedings before the judge to refrain from manifesting, bias or prejudice based upon race, gender, religion, national origin, ethnicity, disability, age, sexual orientation or socioeconomic status, against parties, witnesses, counsel or others. This Rule does not preclude legitimate advocacy when race, gender, religion, national origin, ethnicity, disability, age, sexual orientation, socioeconomic status or other similar factors are issues in the proceeding.⁵

Commentary:

[1] A judge shall refrain from speech, gestures or other conduct that would reasonably be perceived as manifestations of bias and prejudice, including but not limited to harassment as defined by applicable law. A judge who engages in such conduct 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 a manifestation of bias. A judge shall require others subject to the judge's direction and control to abide by the same standard of conduct.⁶

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

³ Canon 3.B.2
⁴ Canon 3.B.5.
⁵ Canon 3.B.6.
⁶ Canon 3.B.5 commentary

1 **Rule 2.06 Diligence. A judge shall act diligently in the performance of all of his/her**
2 **judicial duties, and shall dispose of all judicial matters promptly, efficiently and**
3 **fairly.**⁸
4

5 **Commentary:**

6 [1] Prompt disposition of the court's business requires a judge to devote adequate time to
7 judicial duties, to be punctual in attending court and expeditious in determining matters
8 under submission, and to insist that court officials, litigants and their lawyers cooperate
9 with the judge to that end.⁹
10

11 [2] In disposing of matters promptly, efficiently and fairly, a judge must demonstrate due
12 regard for the rights of the parties to be heard and to have issues resolved without
13 unnecessary cost or delay. Containing costs while preserving fundamental rights of
14 parties also protects the interests of witnesses and the general public. A judge must
15 monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable
16 delays and unnecessary costs. A judge should encourage and seek to facilitate
17 settlement, but should not coerce parties into surrendering the right to have their
18 controversy resolved by the courts.¹⁰ See Rule 2.08
19

20 **Rule 2.07 Demeanor and Decorum.**

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

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

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

30 **Commentary:**

31 [1] The duty to hear all proceedings fairly and with patience is not inconsistent with the
32 duty to dispose promptly of the business of the court. Judges can be efficient and
33 businesslike while being patient and deliberate.¹⁴
34

35 [2] Commending or criticizing jurors for their verdict may imply a judicial expectation in
36 future cases and may impair a juror's ability to be fair and impartial in a subsequent
37 case.¹⁵
38

39 [3] Where not otherwise prohibited by law and with due caution after their jury service is
40 concluded, judges may meet with jurors to answer questions about and discuss the
41 justice system generally. Judges shall not engage in any substantive discussion with
42 jurors regarding the case that has just concluded, nor shall they state or imply agreement
43 or disagreement with the verdict or reveal information that was excluded from the jury's
44 consideration during the pendency of the case. Judges shall not discuss with jurors any
45 rulings or proceedings that took place outside the presence of the jury, nor shall they
46 discuss the performance of the lawyers or the witnesses.
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48 ⁷ Canon 3.B.5 commentary

49 ⁸ Canon 3.B.8.

50 ⁹ Canon 3.B.8 Commentary

51 ¹⁰ Canon 3.B.8 commentary

52 ¹¹ Canon 3.B.3

53 ¹² Canon 3.B.4.

54 ¹³ Canon 3.B.11.

55 ¹⁴ Canon 3.B.4 commentary

56 ¹⁵ Canon 3.B.11 commentary

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Rule 2.08 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 and procedural 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.

Rule 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 that:

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

(i) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication, and

(ii) the judge promptly gives notice to all other parties of the substance of the ex parte communication and allows an opportunity to respond.

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

(3) A judge may consult with court personnel* whose function is to aid the judge in carrying out the judge’s adjudicative responsibilities or with other judges who do not have any disqualifying interest if the judge does not abrogate the responsibility to personally decide the case and takes all reasonable steps to avoid receiving factual information that is not part of the record.

