

Ethical Issues for Chief Judges

Daniel J. Crothers, Justice
North Dakota Supreme Court
© Daniel Crothers, all rights reserved 2017

Hypothetical #1

- Judge Rea Searcher regularly uses the internet to “supplement the record” for information used to decide cases, generally in the form of a dissent critical of the majority opinion.
- Determine:
 - What you should do?
 - What do the ethics rules say about this?

Hypothetical #2

- Judge Part'e Tyme gets his work done and is prepared at oral argument, but he seldom keeps regular work hours and his law clerk and staff seemingly come and go at will.
- Determine:
 - What should you do?
 - What do the ethics rules say about this?

Hypothetical #3

- Judge Ima Tweeter is very active posting to social media sites, including Twitter, Facebook, LinkedIn and Snapchat. She often “friends” lawyers and writes about her court.
- Determine:
 - What should you do?
 - What do the ethics rules say about this?

Hypothetical #4

- Judge I. N. D’Cisive is in her office 10 hours a day and most every Saturday morning. Yet she is months behind on issuing opinions, including child custody and parental termination files.
- Determine:
 - What should you do?
 - What do the ethics rules say about this?

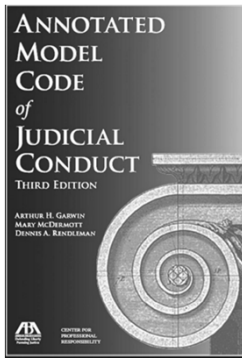
Hypothetical #5

- Chief Judge Warbucks hires his niece to administer the court’s mediation program. The niece is qualified by experience and education. She was selected over other applicants.
- Determine:
 - Is this proper conduct?
 - What do the ethics rules say about this?

Hypothetical #6

- Senior Judge Crank is in the twilight of a distinguished career. Lately, he appears disheveled, his verbal skills have suddenly changed, and he was overheard making lude remarks to female court staff.
- Determine:
 - What should you do?
 - What do the ethics rules say about this?

A Resource



Daniel J. Crothers

dcrothers@ndcourts.gov

701-328-4205

1 **Rule 2.12: Supervisory Duties**

2 (A) A judge shall require court staff, court officials, and others subject to the judge’s direction
3 and control to act in a manner consistent with the judge’s obligations under this Code.

4 (B) A judge with supervisory authority for the performance of other judges shall take reasonable
5 measures to ensure that those judges properly discharge their judicial responsibilities, including
6 the prompt disposition of matters before them.

7 **Comment**

8 [1] A judge is responsible for his or her own conduct and for the conduct of others, such as staff,
9 when those persons are acting at the judge’s direction or control. A judge may not direct court
10 personnel to engage in conduct on the judge’s behalf or as the judge’s representative when such
11 conduct would violate the Code if undertaken by the judge.

12 [2] Public confidence in the judicial system depends upon timely justice. To promote the efficient
13 administration of justice, a judge with supervisory authority must take the steps needed to ensure
14 that judges under his or her supervision administer their workloads promptly.

15 **Rule 2.13: Administrative Appointments**

16 (A) In making administrative appointments, a judge:

17 (1) shall exercise the power of appointment impartially* and on the basis of merit; and

18 (2) shall avoid nepotism, favoritism, and unnecessary appointments.

19 (B) A judge shall not appoint a lawyer to a position if the judge either knows* that the lawyer, or
20 the lawyer’s spouse or domestic partner,* has contributed more than \$[insert amount] within the
21 prior [insert number] year[s] to the judge’s election campaign, or learns of such a contribution*
22 by means of a timely motion by a party or other person properly interested in the matter, unless:

23 (1) the position is substantially uncompensated;

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

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

28 (C) A judge shall not approve compensation of appointees beyond the fair value of services
29 rendered.

30 **Comment**

31 [1] Appointees of a judge include assigned counsel, officials such as referees, commissioners,
32 special masters, receivers, and guardians, and personnel such as clerks, secretaries, and bailiffs.
33 Consent by the parties to an appointment or an award of compensation does not relieve the judge
34 of the obligation prescribed by paragraph (A).

35 [2] Unless otherwise defined by law, nepotism is the appointment or hiring of any relative within
36 the third degree of relationship of either the judge or the judge’s spouse or domestic partner, or

37 the spouse or domestic partner of such relative.

38 [3] The rule against making administrative appointments of lawyers who have contributed in
39 excess of a specified dollar amount to a judge's election campaign includes an exception for
40 positions that are substantially uncompensated, such as those for which the lawyer's
41 compensation is limited to reimbursement for out-of-pocket expenses.

42 **Rule 2.14: Disability and Impairment**

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

46 **Comment**

47 [1] "Appropriate action" means action intended and reasonably likely to help the judge or lawyer
48 in question address the problem and prevent harm to the justice system. Depending upon the
49 circumstances, appropriate action may include but is not limited to speaking directly to the
50 impaired person, notifying an individual with supervisory responsibility over the impaired
51 person, or making a referral to an assistance program.

52 [2] Taking or initiating corrective action by way of referral to an assistance program may satisfy a
53 judge's responsibility under this Rule. Assistance programs have many approaches for offering
54 help to impaired judges and lawyers, such as intervention, counseling, or referral to appropriate
55 health care professionals. Depending upon the gravity of the conduct that has come to the judge's
56 attention, however, the judge may be required to take other action, such as reporting the impaired
57 judge or lawyer to the appropriate authority, agency, or body. See Rule 2.15.

58 **Rule 2.15: Responding to Judicial and Lawyer Misconduct**

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

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

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

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

69 **Comment**

70 [1] Taking action to address known misconduct is a judge's obligation. Paragraphs (A) and (B)
71 impose an obligation on the judge to report to the appropriate disciplinary authority the known
72 misconduct of another judge or a lawyer that raises a substantial question regarding the honesty,

73 trustworthiness, or fitness of that judge or lawyer. Ignoring or denying known misconduct among
74 one's judicial colleagues or members of the legal profession undermines a judge's responsibility
75 to participate in efforts to ensure public respect for the justice system. This Rule limits the
76 reporting obligation to those offenses that an independent judiciary must vigorously endeavor to
77 prevent.

78 [2] A judge who does not have actual knowledge that another judge or a lawyer may have
79 committed misconduct, but receives information indicating a substantial likelihood of such
80 misconduct, is required to take appropriate action under paragraphs (C) and (D). Appropriate
81 action may include, but is not limited to, communicating directly with the judge who may have
82 violated this Code, communicating with a supervising judge, or reporting the suspected violation
83 to the appropriate authority or other agency or body. Similarly, actions to be taken in response to
84 information indicating that a lawyer has committed a violation of the Rules of Professional
85 Conduct may include but are not limited to communicating directly with the lawyer who may
86 have committed the violation, or reporting the suspected violation to the appropriate authority or
87 other agency or body.