



SUPREME COURT OF GEORGIA

FILED
Administrative Minutes
February 1, 2024

Thérèse S. Barnes
Clerk/Court Executive
SUPREME COURT OF GEORGIA

The Honorable Supreme Court met pursuant to adjournment.
The following order was passed:

IN RE: GEORGIA CODE OF JUDICIAL CONDUCT

The Court hereby adopts the following amendment to the revised Georgia Code of Judicial Conduct that took effect on January 1, 2016, to clarify that the rules that require impartiality or prohibit ex parte communications in connection with impending matters or pending proceedings do not apply to administrative duties not in connection with an impending matter or a pending proceeding. This amendment shall take effect on February 1, 2024, and shall read as follows:

Canon 2

JUDGES SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY.

...

Rule 2.5 Performing Administrative Responsibilities

...

(C) Rules that might be understood as

- (1) requiring *impartiality* or
- (2) prohibiting ex parte communications

in connection with *impending matters* and *pending proceedings*, including but not limited to Rules 1.2, 2.9, 2.11, 2.13, 3.7, and 4.2 (A) (2), do not apply to administrative duties not in connection with an *impending matter* or a *pending proceeding*.

Commentary:

[4] As Rule 2.1 states, the primary role of judges is to “serve as the arbiters of facts and law for the resolution of disputes.” See also *Sons of Confederate Veterans v. Henry County Bd. of Comm’rs*, 315 Ga. 39, 50 (2) (b) (880 SE2d 168) (2022) (“The judicial power is that which declares what law is, and applies it to past transactions and existing cases; it expounds and judicially administers the law; it interprets and enforces the law in a case in litigation.” (cleaned up)). But our constitutional system of separated powers also vests in at least some judges and organizations of judges an additional role, that of policy-maker with respect to administrative duties. Much of that authority is vested in the Supreme Court, but at least some is vested in other classes of courts as well. See, e.g., Ga. Const. Art. VI, Sec. IX, Par. I (providing for the advice and consent of councils of trial courts in the adoption by the Supreme Court of uniform trial court rules). Judges in whom the Constitution has vested policy-making power must be free to exercise that power in the manner they believe best serves the public, even if that involves preferring and advocating for particular outcomes within the scope of that policy-making power in a manner that otherwise would be forbidden if it instead regarded an *impending matter* or a *pending proceeding*. While judges must always be impartial in their exercise of adjudicative duties (which this Code identifies by the use of the terms “*impending matters*” and “*pending proceedings*”), extending to policy-making administrative duties that same requirement of impartiality – at least in the colloquial sense of that word – would be in tension with the nature of policy-making power. As used in this Code, of course, impartiality has a narrower, two-fold meaning than its colloquial sense: (1) avoiding bias and prejudice, and (2)

maintenance of an open mind in considering issues that may come before a judge. The first such meaning applies to all judicial actions, which Rule 2.5 (A) reiterates. But the second meaning is limited to the exercise of adjudicative duties, as are the recusal obligations of Rule 2.11, which by its very terms apply only to proceedings. In the same way, Rule 2.9's prohibition on ex parte communications, by its text and nature, applies only to impending matters and pending proceedings, and hence has no application to administrative duties unrelated to such matters or proceedings. That judges, lawyers, members of the public, or other stakeholders may have and communicate an interest in how a judge performs administrative duties does not convert the administrative duty into an adjudicative duty.

Text amended effective February 1, 2024.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

 , Clerk