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

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

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

(c) A judge shall make reasonable efforts, including the provision of appropriate supervision, to ensure that Rule 2.09 is not violated through law clerks or other personnel on the judge’s staff.¹⁹

¹⁶ Canon 3.B.7.

¹⁷ Canon 3.B.7.

¹⁸ Canon 3.B.7 commentary

¹⁹ Canon 3.B.7 commentary

1 **Commentary:**
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3 [1] To the extent reasonably possible, all parties or their lawyers shall be included in
4 communications with a judge.
5

6 [2] Whenever the presence of a party or notice to a party is required by Rule 2.09, it is the
7 party's lawyer, or if the party is unrepresented the party, who is to be present or to whom
8 notice is to be given.
9

10 [3] The proscription against communications concerning a proceeding includes
11 communications with lawyers, law professors, and other persons who are not participants
12 in the proceeding, except to the limited extent permitted by this Rule.
13

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

21 [5] An appropriate and often desirable method of obtaining the advice of a disinterested
22 expert on legal issues is to invite the expert to file a brief amicus curiae. A judge
23 consulting with another judge shall ensure, prior to consultation, that the judge whose
24 opinion or advice is sought does not have any disqualifying interests. A disqualifying
25 interest for the purpose of Rule 2.09 (a)(3) would include, but is not limited to, the judge
26 whose opinion is sought serves on a subordinate or appellate court that may hear the
27 matter that is the subject of the consultation.
28

29 [6] A judge may request a party to submit proposed findings of fact and conclusions of
30 law, so long as the other parties are apprised of the request and are given an opportunity
31 to respond to the proposed findings and conclusions.
32

33 [7] If communication between the trial judge and the appellate court with respect to a
34 proceeding is permitted, a copy of any written communication or the substance of any
35 oral communication should be provided to all parties.
36

37 [8] The prohibition against a judge investigating the facts of a case independently or
38 through a member of the judge's staff, extends to information available in all mediums
39 including electronic access.
40

41 **2.10 External Influences on Judicial Conduct.**

42 **(a) A judge shall not be influenced by partisan interests, public clamor or fear of**
43 **criticism.²¹**

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

46 **(c) A judge shall not convey or permit others persons to convey the impression**
47 **that such persons are in a special position to influence the judge.²³**
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49 ²⁰ The commentary to this rule is taken entirely from Canon 3.B.7 commentary

50 ²¹ Canon 3.B.2.

51 ²² Canon 2.B.

52 ²³ Canon 2.B.
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1 **Commentary:**
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3 [1] An independent judiciary requires that judges decide cases according to law and facts
4 without regard to whether the law or the litigants are popular or unpopular with the media,
5 the public, government officials, or the judge's own friends or family. Confidence in the
6 judiciary is eroded if judicial decision-making is perceived to be subject to inappropriate
7 outside influences, thus giving rise to an appearance of impropriety See Rules 1.01
8 through 1.03. It is essential to judicial independence and impartiality* and maintaining the
9 public's confidence in the justice system that judges create no perception that their
10 decision-making could be affected by such influences.
11

12 **Rule 2.11 Judicial Statements Regarding Pending and Future Cases.**

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

19 **(b) A judge shall not, with respect to cases, controversies or issues that are likely**
20 **to come before the court, make statements, pledges, promises or commitments**
21 **that are inconsistent with the impartial performance of the adjudicative duties of**
22 **the office. 25**
23

24 **Commentary:**
25

26 [1] Rule 2.11's restrictions on judicial speech are essential to the maintenance of the
27 integrity, independence impartiality of the judiciary.
28

29 [2] A pending proceeding is one that has commenced and continues during any appellate
30 process and until final disposition. An impending proceeding is one that is anticipated but
31 not yet commenced. A proceeding is "impending where there is reason to believe a case
32 may be filed, for example, if a crime is being investigated but no charges have been
33 brought, or if someone has been arrested but not yet charged." **Citation or**
34 **Terminology?**
35

