

NORTH DAKOTA JUDICIAL ETHICS ADVISORY COMMITTEE

OPINION 2025-3¹

ISSUES

1. Is it a violation of the Code of Judicial Conduct for a judge to refuse to follow administrative policies and procedures in a judicial district?
2. If yes, what obligations does another judge have regarding the conduct?

FACTS

A judicial district has certain, non-substantive hearings, placed on the schedule of the judge assigned to master calendar to assist with the case flow in the district. The judge may or may not be the assigned judge on the case. A judge in the district is refusing to preside over hearings placed on master calendar because the judge is not the assigned judge to the case. The judge has, on multiple occasions, directed court staff to cancel the hearings. The requestor would like to know if this is a violation of the Code of Judicial conduct and, if so, what obligations do other judges in the district have regarding the conduct, if any.

ANALYSIS

1. Is it a violation of the Code of Judicial Conduct for a judge to refuse to follow administrative policies and procedures in a judicial district?

Canon 1, Rule 1.2 of the Code of Judicial Conduct states: “A judge shall act at all time in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.”

Rule 2.5 states:

- A. A judge shall perform judicial and administrative duties competently and diligently.
- B. A judge shall cooperate with other judges and court officials in the administration of court business.

Each judicial district in the state has a case flow management plan to manage the caseload of the judges and the flow of cases in the district to ensure compliance with time standards. A judge in the district has decided that they will not handle hearings assigned to their master calendar week if they are not the actual assigned judge for the case. Lack of cooperation with colleagues and other court officials can rise to the level of violating the Code of Judicial Conduct.

In re Lokuta, 964 A.2d 988 (Pa.Ct.Jud.Disc. 2008), presents somewhat similar circumstances. It was the practice in the county that judges in non-criminal divisions would be “available to help with

¹ Judge Narum did not take part in this decision.

criminal cases when the court’s criminal docket was getting backed up.” Id. at 1095. All judges complied with this practice except Judge Lokuta. Id. at 1096. This conduct, and other conduct showing a lack of cooperation with the other judges and compliance with the president judge resulted in a finding that the judge had violated the Code of Judicial Conduct Rule 3B(1) (regarding a duty to “facilitate the performance of the administrative responsibilities of other judges and court officials”). Id. at 1097.

In the case of In re Fiffie, 395 So.3d 738 (La. 2024), a judge refused to comply with an appellate court order and refused to cooperate with another judge regarding the recalling of bench warrants. The court found “Judge Fiffe’s failure to work cooperatively with others was a failure to observe a high standard of conduct to preserve the integrity of the judiciary, in violation of Canon 1, and a failure to cooperate with other judges and court officials in the administration of business, in violation of Canon 3B(1).” Id. at 747-48.

Ethics are at the heart of establishing public trust and confidence in the justice system. The integrity of the system and the ethics of those who participate in it are vital building blocks for that trust and confidence. Through a judge’s decision-making and handling of cases, the judge is also a critical element of the justice system.

Peter M. Koelling, Responding to Judicial and Lawyer Misconduct: Analyzing a Survey of State Trial Court Judges, 7 ST. MARY’S J. ON LEGAL MALPRACTICE & ETHICS 68 (2016).

“When a judge’s failure to cooperate . . . rises to the level that court functioning is adversely impacted, the judge is properly subject to discipline.” Matter of Halverson, 169 P.3d 1161, 1181 (Nev. 2007). The Committee finds that failure of a judge to cooperate with other judges and follow administrative procedures for the proper administration and flow of court business is a violation of Rules 1.2 and 2.5 of the North Dakota Code of Judicial Conduct.

2. If yes, what obligations does another judge have regarding the conduct?

Because the Committee determined the answer to question 1 above is “yes,” the second question regarding the obligations of other judges must be addressed.

“In addition to their duty to fairly administer justice, judges are obligated to protect the integrity of proceedings and to take action when ethical standards are violated by judges and lawyers. Indeed, failure to take action is a violation in and of itself.” See supra, Koelling. Rule 2.15 requires a judge to report violations of the Code of Judicial Conduct in certain circumstances.

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

. . .

