Code of Judicial Conduct, Canon 2, Rules 2.2 and 2.6 New Comments as of 2022

**CANON 2**

**A JUDGE SHOULD PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY.**

**RULE 2.1**

[**Giving Precedence to the Duties of Judicial Office**](javascript:;)

**RULE 2.2**

[**Impartiality and Fairness**](javascript:;)

A judge shall uphold and apply the [law](https://www.cjc.state.wa.us/index.php?page=governing_provisions&section=code_of_judicial_conduct_terminology#law), and shall perform all duties of judicial office fairly and [impartially](https://www.cjc.state.wa.us/index.php?page=governing_provisions&section=code_of_judicial_conduct_terminology#impartial).

**Comment**

1. To ensure impartiality and fairness to all parties, a judge must be objective and open-minded.
2. Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.
3. When applying and interpreting the law, a judge sometimes may make good-faith errors of fact or law. Errors of this kind do not violate this Rule.
4. At times, judges have before them unrepresented litigants whose lack of knowledge about the law and about judicial procedures and requirements may inhibit their ability to be heard effectively. A judge's obligation under Rule 2.2 to remain fair and impartial and to uphold and apply the law does not preclude the judge from making reasonable accommodations to ensure an unrepresented litigant's right to be heard, so long as those accommodations do not give the unrepresented litigant an unfair advantage. This rule does not require a judge to make any particular accommodation.

**RULE 2.6**

[**Ensuring the Right to Be Heard**](javascript:;)

1. 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](https://www.cjc.state.wa.us/index.php?page=governing_provisions&section=code_of_judicial_conduct_terminology#law).
2. Consistent with controlling court rules, a judge may encourage parties to a proceeding and their lawyers to settle matters in dispute but should not act in a manner that coerces any party into settlement.

**Comment**

1. The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed.
2. The judge plays an important role in overseeing the settlement of disputes, but should be careful that efforts to further settlement do not undermine any party's right to be heard according to law. The judge should keep in mind the effect that the judge's participation in settlement discussions may have, not only on the judge's own views of the case, but also on the perceptions of the lawyers and the parties if the case remains with the judge after settlement efforts are unsuccessful. Among the factors that a judge should consider when deciding upon an appropriate settlement practice for a case are (1) whether the parties have requested or voluntarily consented to a certain level of participation by the judge in settlement discussions, (2) whether the parties and their counsel are relatively sophisticated in legal matters, (3) whether the case will be tried by the judge or a jury, (4) whether the parties participate with their counsel in settlement discussions, (5) whether any parties are unrepresented by counsel, and (6) whether the matter is civil or criminal.
3. Judges must be mindful of the effect settlement discussions can have, not only on their objectivity and impartiality, but also on the appearance of their objectivity and impartiality. Despite a judge's best efforts, there may be instances when information obtained during settlement discussions could influence a judge's decision making during trial, and, in such instances, the judge should consider whether disqualification or recusal may be appropriate. See Rule 2.11(A)(1).
4. Judges should endeavor to ensure unrepresented litigants have a fair opportunity to participate in proceedings. While not required, judges may find the following nonexhaustive list of steps consistent with these principles and helpful in facilitating the right of unrepresented litigants to be heard:
   1. Identifying and providing resource information to assist unrepresented litigants. Judges should endeavor to identify resources early in the case so as to reduce the potential for delay.
   2. Informing litigants with limited-English-proficiency of available interpreter services.
   3. Providing brief information about the proceeding and evidentiary and foundational requirements.
   4. Using available courtroom technology to assist unrepresented individuals to access and understand the proceedings (e.g., remote appearances, use of video displays to share court rules, statutes, and exhibits).
   5. Asking neutral questions to elicit or clarify information.
   6. Attempting to make legal concepts understandable by minimizing use of legal jargon.
   7. Starting the hearing with a quick summary of the case history of the issues that will be addressed
   8. Explaining at the beginning of the hearing that you may be asking questions and that this will not indicate any view on your part. It will merely mean that you need to get the information to decide the case.
   9. Working through issues one by one and moving clearly back and forth between the two sides during the exploration of each issue.
   10. Inviting questions about what has occurred or is to occur.
   11. Permitting narrative testimony.
   12. Allowing parties to adopt their written statements and pleadings as their sworn testimony. This provision would not limit opportunities for cross-examination or be permitted in a manner that would prejudice the other party in the presentation of their case.
   13. Asking questions to establish the foundation of evidence, when uncertain.
   14. Clarifying with the parties whether they have presented all of their evidence and explaining that no additional testimony or evidence will be permitted once the evidentiary portion of the case is completed.
   15. Prior to announcing the decision of the court, reminding the parties that they have presented all of their evidence, that they will be given an opportunity to ask questions once the court has issued its ruling, and that they should not interrupt the court.
   16. If unable to do what a litigant asks because of neutrality concerns, explaining the reasons in those terms.
   17. Announcing the decision, if possible, from the bench, taking the opportunity to encourage litigants to explain any problems they might have complying.
   18. Explaining the decision and acknowledging the positions and strengths of both sides.
   19. Making sure, by questioning, that the litigants understand the decision and what is expected of them, while making sure that they know you expect compliance with the ultimate decision.
   20. Where relevant, informing the litigants of what will be happening next in the case and what is expected of them.
   21. Making sure, if practicable, that the decision is given in written or printed form to the litigants.
   22. Informing the parties of resources that are available to assist with drafting documents, as well as compliance or enforcement of the order. Examples include but are not limited to courthouse facilitator programs, advocates, lists of treatment providers, and child support enforcement.
   23. Thanking the parties for their participation and acknowledging their efforts.