36 [3] This Rule does not prohibit a judge from commenting on proceedings in which the
37 judge is a litigant in a personal capacity, but in cases such as a writ of mandamus where
38 the judge is a litigant in an official capacity, the judge must not comment publicly.
39 The conduct of lawyers relating to trial publicity is governed by [Rule 3.6 of the ABA
40 Model Rules of Professional Conduct]. (Each jurisdiction should substitute an appropriate
41 reference to its rule.)²⁶
42

43 [4] This Section does not prohibit judges from making public statements in the course of
44 their official duties or from explaining the procedures of the court to the public. Nor does it
45 prohibit judges from responding directly, or through a third party, to allegations in the
46 media or elsewhere concerning the judge's conduct in a matter, provided that any such
47 response meets the requirements of Rule 2.11(a) and (b). 18
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51 ²⁴ Canon 3.B.9

52 ²⁵ Canon 3.B.10

53 ²⁶ Canon 3.B.9 commentary
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1 **Rule 2.12 Disqualification.**

2 **A. General Rule.** In addition to disqualifying himself or herself in
3 any of the circumstances in paragraphs (B) through (F) below, a judge shall
4 disqualify himself or herself in a proceeding in which the judge's impartiality
5 would reasonably be questioned.

6 **B. Personal Bias or Knowledge.** A judge shall disqualify himself or herself when
7 the judge has a personal bias or prejudice concerning a party or a party's lawyer,
8 or personal knowledge of disputed evidentiary facts concerning the proceeding.

9 **C. Roles in a Proceeding.** A judge shall disqualify himself or herself when the
10 judge, the judge's spouse or domestic partner, a person within the third degree of
11 relationship to either of them, or the spouse or domestic partner of such a person

12 1. is a party to the proceeding, or an officer, director, or trustee of a party;

13 2. is acting as a lawyer in the proceeding [how can the judge be acting as
14 the lawyer in the proceeding?]; or

15 3. is to the judge's knowledge likely to be a material [not sure of the law,
16 but would materiality matter in some of these instances? And if the judge
17 were a witness, materiality would seem to be irrelevant]

18 witness in the proceeding.

19 **D. Economic and other Personal Interests.** A judge shall disqualify himself or
20 herself when the judge knows that

21 1. he or she, individually or as a fiduciary, or the judge's spouse, domestic
22 partner or child, or any other member of the judge's family residing in the
23 judge's household, has an economic interest in the subject matter in
24 controversy or in a party to the proceeding or

25 has any other more than de minimis interest that could be substantially
26 affected by the proceeding; or

27 2. a person within the third degree of relationship to the judge or the
28 judge's spouse or domestic partner, or the spouse or domestic partner of
29 such a person, has a more than de minimis interest that could be
30 substantially affected by the proceeding.

31 **E. Campaign Contributions.** A judge shall disqualify himself or herself when the
32 judge knows or learns by means of a timely motion that a party or a party's lawyer
33 has within the previous [] year[s] made aggregate contributions to the judge's
34 campaign in an amount that is greater than [[[\$] for an individual or [\$] for an
35 entity]] [is reasonable and appropriate for an individual or an entity].²⁷

36 **F. Public Statements.** A judge shall disqualify himself or herself if the judge, while
37 a judge or a candidate for judicial office, has made a public statement that
38 commits, or appears to commit, the judge with respect to an issue in the
39 proceeding or the controversy in the proceeding.

