

# THE JUDICIAL WORKPLACE

A FOCUSED LOOK AT  
DISCRIMINATION AND HARASSMENT  
ISSUES



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# CANON 2:

A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY

## RULE 2.3 BIAS, PREJUDICE, AND HARASSMENT

(A) A judge shall perform the **duties of judicial office**, including administrative duties, **without bias or prejudice.**

## RULE 2.3

- (B) A judge shall not, **in the performance of judicial duties**, by words or conduct manifest **bias or prejudice, or engage in harassment**, including but not limited to bias, prejudice, or harassment based upon race, sex, gender identity or expression, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation . . .

# EMPLOYMENT LAW 101 BASICS

QUID PRO QUO

HOSTILE WORK ENVIRONMENT

# WHAT'S THE STANDARD FOR JUDGES?

- **LESS!!!**
- NO SHOWING OF A TITLE 7 VIOLATION MUST BE SHOWN



# BEYOND THE OBVIOUS...

- DEMEANING NICKNAMES
- NEGATIVE STEREOTYPING (Generalizations)
- INAPPROPRIATE ATTENTION
- IRRELEVANT REFERENCES TO PERSONAL CHARACTERISTICS



**JUDGES TRYING TO BE FUNNY**  
(AND NOT SUCCEEDING)

“ON A LIGHTER NOTE, I CAN TAKE JUDICIAL NOTICE THAT WOMEN CAN DRIVE YOU CRAZY,” AND, “YOU KNOW, A JUDGE COULD GET IN TROUBLE FOR SOMETHING LIKE THIS.”

JUDGE WHILE PRESIDING OVER A DOMESTIC VIOLENCE CASE.

INQUIRY CONCERNING LAETTNER, DECISION AND ORDER (CA. CMSN. ON JUDICIAL PERFORMANCE NOVEMBER 6, 2019).



**“THE ONLY PERSON YOU SHOULD BE SENDING  
NAKED PICTURES TO [IS] . . . HUGH HEFNER. HE WILL  
PAY YOU \$100,000 FOR THE USE OF THEM.”**

JUDGE TO WOMAN WHO SOUGHT THE RETURN OF PHOTOGRAPHS  
TAKEN OF HER FOR THE BENEFIT OF HER BOYFRIEND.

IN THE MATTER OF RIVAS, ORDER  
(NEW JERSEY SUPREME COURT MARCH  
23, 2020), ACCEPTING (CENSURE FOR THIS AND RELATED COMMENTS).

“I DON’T CARE WHAT ANYBODY WEARS, MS. MCKEEGAN, IF YOU WEAR YOGA PANTS TO COURT, IT’S OKAY WITH ME;” AND “OH, I SHOULD NOT HAVE SAID THAT. ARE THERE CAMERAS IN HERE?” JUDGE TO ASSISTANT DISTRICT ATTORNEY.

IN THE MATTER  
OF GERBER, DETERMINATION (NEW YORK STATE COMMISSION ON  
JUDICIAL CONDUCT  
JUNE 27, 2020)

(ADMONITION FOR THIS AND OTHER MISCONDUCT).

## “[DO YOU] WANT A ROOM?” AND “[SHOULD I] TURN OFF THE LIGHTS?”

JUDGE TO FEMALE ASSISTANT DISTRICT ATTORNEY AND HER MALE FRIEND AS JUDGE WAS LEAVING THE COURTROOM.

IN THE MATTER OF GERBER, DETERMINATION (NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT JUNE 27, 2020) (ADMONITION FOR THIS AND OTHER MISCONDUCT).

**“GET TO WORK WOMAN!” AND “LET’S GO WOMAN!”**

JUDGE REFERRING TO FEMALE EMPLOYEES.

STAGGS, ORDER (ARIZONA COMMISSION ON JUDICIAL CONDUCT  
NOVEMBER 17, 2020)

(REPRIMAND FOR THIS AND OTHER MISCONDUCT).

## ONE JUDGE'S COMMENTS TO THE SAME FEMALE EMPLOYEE

AFTER A POTLUCK LUNCH: IF I KNEW YOU COULD ALSO COOK, I WOULD HAVE GONE FOR YOU.

WHEN THE EMPLOYEE WAS FANNING HERSELF BECAUSE SHE WAS HAVING A HOT FLASH, HE TOLD HER: IT'S NICE TO KNOW I STILL HAVE THAT EFFECT ON YOU.

WHEN THE EMPLOYEE WAS JUST WALKING BY THE OFFICE: "YOU LOOK REALLY HOT IN THAT OUTFIT."

