

1 American Bar Association
2 Model Code of Judicial Conduct

3 **MAY 2004 DRAFT**

4
5 **CANON 2**

6
7 **JUDICIAL CONDUCT : A JUDGE SHALL PERFORM THE**
8 **DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY**

9 **A. In General**

10 **2.01 Giving Precedence to the Duties of Judicial Office.** The
11 **duties of judicial office shall take precedence over all the other**
12 **activities of the judge. The duties of judicial office include all**
13 **the responsibilities of the judge's office prescribed by law.¹**

14 **Commentary:**

15 [1] While judges engage in a variety of activities, the defining
16 feature of their judicial role is the interpretation and application of
17 the law. For that reason, those official duties that further the judicial
18 function directly, though adjudication, or indirectly, through
19 administration or discipline, are of primary importance relative to
20 the judge's other activities.

21 **B. Adjudication**

22 **2.02 The Duty to Decide.** A judge shall hear and decide
23 **matters assigned to the judge except those in which**
24 **disqualification is required or recusal is appropriate under**
25 **Canon 2.²**

26 **Commentary:**

27 [1] To protect the rights of litigants and preserve public confidence
28 in the integrity, independence and impartiality of the judiciary, there
29 will be times when disqualification or recusal is required or
30 appropriate. A judge must be mindful, however, that a fundamental
31 obligation of the judicial office is to be available to decide the

¹ Canon 3.A

² Canon 3.B.1.

1 matters that come before the court or tribunal. A judge must not
2 use recusal or disqualification to avoid difficult or controversial
3 issues.

4 **2.03 Competence in the Law.** A judge shall maintain
5 **professional competence in the law.**³

6 **Commentary:**

7 [1] In order to uphold the law, a judge must possess the legal
8 knowledge, skills, and preparation necessary for the effective
9 administration of justice.

10 [2] When applying and upholding the law in the course of judicial
11 decision-making, a judge may on occasion make a mistake of fact
12 or law. An error of this kind does not violate this rule. Willful
13 disregard of the law, however, is another matter and in appropriate
14 circumstances may constitute misconduct by the judge

15 [3] Judicial competence may be diminished and compromised when
16 a judge is impaired by drugs, alcohol or other mental or physical
17 impairments.

18 **2.04 Impartiality and Fairness** A Judge shall apply the law
19 **without regard to the judge's personal views and shall decide**
20 **all cases with impartiality and fairness.**

21 **Commentary**

22 [1] A judge must be objective and free of favoritism to ensure
23 impartiality and fairness to all parties. While a judge's background
24 and philosophy may influence the way in which the judge analyzes,
25 interprets and applies the law, the judge's personal views, by
26 themselves, should not be controlling. Thus, a judge must uphold
27 the law without regard to whether the judge personally approves or
28 disapproves of the law in question.

29 **2.05 Bias and Discrimination.**

30 **(a) A judge shall perform judicial duties without**
31 **bias or prejudice. A judge shall not, in the**
32 **performance of judicial duties, by words or**
33 **conduct manifest bias or prejudice, including but**
34 **not limited to bias or prejudice based upon race,**

³ Canon 3.B.2

1 **sex, religion, national origin, disability, age,**
2 **sexual orientation or socioeconomic status, and**
3 **shall not permit staff, court officials and others**
4 **subject to the judge's direction and control to do**
5 **so.**⁴

6 **(b) A judge shall require* lawyers in proceedings**
7 **before the judge to refrain from manifesting, bias**
8 **or prejudice based upon race, sex, religion,**
9 **national origin, disability, age, sexual orientation**
10 **or socioeconomic status, against parties,**
11 **witnesses, counsel or others. This Section does**
12 **not preclude legitimate advocacy when race, sex,**
13 **religion, national origin, disability, age, sexual**
14 **orientation or socioeconomic status, or other**
15 **similar factors, are issues in the proceeding.**⁵

