V. DUTY TO TAKE APPROPRIATE ACTION

§ 5:65 Appropriate action regarding colleagues

Canon 3D(1) of the Code of Judicial Ethics requires the following of all judges (not just presiding or supervising judges):

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397This should not mean that works of art, flattering or otherwise, are off-limits, e.g., the rhino (Handbook, § 4:1), I Too, Nicodemus (Handbook, § 2:40).
“Whenever a judge has reliable information that another judge has violated any provision of the Code of Judicial Ethics, that judge shall take appropriate corrective action, which may include reporting the violation to the appropriate authority.”  

On judicial courage. As one examines this canon, it is hard to escape the potential gravity of what is expected of a judge. Is it too much to create such an imposition and obligation on a judge toward a colleague? It is clear from the language of Code of Judicial Ethics, canon 3D(1), that “appropriate corrective action” may be simple and relatively harmless or serious with grave consequences. Being a judge requires willingness to do what is right and the courage to do so. Section 1:37 of the Handbook—Pillar VII: Courage To Do the Right Thing—deals with this demand for honesty and integrity. Although judicial colleagues look to one another for support in their challenging tasks, they must also understand that they are first judges whose duty is to the people they serve. The words of former Secretary of State Dean Acheson, included in section 1:37, address what judges face when they make decisions:

“In the long days and years which stretch beyond that moment of decision, one must live with oneself, and the consequences of living with a decision which one knows has sprung from timidity and cowardice go to the roots of one’s life. It is not merely a question of peace of mind, although it is vital; it is a matter of integrity of character.”

Meaning of “appropriate corrective action.” The Advisory Committee Commentary to canon 3D(1) states: “Appropriate corrective action could include direct communication with the judge . . . who has committed the violation, other direct action, such as a confidential referral to a judicial . . . assistance program, or a report of the violation to the presiding judge, appropriate authority, or other agency or body.”

This commentary makes it clear that judgment is required as to the level of corrective action, which should involve weighing factors such as the nature of the violation, the amenability of the judge who committed the violation to correcting his or her behavior, and whether it is an isolated incident or represents a pattern of behavior. See below in this section the list of factors a judge should consider in determining whether to report a colleague to the Commission on Judicial Performance.

Levels of appropriate action. On receipt of reliable information that a judge has violated the Code of Judicial Ethics, doing nothing is

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398 See Handbook, § 6:3 (taking appropriate corrective action regarding misconduct by other judges).
399 Acheson, Present at the Creation: My Years in the State Department (W.W. Norton & Co. 1987) p. 361.
400 "Appropriate authority’ means the authority with responsibility for initiation of the disciplinary process with respect to a violation to be reported.” (Advisory Com. com., Cal. Code Jud. Ethics, canon 3D(1).)
not an option. The following are some thoughts on levels of corrective action.

1. Direct communication to the judge. Imagine you are having lunch with a group of judges and one of them is discussing a case and mentions that he engaged in an unauthorized ex parte communication with one of the lawyers. What should you do?

The value of an immediate response. The first and potentially most effective “appropriate action” is to say something to the judge immediately. Although other judges may be present, it would be natural in such a context for a judge to give input in response to what another judge says. Indeed, the ability of judges to consult with one another about cases is one of the most important resources judges have. The reaction of other judges present may serve as an opportunity to discuss whether the matter poses an ethics issue and what the judge should do to correct the problem created by the ex parte contact. Although the options for addressing an improper ex parte communication may cause difficulties for the judge, doing nothing would be far more serious. Early intervention by judicial colleagues may avoid future problems. Helping a judge to look at remedies may also avoid trouble down the road. All of this can be discussed in the context of immediate direct communication.

Concerns about rejection and anger. Even if the judge at that moment rejects the input (maybe expressing annoyance or even anger), the person providing input is a judge and is expected to have the fortitude to withstand rejection. One can expect that the person receiving the input will give the matter thought and do something to correct the problem, perhaps even later thanking the judge who gave the input. If the ethics issue involves breach of a specific canon or rule (e.g., decisional delay, contempt, sanctions, ex parte contacts, public comment, private life conduct, judicial elections) rather than personal misconduct (e.g., expression of bias, racist or sexist jokes, improper judicial demeanor; anger, abusive conduct, abuse of alcohol), the likelihood of a strong reaction is reduced. Of course, the manner in which the judge is approached is an important ingredient in achieving a favorable response.