IN THE MATTER OF MILLER, 158 N.E.3D 87 (NEW YORK 2020),

## EXCUSES THAT ARE NOT EXCUSES

\* COMMENTS MADE IN JEST

\* THE EMPLOYEE SHOULD HAVE STATED SHE  
WAS UNCOMFORTABLE

# WHAT ABOUT BODY LANGUAGE & FACIAL EXPRESSIONS?



The background of the image is a vibrant teal color, densely populated with numerous speech bubbles of various colors including red, yellow, pink, and white. Each speech bubble contains a large, dark blue question mark. The bubbles are scattered across the frame, some overlapping, creating a sense of a busy, questioning environment. In the center of the image, there is a dark blue, semi-transparent rectangular box that serves as a backdrop for the main text.

ARE COMPLIMENTS OK?



REFERRING TO THE COURT REPORTER AS “VERY PRETTY” OR “BEAUTIFUL” WHEN INTRODUCING HER TO THE JURY.

REFERRING TO FEMALE DEFENDANTS AS PRETTY, SUGGESTING THEY NOT GET TATTOOS.

REFERRING TO THE PUBLIC DEFENDER 12-20 TIMES THAT SHE LOOKED LIKE A CERTAIN ADDRESS FROM A TV SHOW, OFTEN SAYING, “I SAW YOU ON TV LAST NIGHT.

REFERRING TO COUNSEL AS “LOVELY” AND “ONE OF MY FAVORITE ATTORNEYS”

SAYING THAT A FEMALE ATTORNEY IS BEAUTIFUL OR OTHERWISE COMMENTING UPON HER LOOKS LIFTS LADY JUSTICE'S BLINDFOLD BY SUGGESTING THAT ONE OF A PERSON'S IMMUTABLE CHARACTERISTICS, HER APPEARANCE, MATTERS TO THE JUDGE

The background of the image is a vibrant teal color, densely populated with numerous speech bubbles of various colors including red, yellow, pink, and white. Each speech bubble contains a large, dark blue question mark, creating a pattern of inquiry. A dark blue, semi-transparent rectangular banner is centered horizontally across the middle of the image, containing the text in white.

WHAT ABOUT A CONSENSUAL  
RELATIONSHIP?

THE PUBLIC / COURT EMPLOYEES HAVE A LEGITIMATE  
EXPECTATION THAT THE JUDGE WILL MAINTAIN  
APPROPRIATE WORKPLACE BOUNDARIES. . . THE  
**INEQUITABLE NATURE OF THE RELATIONSHIP**  
DEMONSTRATES A LACK OF JUDGMENT AND DISREGARD  
FOR THE NORMS OF THE WORKPLACE

## RULE 2.3

- **(B)** A judge shall not, **in the performance of judicial duties**, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender identity or expression, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and **shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.**

JUDGES ARE RESPONSIBLE NOT ONLY FOR THEIR OWN CONDUCT BUT ALSO FOR ENSURING THAT THOSE UNDER THEIR DIRECTION AND CONTROL DO NOT HARASS OTHERS.

JUDGE HIRES CLOSE PERSONAL FRIEND TO SERVE AS PERMANENT LAW CLERK----HOSTILE WORK ENVIRONMENT

JUDGE DISCIPLINED

IN RE INQUIRY CONCERNING MURPHY, 852 S.E.2D 599 (N.C.)

## RULE 2.3

- (C) A judge **shall require lawyers in proceedings before the court** to refrain from manifesting bias or prejudice, or engaging in harassment, based upon attributes including but not limited to race, sex, gender identity or expression, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or **political affiliation**, against parties, witnesses, lawyers, or others.
- Holding Lawyers to a Similar Standard, but there are differences
- 8.4 RPC Misconduct for Lawyers –
  - No mention of political affiliation
  - Knowingly (No mens rea component in CJC)

**WHEN DOES RULE  
2.3(C) REQUIRE A  
JUDGE REPORT A  
LAWYER TO ODC?**



# RISKS OF CYBERSPACE AND ELECTRONICS

(OTHER RULES IMPLICATED)

- Social media is dangerous
- Never assume emails /texts are private
- Nothing ever disappears
- Never assume you are acting anonymously

## FACEBOOK PAGE

**“BOOBIES ARE PROOF THAT MEN CAN  
FOCUS ON TWO THINGS AT ONCE!”**

**PHOTOGRAPH LISTS 10 REASONS WHY  
“COUNTRY GIRLS ARE HOTTER”**

STILSON (NEW YORK COMMISSION) (REMOVAL FOR THIS AND  
OTHER MISCONDUCT).



# OTHER THORNY ISSUES

ON LINE DATING

IMPLICATIONS FOR  
THIRD-PARTY POSTS

THANK  
YOU!  
AMY & BETHANN



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