16 **Commentary:**

17 [1] A judge must refrain from speech, gestures or other conduct
18 that could reasonably be perceived as harassment and must
19 require the same standard of conduct of others subject to the
20 judge's direction and control.⁶

21 [2] A judge must perform judicial duties impartially and fairly. A
22 judge who manifests bias in a proceeding impairs the fairness of
23 the proceeding and brings the judiciary into disrepute. Even facial
24 expression and body language can convey to parties or lawyers in
25 the proceeding, jurors, the media and others an appearance of
26 bias. A judge must avoid conduct that may be perceived as
27 prejudicial or biased.⁷

28 [3] Examples of manifestations of bias include but are not limited to
29 epithets, slurs, demeaning nicknames, negative stereotyping,
30 attempted humor based on stereotypes, threatening, intimidating or
31 hostile acts, suggesting a connection between race or nationality
32 and crime, and irrelevant references to personal characteristics.
33 This rule does not preclude legitimate references to those factors
34 when relevant to an issue in a proceeding.
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⁴ Canon 3.B.5.

⁵ Canon 3.B.6.

⁶ Canon 3.B.5 commentary

⁷ Canon 3.B.5 commentary

1 **2.06 Diligence. A judge shall dispose of all judicial matters**
2 **promptly, efficiently and fairly.**⁸

3 **Commentary:**

4 [1] Prompt disposition of the court's business requires a judge to
5 devote adequate time to judicial duties, to be punctual in attending
6 court and expeditious in determining matters under submission,
7 and to insist that court officials, litigants and their lawyers cooperate
8 with the judge to that end.⁹

9 [2] In disposing of matters promptly, efficiently and fairly, a judge
10 must demonstrate due regard for the rights of the parties to be
11 heard and to have issues resolved without unnecessary cost or
12 delay. Containing costs while preserving fundamental rights of
13 parties also protects the interests of witnesses and the general
14 public. A judge should monitor and supervise cases so as to reduce
15 or eliminate dilatory practices, avoidable delays and unnecessary
16 costs. A judge should encourage and seek to facilitate settlement,
17 but should not coerce parties into surrendering the right to have
18 their controversy resolved by the courts.¹⁰

19

20 **2.07 Demeanor and Decorum.**

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

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

29 **(c) A judge shall not commend or criticize jurors**
30 **for their verdict other than in a court order or**
31 **opinion in a proceeding, but may express**

⁸ Canon 3.B.8.

⁹ Canon 3.B.8 Commentary

¹⁰ Canon 3.B.8 commentary

¹¹ Canon 3.B.3

¹² Canon 3.B.4.

1 **appreciation to jurors for their service to the**
2 **judicial system and the community.**¹³

3
4 **Commentary:**

5 [1] The duty to hear all proceedings fairly and with patience is not
6 inconsistent with the duty to dispose promptly of the business of the
7 court. Judges can be efficient and businesslike while being patient
8 and deliberate.¹⁴

9 [2] Commending or criticizing jurors for their verdict may imply a
10 judicial expectation in future cases and may impair a juror's ability
11 to be fair and impartial in a subsequent case.¹⁵

12 [3] Where not otherwise prohibited by law, judges may take the
13 opportunity to debrief jurors on their jury experience, after their jury
14 service is concluded.

15
16 **2.08 Ensuring the Right to be Heard. A judge shall accord to**
17 **every person who has a legal interest in a proceeding, or that**
18 **person's lawyer, the right to be heard according to law*.**¹⁶

19 **Commentary:**

20 [1] Ensuring the right to be heard is an essential component of a
21 fair and impartial system of justice. Substantive rights of litigants
22 can be protected only if procedures protecting the right to be heard
23 are respected.

24 [2] The judge has an important role to play in overseeing the
25 settlement of disputes, but should be careful that efforts to further
26 settlement not undermine a party's right to be heard according to
27 law. A judge may therefore encourage parties to a proceeding and
28 their lawyers to settle matters in dispute but should not act in a
29 manner that coerces a party into settlement.

