

Re: Amendments to Rule 2.2 and Rule 2.6 of the Hawai'i Revised Code of Judicial Conduct

*BECOMING AN "ENCOURAGING" STATE: ENCOURAGING JUDGES TO
MAKE REASONABLE ACCOMMODATIONS FOR SELF-REPRESENTED LITIGANTS*

The Supreme Court of Hawai'i seeks public comment regarding proposed amendments to the Revised Code of Judicial Conduct Rule 2.2 and Rule 2.6 which encourage judges to provide reasonable accommodation to self-represented litigants in an effort to ensure that all parties to a case are fairly heard.

The Ramseyer version of the proposed rule amendments are attached. For the rule amendments, the proposed language to be added is underscored, and the language to be deleted is bracketed and stricken as illustrated in this [example].

Comments should be submitted in writing **no later than Friday, November 14, 2025** to the Judiciary Communications & Community Relations Office by mail to 417 South King Street, Honolulu, HI 96813, by facsimile to 808-539-4801, by e-mail to pao@courts.hawaii.gov, or via the [Judiciary website](#).

Attachment.

**PROPOSED AMENDMENTS TO THE
REVISED CODE OF JUDICIAL CONDUCT**

(Deleted material is bracketed and stricken; new material is underlined.)

CANON 2

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

Rule 2.2. IMPARTIALITY AND FAIRNESS

A judge shall uphold and apply the law* and shall perform all the duties of judicial office fairly and impartially.*

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] It is not a violation of this Rule for a judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard. See Rule 2.6(a) of these Rules.

[5] It is not a violation of this Rule for a judge to sanction a lawyer by permitting the lawyer to provide pro bono legal services to persons or organizations of the lawyer's choosing that are described in Rule 6.1(a) of the Hawai'i Rules of Professional Conduct, or to make a monetary contribution to such organizations.

Rule 2.6. ENSURING THE RIGHT TO BE HEARD

(a) 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.* A judge may make reasonable efforts to facilitate the ability of all litigants, including self-represented litigants, to be fairly heard.

(b) A judge may encourage settlement of disputed matters in a proceeding but shall 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. The growth in litigation involving self-represented litigants and the responsibility of courts to promote access to justice warrant reasonable flexibility by judges to ensure that all litigants are fairly heard. The judge has an important role in facilitating the ability of every person who has a legal interest in a proceeding to be fairly heard. In the interest of ensuring fairness and access to justice, judges should make reasonable accommodations that help self-represented litigants to understand the proceedings and applicable procedural requirements, secure legal assistance, and be heard according to law. In some potential circumstances, particular accommodations for self-represented litigants are required by decisional or other law. In other circumstances, accommodations are within the judge's discretion.

Steps judges may consider in facilitating the right to be heard include, but are not limited to,

- (a) providing information about any resources that may be available to assist the litigant in the preparation of the case or enforcement and compliance with any order;*
- (b) liberally construing pleadings to facilitate consideration of the issues raised;*
- (c) providing general information about proceedings and evidentiary and foundational requirements;*
- (d) informing litigants what will be happening next in the case and what is expected of them;*
- (e) attempting to make legal concepts understandable by using plain language whenever possible;*
- (f) asking neutral questions or clarifying information provided by a litigant;*
- (g) modifying the traditional order of taking evidence;*
- (h) permitting narrative testimony;*
- (i) explaining the basis for a ruling*

Code Comparison

The Hawai'i Revised Code of Judicial Conduct modifies ABA Model Code Comment [1] by addressing the growth of litigation involving self-represented litigants and elaborates on the reasonable accommodations judges may consider providing to self-represented litigants. This list, which is not exhaustive, is included in comment [1] as sections (a) through (i).

[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)]~~(a) whether the parties have requested or voluntarily consented to a certain level of participation by the judge in settlement discussions, ~~[(2)]~~(b) whether the parties and their counsel are relatively sophisticated in legal matters, ~~[(3)]~~(c) whether the case will be tried by a judge or a jury and, if by a judge, whether ~~he or she~~the judge will be the settlement judge or another judge, ~~[(4)]~~(d) whether the parties participate with their counsel in settlement discussions, ~~[(5)]~~(e) whether any parties are unrepresented by counsel, and ~~[(6)]~~(f) whether the matter is civil or criminal.

Code Comparison

The Hawai'i Revised Code of Judicial Conduct modifies ABA Model Code Comment [2]'s factor ~~[(3)]~~(c) by adding the second clause.

[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).

Code Comparison

The Hawai'i Revised Code of Judicial Conduct modifies ABA Model Code Comment [3] by adding "recusal" consistent with Hawaii's distinction between disqualification and recusal.