40 **G. Prior Affiliations.** A judge shall disqualify himself or herself where the judge

41 1. served as a lawyer in the matter in controversy, or a lawyer with whom
42 the judge previously practiced law served during such association as a
43 lawyer

44 concerning the matter;

45 2. served as a material witness concerning the matter; or

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50 ²⁷ This provision is meant to be applicable wherever judges are subject to public election.
51 Jurisdictions that

52 adopt specific dollar limits on contributions in section 5(C)(3) should adopt the same limits in
53 section

54 3(E)(1)(e). Where specific dollar amounts determined by local circumstances are not used, the
55 "reasonable

56 an appropriate" language should be used.
57

1 **3. served in governmental employment and in such capacity participated as**
2 **lawyer, advisor, or material witness concerning the proceeding or has**
3 **expressed an opinion concerning the merits of the particular case in**
4 **controversy.**

5 **H. Monitoring Economic Interests. A judge shall keep informed about the judge's**
6 **personal and fiduciary economic interests, and make a reasonable effort to keep**
7 **informed about the personal economic interests of the judge's spouse or domestic**
8 **partner, and minor children residing in the judge's household.**

9 **I. Remittal of Disqualification. A judge subject to disqualification by the terms of**
10 **this Rule, other than paragraph B, may disclose on the record the basis of the**
11 **judge's disqualification and may ask the parties and their lawyers to consider, out**
12 **of the presence of the judge, whether to waive disqualification if such waiver is**
13 **permitted by law. If the parties and lawyers, without participation by the judge,**
14 **agree that the judge should not be disqualified and it is permitted by law the judge**
15 **may participate in the proceeding. Such a remittal agreement shall be written and**
16 **shall be incorporated in the record of the proceeding.**

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18 **Commentary:** 28

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

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

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

38
39 [4] A lawyer in a government agency does not ordinarily have an association with other
40 lawyers employed by that agency within the meaning of Rule 2.12(a)(2); a judge formerly
41 employed by a government agency, however, shall disqualify himself or herself in a
42 proceeding if the judge's impartiality might reasonably be questioned because of such
43 association.

44
45 [5] The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative
46 of the judge is affiliated does not of itself disqualify the judge. If, however, "the judge's
47 impartiality might reasonably be questioned" under Rule 2.12(a) or the relative is known
48 by the judge to have an interest in the law firm that could be "substantially affected by the
49 proceeding" under Rule 2.12(a)(4)(iii) the judge's disqualification may be required.

50
51 [6] A remittal procedure provides the parties an opportunity to proceed without delay if
52 they wish to waive the disqualification when permitted by law to do so. To
53 assure that consideration of the question of remittal is made independently of the judge, a
54 judge must not solicit, seek or hear comment on possible remittal or waiver of the
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56 ²⁸The commentary to this rule is taken from Canon 3.F. commentary

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disqualification unless the lawyers jointly propose remittal after consultation as provided in the Rule. A party may act through counsel if counsel represents on the record that the party has been consulted and consents. As a practical matter, a judge may wish to have all parties and their lawyers sign the remittal agreement.

C. Administration

Rule 2.13 Administrative Competence and Diligence. A judge shall discharge the judge’s administrative responsibilities promptly and without bias or prejudice, shall maintain professional competence in judicial administration, and shall cooperate with other judges and court officials in the administration of court business.²⁹

Commentary:

[1] The judge’s obligation to perform adjudicative responsibilities diligently, competently and without bias or prejudice, applies equally to the judge’s administrative responsibilities. See Rule 2.03 and Commentary.

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 consistent with this Code.³⁰

Commentary:

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

Rule 2.15 Supervision of Other Judges. A judge with supervisory authority for other judges shall take reasonable measures to assure that those judges properly perform their administrative responsibilities and promptly dispose of matters before them in a manner consistent with this Code.³¹

Commentary:

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

**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.³²**

²⁹ Canon 3.C.1.
³⁰ Canon 3.C.2.
³¹ Canon 3.C.3.
³² Canon 3.C.4.