30 **2.09 Ex Parte Communications**

¹³ Canon 3.B.11.

¹⁴ Canon 3.B.4 commentary

¹⁵ Canon 3.B.11 commentary

¹⁶ Canon 3.B.7.

1 (a) A judge shall not initiate, permit, or consider
2 ex parte communications, or consider other
3 communications made to the judge outside the
4 presence of the parties concerning a pending or
5 impending proceeding except that:

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

12 (i) the judge reasonably
13 believes that no party
14 will gain a procedural,
15 substantive, or tactical
16 advantage as a result of
17 the ex parte
18 communication, and

19 (ii) the judge promptly
20 gives notice to all other
21 parties of the substance
22 of the ex parte
23 communication and
24 allows an opportunity to
25 respond.

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

35 (3) A judge may consult with court
36 personnel* whose function is to aid
37 the judge in carrying out the judge's
38 adjudicative responsibilities or with
39 other judges and the judge does not
40 abrogate the responsibility to
41 personally decide the case and takes

1 all reasonable steps to avoid
2 receiving factual information that is
3 not part of the record.

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

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

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

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

20 **Commentary:**²⁰

21 [1] To the extent reasonably possible, all parties or their lawyers
22 shall be included in communications with a judge.

23 [2] Whenever the presence of a party or notice to a party is required
24 by Section 2.09, it is the party's lawyer, or if the party is
25 unrepresented the party, who is to be present or to whom notice is
26 to be given.

27 [3] The proscription against communications concerning a
28 proceeding includes communications with lawyers, law professors,
29 and other persons who are not participants in the proceeding,
30 except to the limited extent permitted by this rule.

¹⁷ Canon 3.B.7.

¹⁸ Canon 3.B.7 commentary

¹⁹ Canon 3.B.7 commentary

²⁰ The commentary to this rule is taken entirely from Canon 3.B.7 commentary

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

9 [5] An appropriate and often desirable method of obtaining the
10 advice of a disinterested expert on legal issues is to invite the
11 expert to file a brief amicus curiae.

12 [6] A judge may request a party to submit proposed findings of fact
13 and conclusions of law, so long as the other parties are apprised of
14 the request and are given an opportunity to respond to the
15 proposed findings and conclusions.

16 [7] If communication between the trial judge and the appellate
17 court with respect to a proceeding is permitted, a copy of any
18 written communication or the substance of any oral communication
19 should be provided to all parties.

20 [8] The prohibition against a judge investigating the facts of a case
21 independently or through a member of the judge's staff, extends to
22 information available in all mediums including electronic access.

23 **2.10 External Influences on Judicial Conduct.**

24 **(a) A judge shall not be swayed by partisan**
25 **interests, public clamor or fear of criticism.²¹**

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

29 **(c) A judge shall not convey or permit others**
30 **persons to convey the impression that such**
31 **persons are in a special position to influence the**
32 **judge.²³**

33 **Commentary:**

²¹ Canon 3.B.2.

²² Canon 2.B.

²³ Canon 2.B.

1 [1] An independent judiciary requires that judges decide cases
2 according to law without regard to whether the law or the litigants
3 are popular or unpopular with the media, the public, government
4 officials, or the judge’s own friends or family.

5 [2] Confidence in the judiciary is eroded if judicial decision-making
6 is perceived to be subject to inappropriate outside influences, thus
7 giving rise to an appearance of impropriety (see Rule 1.02/03) It is
8 therefore essential to judicial independence and impartiality* that
9 judges create no perception that their decision-making could be
10 colored by such influences.

11

12 **2.11 Judicial Statements on Pending and Future Cases.**

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

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

29 **Commentary:**

30 [1] Section 2.11 restrictions on judicial speech are essential to the
31 maintenance of the integrity, independence impartiality of the
32 judiciary.

