

Rule 1.01, Comment 2

Observing Standards of Judicial Conduct

Association of the Bar of the City of New York [ABCONY] Joint Subcommittee

Ronald C. Minkoff

August 3, 2004

The ABCONY Joint Committee favors replacement of the more indirect statement in Rule 1.10, Comment 2 (“Avoiding impropriety and its appearance is an overarching principle of judicial conduct embodied in this Canon.”) with clearer language from the current Code of Judicial Conduct (“A judge must avoid all impropriety and appearance of impropriety”).

Rule 2.02, Comment 1

The Duty to Decide

Association of the Bar of the City of New York [ABCONY] Joint Subcommittee

Ronald C. Minkoff

August 3, 2004

The ABCONY Joint Committee endorses the addition to Rule 2.02, Comment 1 which states: “A judge must not use recusal or disqualification to avoid difficult or controversial issues.” In response to the Commission’s request for comment about location of this statement, it should appear as comment to both Rule 2.02 and Rule 2.12 (Disqualification).

Rule 2.04

Impartiality and Fairness

Association of the Bar of the City of New York [ABCONY] Joint Subcommittee

Ronald C. Minkoff

August 3, 2004

The ABCONY Joint Subcommittee suggests the following modification to Rule 2.04 to harmonize the Rule with the Comment’s correctly stated view that the humanity of the judicial process is furthered by the a philosophy and set of core values that a judge brings to the bench:

“A judge shall apply the law without regard to the judge’s personal views and shall decide all cases with impartiality and fairness.”

Rule 2.08, Comment 2

Ensuring the Right to Be Heard

Association of the Bar of the City of New York [ABCONY] Joint Subcommittee

Ronald C. Minkoff

August 3, 2004

The ABCONY Joint Subcommittee endorses Rule 2.08, Comment 2 and observes that judges should be encouraged to facilitate settlement in cases pending before them that will be tried to a jury, to conserve time, money and scarce judicial resources.

Rule 2.09, Comment 8

Ex Parte Communications

Association of the Bar of the City of New York [ABCONY] Joint Subcommittee

Ronald C. Minkoff

August 3, 2004

Since facts obtained on the Internet and in other electronic media are often incomplete or incorrect, the ABCONY Joint Subcommittee supports reference to electronic research methods in Rule 2.09, Comment 8.

Rule 2.09(a)(3)

Ex Parte Communications

Association of the Bar of the City of New York [ABCONY] Joint Subcommittee

Ronald C. Minkoff

August 3, 2004

The ABCONY Joint Subcommittee endorses inclusion in Rule 2.09(a)(3) of the following clause, with syntax changes, as noted:

“ . . . ~~and~~ *provided that* 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.”

A clause to Rule 2.09(a)(3) addressing the possibility of disqualifying interests that might be attributed to “consulted” judges is not necessary, and guidance or rules on this point should come from court decisions and ethics opinions. Moreover, trying to regulate judge-to-judge contacts in this manner is neither necessary nor workable.

Rule 2.09

Ex Parte Communications

Association of the Bar of the City of New York [ABCONY] Joint Subcommittee

Ronald C. Minkoff

August 3, 2004

The Joint Subcommittee does not favor inclusion of exceptions to prohibitions on ex parte communications for any specialized court such as drug or domestic abuse court. The Joint Subcommittee notes in this regard numerous complaints about Housing Court judges who made a practice of communicating ex parte with the New York City Department of Housing Preservation and Development concerning pending eviction cases.

Rule 2.09, Comment 5

Ex Parte Communications

Association of the Bar of the City of New York [ABCONY] Joint Subcommittee

Ronald C. Minkoff

August 3, 2004

The ABCONY Joint Subcommittee expresses serious concern about the breadth of Rule 2.09(a)(2) and Comment 5 which provide that a judge may seek out the advice of a disinterested expert with notice to the parties and an opportunity for the parties to respond because of the risks that experts may not be sufficiently disinterested and unfairness that may result for the parties if the judge and expert consult on specific issues relating to the case before the parties are notified. To minimize these risks, the Joint Subcommittee recommends inclusion of comment that a judge may independently consult with others regarding general legal issues, without naming parties or giving factual details concerning particular cases.

Rule 2.20

Immunity for Discharge of Duties

Association of the Bar of the City of New York [ABCONY] Joint Subcommittee

Ronald C. Minkoff

August 3, 2004

The ABCONY Joint Subcommittee observes that the immunity conferred in Rule 2.20 for acts under Rules 2.17, 2.18 and 2.19 (concerning judicial misconduct, lawyer misconduct, and lawyer or judge disability and impairment) is typically granted only by the legislature and is therefore inappropriately included in the Code of Judicial Conduct.