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

The Comments to Rule 2.15 provide some guidance:

[1] Taking action to address known misconduct is a judge's obligation. Paragraphs (A) and (B) impose an obligation on the judge to report to the appropriate disciplinary authority the known misconduct of another judge or a lawyer that raises a substantial question regarding the honesty, trustworthiness, or fitness of that judge or lawyer. Ignoring or denying known misconduct among one's judicial colleagues or members of the legal profession undermines a judge's responsibility to participate in efforts to ensure public respect for the justice system. This Rule limits the reporting obligation to those offenses that an independent judiciary must vigorously endeavor to prevent.

[2] A judge who does not have actual knowledge that another judge or a lawyer may have committed misconduct, but receives credible information indicating a substantial likelihood of such misconduct, is required to take appropriate action under paragraphs (C) and (D). Appropriate action may include communicating directly with the judge who may have violated this Code, communicating with a supervising judge, or reporting the suspected violation to the appropriate authority or other agency or body.

...

Rule 2.15, cmts 1-2.

Reporting is mandatory if the requirements of Rule 2.15(A) are met. The first requirement is that the judge have knowledge that a violation has been committed. Knowledge means "actual knowledge of the fact in question." N.D. Code of Jud. Conduct, Terminology. Knowledge may also "be inferred from circumstances." Id. Without more, "[r]eports from attorneys, clerks, or other courtroom personnel about another judge's activities do not rise to the level of actual knowledge." See Koelling, supra.

The second requirement is that the violation "raises a substantial question regarding the judge's honesty, trustworthiness, or fitness as a judge." Rule 2.15(A). "Not all violations of ethical rules necessarily involve lack of honesty or trustworthiness, nor do they make a person unfit to be a judge. It is clear that there is a high bar for the type of conduct that must be reported." See Koelling, supra. Because none of these terms is defined in the Code, "[i]t seems that judges are given broad discretion in determining what is a substantial question and to determine what are questions of honesty, trustworthiness, and fitness, although these terms are better developed within the body of case law pertaining to lawyer discipline." See Koelling, supra. Rule 8.3(b) of the North Dakota Rules of Professional Conduct includes a nearly identical provision to Rule 2.15 requiring lawyer's to report a judge's conduct if it "raises a substantial question as to the judge's honesty, trustworthiness, or fitness for judicial office." Comment 3 to Rule 8.3 states "[t]he term 'substantial' refers to the seriousness of the possible offense and not the quantum of evidence to which the lawyer is aware." The Comment cautions that "[a] measure of judgment is . . . required in complying with the provisions of this Rule." Rule 8.3, cmt. 3. "Similar considerations apply to the reporting of judicial misconduct." Id. If the judge has knowledge of the violation and, the judge believes the conduct raises a substantial question regarding the violating judge's honesty, trustworthiness, or fitness, the judge must report the conduct to the Judicial Conduct Commission.

Even if the judge does not have actual knowledge or the violation does not rise to the level of mandatory reporting under Rule 2.15(A), the judge would still have some obligation to take action under Rule 2.15(B) if the information is credible. Comment 2 to Rule 2.15 provides that action could include speaking to the judge or reporting to conduct. If the judge determines that the requirements of Rule 2.15(A) are not met, but believes the allegations to be credible, the judge must take appropriate action. A presiding judge has an additional responsibility under the Code of Judicial Conduct to “take reasonable measures to ensure [that] judges properly discharge their duties of judicial office, including administrative duties.” Rule 2.12(B).

In addition, the effect of the misconduct on others is a relevant consideration. A momentary lapse of judgment resulting in a minor gaffe or embarrassment can easily be resolved internally. On the other hand, misconduct that persists in the face of repeated warning or inappropriate behavior that affects public perceptions of the fairness and impartiality of a judicial proceeding should be reported promptly. Conduct that falls somewhere in between those two extremes should be dealt with carefully and sensitively; it cannot be ignored or swept under the rug, but it does not always have to be reported to a disciplinary body.

AZ Jud. Adv. Op. 03-03.

CONCLUSION

The Committee finds that failure to follow judicial district procedure does violate the Code of Judicial Conduct’s requirement that judges cooperate with their colleagues and other court officials. The other judges in the district have an obligation to either take appropriate action if they receive credible information or report to the North Dakota Judicial Conduct Commission if they have actual or inferred knowledge of the violation and it rises to the level of a “substantial question regarding the judge’s honesty, trustworthiness, or fitness” which depends on the seriousness of the failure to cooperate and the impact on the integrity of the profession and the flow of cases in the district.