33 [2] A pending proceeding is one that has commenced and
34 continues during any appellate process and until final disposition.
35 An impending proceeding is one that is anticipated but not yet
36 commenced. A proceeding is “impending where there is reason to

²⁴ Canon 3.B.9

²⁵ Canon 3.B.10

1 believe a case may be filed, for example, if a crime is being
2 investigated but no charges have been brought, or if someone has
3 been arrested but not yet charged.

4

5 [3] This Section does not prohibit a judge from commenting on
6 proceedings in which the judge is a litigant in a personal capacity,
7 but in cases such as a writ of mandamus where the judge is a
8 litigant in an official capacity, the judge must not comment publicly.
9 The conduct of lawyers relating to trial publicity is governed by
10 [Rule 3.6 of the ABA Model Rules of Professional Conduct]. (Each
11 jurisdiction should substitute an appropriate reference to its rule.)²⁶

12 [4] This Section does not prohibit judges from making public
13 statements in the course of their official duties or from explaining
14 the procedures of the court to the public. Nor does it prohibit judges
15 from responding directly, or through a third party, to allegations in
16 the media or elsewhere concerning the judge's conduct in a matter,
17 provided that any such response meets the requirements of 2.11(a)
18 and (b).

19 **2.12 Disqualification.**

20

- 21 **A. General Rule. In addition to disqualifying himself or herself in**
22 **any of the circumstances in paragraphs (B) through (F) below, a**
23 **judge shall disqualify himself or herself in a proceeding in which**
24 **the judge's impartiality might reasonably be questioned.**
- 25 **B. Personal Bias or Knowledge. A judge shall disqualify himself or**
26 **herself when the judge has a personal bias or prejudice**
27 **concerning a party or a party's lawyer, or personal knowledge of**
28 **disputed evidentiary facts concerning the proceeding.**
- 29 **C. Roles in a Proceeding. A judge shall disqualify himself or herself**
30 **when the judge, the judge's spouse or domestic partner, a person**
31 **within the third degree of relationship to either of them, or the**
32 **spouse or domestic partner of such a person**
- 33 1. is a party to the proceeding, or an officer, director, or
 - 34 trustee of a party;
 - 35 2. is acting as a lawyer in the proceeding; or
 - 36 3. is to the judge's knowledge likely to be a material
 - 37 witness in the proceeding.
- 38 **D. Economic and other Personal Interests. A judge shall disqualify**
39 **himself or herself when the judge knows that**

²⁶ Canon 3.B.9 commentary

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1. he or she, individually or as a fiduciary, or the judge’s spouse, domestic partner 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 or has any other more than de minimis interest that could be substantially affected by the proceeding; or
2. a person within the third degree of relationship to the judge or the judge’s spouse or domestic partner, or the spouse or domestic partner of such a person, has a more than de minimis interest that could be substantially affected by the proceeding.

E. Campaign Contributions. A judge shall disqualify himself or herself when the judge knows or learns by means of a timely motion that a party or a party’s lawyer has within the previous [] year[s] 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]].²⁷

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

- G. Prior Affiliations.** A judge shall disqualify himself or herself where the judge
1. served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter;
 2. served as a material witness concerning the matter; or
 3. served in governmental employment and in such capacity participated as lawyer, advisor, or material witness concerning the proceeding or has expressed an opinion concerning the merits of the particular case in controversy.

H. Monitoring Economic Interests. 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.

²⁷ 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.

1 **I. Remittal of Disqualification. A judge subject to disqualification by**
2 **the terms of this Section, other than paragraph B, may disclose**
3 **on the record the basis of the judge’s disqualification and may**
4 **ask the parties and their lawyers to consider, out of the presence**
5 **of the judge, whether to waive disqualification. If the parties and**
6 **lawyers, without participation by the judge, agree that the judge**
7 **should not be disqualified, the judge may participate in the**
8 **proceeding. Such a remittal agreement shall be written and shall**
9 **be incorporated in the record of the proceeding.**

10
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12 **Commentary:**²⁸

13 [1] Under this rule, a judge is disqualified whenever the judge’s
14 impartiality might reasonably be questioned, regardless of whether
15 any of the specific provisions of Section 2.12(a) apply. For
16 example, if a judge were in the process of negotiating for
17 employment with a law firm, the judge would be disqualified from
18 any matters in which that law firm appeared, unless the
19 disqualification was waived by the parties after disclosure by the
20 judge.

