

1 **RULE 2.10 Judicial Statements on Pending and Impending Cases**

2
3 (A) A judge shall not make any public statement that might reasonably be expected to
4 affect the outcome or impair the fairness of a matter *pending* or *impending* in any court, or make
5 any nonpublic statement that might substantially interfere with a fair trial or hearing.
6

7 (B) A judge shall not, in connection with cases, controversies, or issues that are likely
8 to come before the court, make pledges, promises, or commitments that are inconsistent with the
9 *impartial* performance of the adjudicative duties of judicial office.
10

11 (C) A judge shall require court staff, court officials, and others subject to the judge’s
12 direction and control to refrain from making statements that the judge would be prohibited from
13 making by divisions (A) and (B) of this rule.
14

15 (D) Notwithstanding the restrictions in division (A) of this rule, a judge may make
16 public statements in the course of official duties, may explain court procedures, and may
17 comment on any proceeding in which the judge is a litigant in a personal, nonjudicial capacity.
18

19 (E) Subject to the requirements of division (A) of this rule, a judge may respond
20 directly or through a third-party to allegations in the media or elsewhere concerning the judge’s
21 conduct in a matter.
22

23
24 **Comment**

25
26 [1] This rule’s restrictions on judicial speech are essential to the maintenance of the
27 independence, integrity, and impartiality of the judiciary.
28

29 [2] This rule does not prohibit a judge from commenting on proceedings in which the
30 judge is a litigant in a personal, *i.e.*, nonjudicial capacity. In cases in which the judge is a litigant
31 in ~~an official~~ a judicial capacity, such as a writ of mandamus, the judge must not comment
32 publicly.
33

34 [3] Depending upon the circumstances, the judge should consider whether it may be
35 preferable for a third party, rather than the judge, to respond or issue statements in connection
36 with allegations concerning the judge’s conduct in a matter.
37

38
39 **Comparison to Ohio Code of Judicial Conduct**

40
41 Rule 2.10(A) corresponds to Ohio Canons 3(B)(9) and 7(B)(2)(e).
42

43 Rule 2.10(B) corresponds to Ohio Canons 7(B)(2)(c) and (d), except that it does not
44 encompass judicial candidates and it is narrower with respect to its prohibitions. Placing this
45 particular restriction in Rule 2.10 makes it clear that the prohibition applies to pledges and
46 promises made by a judge even when made outside the context of a political campaign.

47 However, in light of the decision issued by the United States Supreme Court in *Republican Party*
48 *of Minnesota v. White*, 536 U. S. 765 (2002), the prohibition is limited to pledges, promises, or
49 commitments that are made in connection with cases, controversies, or issues likely to come
50 before the court and that are inconsistent with the impartial performance of a judge’s
51 adjudicative duties. For the same reason, the reference in Canon 7(B)(2)(d) to “statements that
52 commit or appear to commit the judge” is not retained in this rule.
53

54 Rule 2.10(C) corresponds to the second sentence of Ohio Canon 3(B)(9), but replaces the
55 phrase “court personnel” with “court staff, court officials, and others” so as to include all persons
56 subject to the judge’s direction and control.
57

58 Rule 2.10(D) corresponds with the third and fourth sentences of Ohio Canon 3(B)(9).
59

60 Rule 2.10(E) is new and is intended to allow a judge to respond to allegations in the
61 media or elsewhere concerning the judge’s conduct in a particular matter, so long as the response
62 would not affect the outcome or impair the fairness of that proceeding.
63

64 **Comparison with ABA Model Code of Judicial Conduct** 65

66 Rule 2.10 is identical to ABA Model Rule 2.10, except for the addition of wording in
67 Rule 2.10(D) and Comment [2]. The added language distinguishes between lawsuits in which a
68 judge may be named personally, but arising out of his or her judicial conduct, and those in which
69 a judge is involved in a purely personal, nonjudicial capacity.