Talk to the judge privately, but promptly. If there is concern that a comment might embarrass the other judge, a prompt, private communication is an equally useful means of appropriate action. The types of misconduct described above as personal, such as expressions of bias or making racist or sexist jokes, may be more effectively addressed in a private discussion.

The consequences of doing nothing are far more serious, both for the involved judge and the judicial institution, than taking corrective action.

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2. Report to the presiding judge. Examples of situations in which appropriate action may entail notification to the presiding judge include:

- A judge who engaged in an improper ex parte communication did not take the appropriate remedial action after being informed of the misconduct;
- A judge who was disqualified from hearing a matter contacted the judge who was newly assigned to the case;
- A judge was aware that another judge had a serious alcohol or substance abuse problem, including drinking during the business day.

These are, of course, not the only examples of cases in which such a report is warranted.

It is possible that the supervising or presiding judge is already aware of other facts or history that might warrant additional corrective action. Involvement of the presiding judge may carry greater weight with the judge and result in actions to correct the problem.

In the case of alcohol or substance abuse, the presiding judge is in a particularly good position to initiate an intervention to help the judge deal with the illness, thereby saving the involved judge and protecting the public.

3. Report to the commission. There are some situations in which the circumstances and the conduct require a report to the Commission on Judicial Performance. For example, if a presiding judge knows that a judge willfully refused to comply with a jury summons, despite being twice admonished to do so by the presiding judge, the Ethics Committee of the California Judges Association has advised that the presiding judge has two obligations: (1) schedule a sanctions hearing pursuant to statute, arranging for a judge assigned by the Judicial Council to conduct the hearing; and (2) report the judge to the commission in light of the judge's willful and deliberate defiance of the admonitions of the presiding judge. In addition to violating the law, the judge has brought the judiciary into disrepute, created an overt appearance of impropriety, failed to uphold high standards of personal conduct, and impaired public confidence in the integrity of the judiciary.

The Ethics Committee of the California Judges Association has further advised that a report to the commission is appropriate in the following situations:

- A judge refuses to accept an assignment (must be reported to the

403 The Commission on Judicial Performance has prepared a useful information guide for presiding judges: Facts for Presiding Judges about the Commission on Judicial Performance, rev. 4/1/17. Among other things, the guide discusses obligations of presiding judges to take appropriate corrective action and obligations of presiding judges related to subordinate judicial officers.

commission under California Rules of Court, rule 10.603(c)(4)(A)(i);\textsuperscript{405}

- A judge keeps matters after being disqualified, threatens a colleague and refuses a transfer.\textsuperscript{406}

Formal Ethics Opinion No. 64 by the Ethics Committee of the California Judges Association identifies several factors a presiding judge (or any judge, for that matter) should consider in determining whether a report to the Commission on Judicial Performance is warranted, including:

- The seriousness of the violation;
- The pervasiveness of the conduct;
- The judge's amenability to correcting his or her behavior;
- The likelihood of repeat violations and difficulty of discerning the likelihood of new violations, e.g., mistreatment of staff; and
- Any prior history of discipline.\textsuperscript{407}

A presiding judge must weigh these factors in deciding whether to report a judge to the commission. If a judge engages in a single egregious act of misconduct, reporting may be required even if the other factors are not present. Conversely, if a judge refuses to address the misconduct or persists after a warning, a presiding judge may be compelled to report misconduct that, in and of itself, would not require reporting.\textsuperscript{408}

Formal Ethics Opinion No. 64 describes situations in which reporting to the commission is and is not required.

**Situations requiring reporting.** The following situations require reporting to the Commission on Judicial Performance:

- A presiding judge concludes after an investigation that a judge sexually harassed a member of the judge's staff. The judge denies the allegations. The judge's unwillingness to acknowledge the problem and the difficulty in discerning whether future misconduct is likely requires a report to the commission.\textsuperscript{409}

- A judge routinely leaves the courthouse early. After counseling by the presiding judge, the judge persists.\textsuperscript{410}

- A judge makes suggestive and inappropriate comments to a court...