21 [2] A judge should disclose on the record information that the judge
22 believes the parties or their lawyers might consider relevant to the
23 question of disqualification, even if the judge believes there is no
24 real basis for disqualification.

25 [3] By decisional law, the rule of necessity may override the rule of
26 disqualification. For example, a judge might be required to
27 participate in judicial review of a judicial salary statute, or might be
28 the only judge available in a matter requiring immediate judicial
29 action, such as a hearing on probable cause or a temporary
30 restraining order. In matters such as these latter two, that require
31 immediate action, the judge must disclose on the record the basis
32 for possible disqualification and use reasonable efforts to transfer
33 the matter to another judge as soon as practicable.

34 [4] A lawyer in a government agency does not ordinarily have an
35 association with other lawyers employed by that agency within the
36 meaning of Section 2.12(a)(2); a judge formerly employed by a
37 government agency, however, shall disqualify himself or herself in a
38 proceeding if the judge’s impartiality might reasonably be
39 questioned because of such association.

²⁸ The commentary to this rule is taken from Canon 3.F. commentary

1 [5] The fact that a lawyer in a proceeding is affiliated with a law firm
2 with which a relative of the judge is affiliated does not of itself
3 disqualify the judge. If, however, "the judge's impartiality might
4 reasonably be questioned" under Section 2.12(a) or the relative is
5 known by the judge to have an interest in the law firm that could be
6 "substantially affected by the proceeding" under Section
7 2.12(a)(4)(iii) the judge's disqualification may be required.

8 [6] A remittal procedure provides the parties an opportunity to
9 proceed without delay if they wish to waive the disqualification. To
10 assure that consideration of the question of remittal is made
11 independently of the judge, a judge must not solicit, seek or hear
12 comment on possible remittal or waiver of the disqualification
13 unless the lawyers jointly propose remittal after consultation as
14 provided in the rule. A party may act through counsel if counsel
15 represents on the record that the party has been consulted and
16 consents. As a practical matter, a judge may wish to have all
17 parties and their lawyers sign the remittal agreement.

18

19 **C. Administration**

20 **2.13 Administrative Competence and Diligence. A judge shall**
21 **discharge the judge's administrative responsibilities without**
22 **bias or prejudice and maintain professional competence in**
23 **judicial administration, and should cooperate with other**
24 **judges and court officials in the administration of court**
25 **business.²⁹**

26 **Commentary:**

27 [1] The judge's obligation to perform adjudicative responsibilities
28 diligently, competently and without bias or prejudice, applies
29 equally to the judge's administrative responsibilities.

30

31 **2.14 Supervision of Staff. A judge shall require* staff, court**
32 **officials and others subject to the judge's direction and control**
33 **to act in a manner consistent with the high standards of**
34 **conduct expressed in this code.³⁰**

35 **Commentary:**

²⁹ Canon 3.C.1.

³⁰ Canon 3.C.2.

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

7 **2.15 Supervision of Other Judges.** A judge with supervisory
8 authority for other judges shall take reasonable measures to
9 assure the prompt disposition of matters before them and the
10 proper performance of their other administrative
11 responsibilities.³¹

12 **Commentary:**

13 [1] Public confidence in the courts depends on justice not being
14 unduly delayed. To promote the efficient administration of justice,
15 judges with supervisory authority must take the steps needed to
16 ensure that judges under their supervision administer the workload
17 of their courts expeditiously.

18 **2.16 Administrative Appointments.**

19 (a) A judge shall exercise the power of
20 appointment impartially and on the basis of merit.
21 A judge shall avoid nepotism, favoritism and
22 unnecessary appointments. A judge shall not
23 approve compensation of appointees beyond the
24 fair value of services rendered.³²

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

32 (1) the position is substantially
33 uncompensated;

34 (2) the lawyer has been selected in
35 rotation from a list of qualified and
36 available lawyers compiled without

³¹ Canon 3.C.3.