1 (b) A judge shall not appoint a lawyer to a position if the judge either knows that
2 the lawyer has contributed more than [\$] within the prior [] years to the judge's
3 election campaign,³³ or learns of such a contribution by means of a timely motion
4 by a party or other person properly interested in the matter, unless

5 (1) the position is substantially uncompensated;

6 (2) the lawyer has been selected in rotation from a list of qualified and
7 available lawyers compiled without regard to their having made political
8 contributions; or

9 (3) the judge or another presiding or administrative judge affirmatively
10 finds that no other lawyer is willing, competent and able to accept the
11 position.³³

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13 **Commentary:**

14
15 [1] Appointees of a judge include assigned counsel, officials such as referees,
16 commissioners, special masters, receivers and guardians and personnel such as clerks,
17 secretaries and bailiffs. Consent by the parties to an appointment or an award of
18 compensation does not relieve the judge of the obligation prescribed by Rule 2.16 (a).³⁴

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20 **D. Reporting**

21 **Rule 2.17 Judicial Misconduct.** A judge having knowledge* that another judge has
22 committed a violation of this Code that raises a substantial question as to the
23 other judge's fitness for office shall inform the appropriate authority*. A judge who
24 receives information indicating a substantial likelihood that another judge has
25 committed a violation of this Code should take appropriate action.³⁵ This Rule
26 does not require disclosure of information gained by the judge while participating
27 in an approved judicial assistance program.

28
29 **Commentary:**

30
31 [1] Appropriate action may include direct communication with the judge who has
32 committed the violation, other direct action if available, and reporting the violation to the
33 appropriate authority or other agency or body.³⁶

34
35 [2] Information about a judge's misconduct or fitness may be received by a judge in the
36 course of that judge's participation in an approved judicial assistance program. In that
37 circumstance, providing for an exception to the reporting requirements of this Rule
38 encourages judges to seek treatment through such a program. Without such an
39 exception, judges may refuse to seek treatment which may result in further harm to the
40 public and the integrity of the judiciary. This Rule does not otherwise address the
41 confidentiality of information received by a judge participating in an approved judicial
42 assistance program. Such an obligation may be imposed by the rules of the program or
43 other law.

44
45 **Rule 2.18 Lawyer Misconduct.** A judge having knowledge* that a lawyer has
46 committed a violation of the Rules of Professional Conduct [substitute correct title
47 if the applicable rules of lawyer conduct have a different title] that raises a
48 substantial question as to the lawyer's honesty, trustworthiness or fitness as a
49 lawyer in other respects shall inform the appropriate authority*. A judge who
50 receives information indicating a substantial likelihood that a lawyer has
51 committed a violation of the Rules of Professional Conduct [substitute correct title

52 ³³ Canon 3.C.5.

53 ³⁴ Canon 3.C.5 commentary

54 ³⁵ Canon 3.D.1

55 ³⁶ Canon 3.D. Commentary

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if the applicable rules of lawyer conduct have a different title]should take appropriate action.³⁷ This Rule does not require disclosure of information gained by the judge while participating in an approved lawyer assistance program.

Commentary:

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

[2] Information about a lawyer's misconduct or fitness may be received by a judge in the course of that judge's participation in an approved lawyers assistance program. In that circumstance, providing for an exception to the reporting requirements of this Rule encourages lawyers and judges to seek treatment through such a program. Without such an exception, judges and lawyers may refuse to seek treatment that may result in further harm to the public and the integrity of the judiciary. This Rule does not otherwise address the confidentiality of information received by a judge participating in an approved lawyers assistance program. Such an obligation may be imposed by the rules of the program or other law.

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

Commentary:

[1] Taking or initiating corrective action by way of referral to an assistance program can fulfill several laudable purposes. For example, a resulting 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, however (i.e., the conduct in response to which action is necessary), a judge having knowledge of such conduct may be required to take action in addition to or in lieu of a referral to the relevant assistance program.

Rule 2.20 Cooperating With Disciplinary Authorities. A judge, in connection with a judicial disciplinary matter, shall not willfully fail to appear personally as directed or knowingly fail to respond to a lawful demand from a disciplinary authority.

Commentary

[1] This Rule is subject to the provisions of the Fifth Amendment of the United States Constitution and corresponding provisions of state constitutions.

³⁷ Canon 3.D.2
³⁸ Canon 3.D. Commentary