

THE CENTRAL PRINCIPLE OF BEING A JUDGE

“The basic function of an independent and honorable judiciary is to maintain the utmost integrity in decision making.”¹

This principle applies to everything that a judge does, whether it is conducting judicial proceedings, off bench activities in the courthouse, or judicial administration. It applies as well to the ethics obligations of judges in the courthouse and in private life. All of what a judge does must ensure the integrity of the process of decision making and the decision itself.

The Eight Pillars of Being a Judge.

The following Eight Pillars of Being a Judge are some of the qualities and thinking processes to help a judge remain focused on what judging is about and to ensure the “utmost integrity of decision making.”²

PILLAR I – Awareness of Being a Judge

Always be mindful that you are a judge—whether on the bench, at a party, or on Facebook.

As you go about your life, constantly running in the background—like an anti virus program—is the awareness that you are a “judge.” This awareness needs to be developed over time, automatically kicking in when information, events or perceptions reach you. *You are a judge, a public figure, who is seen as a symbol of the system of justice.*

As a member of the judiciary you bear the burden of expectations placed upon all judges, expectations on what one does or says, and how one behaves or reacts.

Judges must commit to upholding the integrity and independence of the judiciary, avoid impropriety and the appearance of impropriety in both the public and non-public aspects of their lives, respect and comply with the law, promote confidence in the integrity and impartiality of the judiciary, assure that bias and prejudice are not countenanced in public and private life, and fairness and diligence are encompassed in judicial proceedings and administration. These fundamental ideas are expressed in the first three canons of the California Code of Judicial Ethics.

PILLAR II—Awareness in the Courtroom

Always be mindful that you are a judge and act consistently with your mission as a judge. Always be conscious of what you do and say and be attentive to what others do and say in court proceedings. Never fail to notice your own reactions, feelings and thoughts in regard to what is taking place.

Mindful of the things you are supposed to be doing in regard to the proceeding. Always remain

¹ Canon 1 of the California Code of Judicial Ethics, *Advisory Committee Commentary*.

² The Pillars were prepared by David Rothman with the assistance of the Center for Judicial Education and Research, the New Judge Orientation Working Group, and the CJER staff in 2011 to 2013. Comments are welcome. rothmand@aol.com.

focused on the task before you, including both

The particular elements of the task, and

The qualities judges must exhibit in judicial proceedings (e.g., patience, dignity, fairness, impartiality, honesty in decision making).

Stay focused. If what you are doing and saying is not serving to accomplish the particular task before you, notice this, and get back on track. People before the court (parties, lawyers, jurors, witnesses, observers) expect a judge to pay attention to the matter before the judge. You are there to accomplish the task before you.

A court proceeding is not supposed to afford you an opportunity to berate the lawyers for wasting your time, entertain an “audience” with your wit and/or wisdom, lead a rally for the 49ers, and so on.

Developing the habit of “noticing” and finding productive responses to events in court. Notice the reactions of people and what is taking place both in the courtroom and within yourself (feelings, emotions, anger, sympathy, impatience, or annoyance). Your reactions are signals. If you miss these signals, you increase the probability of unproductive actions based on these emotions (e.g., acting based on anger, prejudice, mistakes, errors, etc.) rather than productive responses based on reflection and thought. Whether in or out of court, a judge needs to develop and use strong self observation skills.

Finding self-awareness. Remember the times when you saw others who were NOT self-aware, did not see themselves (from the person who dominates the conversation at a dinner party, or the judge who berates people in a courtroom). Try to see the clues that your emotions may be getting in the way of your objectivity by observing yourself, as well as how others are reacting to you in the courtroom (facial expressions, body language, etc.).

PILLAR III—The Rule of Law

Actions and decisions in court must be within the law.

Judges are not there to make up the rules as they go along, whether it be imposing a sanction or deciding a case. Observing the *rule of law* involves the fair application of the constitution, statutes, case law and rules of court, ensuring the constitutional rights of all before the court, including unrepresented persons, and demonstrating attentiveness to the ethical obligations of a judge.

PILLAR IV—Do Not Make Assumptions

Challenge assumptions and engage in no prejudging.

It is natural for humans to make assumptions, to take mental shortcuts in order to quickly arrive at conclusions. But it is also a part of our nature that once a conclusion enters our mind (whether based on a bias, assumption or “fact” heard in a trial), it is difficult to either reject or challenge it. A judge is a person who renders honest decisions, not decisions based on bias or prejudice.

“Keeping an open mind” may be the most important and most difficult of judicial tasks—do not take this task lightly. Mitigating the impact of assumptions requires constant awareness of what you are thinking and why.

PILLAR V—Professional Distance

Do not take things personally, become embroiled or be an advocate.

You are no longer a lawyer, and your *only stake* in a case is that justice be administered fairly,

impartially, honestly, and without fear or favor. If you lose your objectivity, your professional distance, you will have abandoned being a judge. Once a judge becomes embroiled (gets involved *personally*) fairness, impartiality and the integrity of the decision leaves the courtroom.

Taking things personally, for whatever reason, is often the cause of judicial misconduct in court proceedings. Loss of self-control, loss of control of the courtroom, frustration that produces anger, acting in a way that favors one side in a matter, assuming the role of a prosecutor or defense attorney, coercing pleas or a settlement, and other conduct are all examples of loss of professional distance.

Pillar VI—Honesty and Integrity

Ensure honesty and integrity in the process of making decisions and in the decision.

Ensuring the honesty and integrity in the process of making decisions and in the decisions encompasses both the *reality* as well as *public perception*. All the rules that govern what you do as a judge, including the Code of Civil Procedure, the Penal Code, the Rules of Court, the Code of Judicial Ethics, and so on, focus on one ultimate objective: ensuring the honesty and integrity of decision making. Not only does a judge do what is right according to law, he or she must also be perceived to be doing so.

Pillar VII—Righteousness and Courage



what is right according to law and work to have the courage to do so.

Canon 3A(2) provides that

“(a) judge shall be faithful to the law regardless of partisan interests, public clamor, or fear of criticism, and shall maintain professional competence in the law.

In her book, *Freedom from Fear and Other Writings*, Aung San Suu Kyi said

“It is not power that corrupts but fear. Fear of losing power corrupts those who wield it and fear of the scourge of power corrupts those who are subject to it. . . . Fearlessness may be a gift but perhaps more precious is the courage acquired through endeavor, courage that comes from cultivating the habit of refusing to let fear dictate one’s action”

Judicial integrity is tested by the challenge of overcoming fear to do what is right. Only the judge knows if the judge’s decisions are honest and true.

Pillar VIII—Accountability

Accept and ensure judicial accountability.

Humility. Recognizing that you are accountable involves the humility to accept that you can be wrong. This is also an essential part of keeping an open mind.

Acceptance of accountability. As a judge you are part of the judicial institution in which public confidence in the judiciary is essential. A judge sees that justice is done and accepts the obligations that go with being a judge, including your own accountability and that of others who serve with you.