³² Canon 3.C.4.

1 regard to their having made political
2 contributions; or

3 (3) the judge or another presiding or
4 administrative judge affirmatively
5 finds that no other lawyer is willing,
6 competent and able to accept the
7 position.³³

8 **Commentary:**

9 [1] Appointees of a judge include assigned counsel, officials such
10 as referees, commissioners, special masters, receivers and
11 guardians and personnel such as clerks, secretaries and bailiffs.
12 Consent by the parties to an appointment or an award of
13 compensation does not relieve the judge of the obligation
14 prescribed by Section 2.16 (a).³⁴

15 **D. Reporting**

16 **2.17 Judicial Misconduct** A judge having knowledge* that
17 another judge has committed a violation of this Code that
18 raises a substantial question as to the other judge's fitness for
19 office shall inform the appropriate authority*. A judge who
20 receives information indicating a substantial likelihood that
21 another judge has committed a violation of this Code should
22 take appropriate action.³⁵

23 **Commentary:**

24 [1] Appropriate action may include direct communication with the
25 judge who has committed the violation, other direct action if
26 available, and reporting the violation to the appropriate authority or
27 other agency or body.³⁶

28 **2.18 Lawyer Misconduct.** A judge having knowledge* that a
29 lawyer has committed a violation of the Rules of Professional
30 Conduct [substitute correct title if the applicable rules of
31 lawyer conduct have a different title] that raises a substantial
32 question as to the lawyer's honesty, trustworthiness or fitness
33 as a lawyer in other respects shall inform the appropriate
34 authority*. A judge who receives information indicating a

³³ Canon 3.C.5.

³⁴ Canon 3.C.5 commentary

³⁵ Canon 3.D.1

³⁶ Canon 3.D. Commentary

1 **substantial likelihood that a lawyer has committed a violation**
2 **of the Rules of Professional Conduct [substitute correct title if**
3 **the applicable rules of lawyer conduct have a different title]**
4 **should take appropriate action.**³⁷

5 **Commentary:**

6 [1]Appropriate action may include direct communication with the
7 lawyer who has committed the violation, and reporting the violation
8 to the appropriate authority or other agency or body.³⁸

9 **2.19 Disability and Impairment. A judge having knowledge that**
10 **the performance of a lawyer or another judge is impaired by**
11 **drugs, alcohol, or other mental, emotional or physical**
12 **condition shall take appropriate action, which may include a**
13 **confidential referral to a lawyer or judicial assistance program.**

14 **Commentary:**

15 [1] Taking or initiating corrective action by way of referral to an
16 assistance program can fulfill several laudable purposes. For
17 example, a resulting intervention can be the first step toward a
18 successful recovery program. That action alone may satisfy the
19 mandates expressed in this section. Depending on the gravity of
20 the conduct, however (i.e., the conduct in response to which action
21 is necessary), a judge having knowledge of such conduct may be
22 required to take action in addition to or in lieu of a referral to the
23 relevant assistance program.

24 **2.20 Immunity for Discharge of Duties . Acts of a judge, in**
25 **responding to judicial misconduct, lawyer misconduct, or**
26 **disability and impairment under Rules 2.17, 2.18, and 2.19 are**
27 **part of a judge’s judicial duties and shall be absolutely**
28 **privileged, and no civil action predicated thereon may be**
29 **instituted against the judge.**³⁹

30 **Commentary:**

31 [1] To encourage judges to report or otherwise act on evidence of
32 lawyer and judicial misconduct as required by these Rules, it
33 important that judges be insulated from threats of civil action when
34 they attempt to comply with their obligations under such rules.

³⁷ Canon 3.D.2

³⁸ Canon 3.D. Commentary

³⁹ Canon 3.D.3