\textsuperscript{407}Cal. Judges Assn., Formal Ethics Opn. No. 64, subra, p. 4. The opinion addresses the reporting obligations of presiding judges, but because all judges are required by Cal. Code Jud. Ethics, canon 3D(1), to take appropriate corrective action when they have reliable information that another judge has violated a canon, this opinion is helpful to all judges.

\textsuperscript{408}Id. at p. 4.

\textsuperscript{410}Ibid.
officer and others. The presiding judge admonishes the judge and transfers him to another court. At the new courthouse, the judge makes demeaning remarks to a court employee. In light of the judge’s prior misconduct, the failure to respond to counseling and the seriousness of the misconduct, reporting is required.\textsuperscript{411}

- A judge modifies a speeding ticket without authority.\textsuperscript{412}
- A judge had an affair with counsel for a public agency assigned to the judge’s court and did not recuse or disclose the relationship. The misconduct affected the validity of all the cases involving the attorney that were decided during the course of the affair.\textsuperscript{413}
- A presiding judge counseled a judge about a delay beyond 90 days in issuing a ruling, then discovered additional cases that were more than 90 days old. After another warning from the presiding judge, the judge signs and file-stamps a case to make it appear it was signed within the 90 days and fabricates dates on several other orders. Because prior corrective action was ineffective and the judge fabricated dates on orders, the presiding judge is required to report the judge.\textsuperscript{414}

**Situations not requiring reporting.** The following situations do not require a report to the commission:

- A judge agrees that certain sexual remarks are inappropriate and agrees to counseling.\textsuperscript{415}
- A judge abused alcohol and had other mental and emotional problems that did not affect the judge’s performance in court. The presiding judge refers the judge to counseling and monitors the judge’s progress.\textsuperscript{416}
- A judge handles arraignments in a way that results in delays exceeding the statutory limit. The presiding judge takes corrective action that effectively prevents the problem from recurring.\textsuperscript{417}
- A judge who was on leave until the judge’s retirement date solicits alternative dispute resolution (ADR) business. The presiding judge admonishes the judge, who continues to solicit ADR business. The presiding judge writes a letter requiring corrective action and moves the judge’s retirement date forward so that the retirement is immediate.\textsuperscript{418}
- A judge had a matter under submission for more than 90 days,

\textsuperscript{411} Id. at p. 5.
\textsuperscript{412} Ibid.
\textsuperscript{413} Ibid.
\textsuperscript{414} Ibid.
\textsuperscript{415} Ibid.
\textsuperscript{416} Ibid.
\textsuperscript{417} Id. at pp. 5 6.
\textsuperscript{418} Id. at p. 6.
which was uncharacteristic. The presiding judge takes remedial action to ensure there will be no recurrence.419

**Failing to take appropriate action.** A presiding judge was privately admonished for failing to take appropriate corrective action after receiving reliable information about serious wrongdoing by another judge on the court.420 A different judge was disciplined for failure to take “appropriate action after presiding over alcohol-related criminal charges involving another judge.”421 Another judge received an advisory letter for failing “to take any action when information revealing potential serious wrongdoing by a judicial colleague was before the judge.”422

**The commitment to do the right thing.** A judge with knowledge of the offending behavior will not find it easy to approach a colleague or to take other forms of appropriate corrective action. Regardless of how valuable an observation may be, few people welcome being told that something has been noticed regarding their conduct, or that he or she has made a mistake and that something must be done about the conduct. Having to take appropriate corrective action in regard to the misconduct of a colleague is a difficult part of the job of being a judge. But it is sufficiently important to the institution of justice, as well as to the judge receiving a comment, that an atmosphere be created in which it is expected and acceptable for judges to make thoughtful and appropriate comments of this nature to one another.

Consider the following Biblical passage from Proverbs 27:17:

“Iron sharpeneth iron; so a man sharpeneth the countenance of his friend.”

§ 5:66 Self-reporting

The Code of Judicial Ethics contains the following self-reporting requirement:

“A judge shall promptly report in writing to the Commission on Judicial Performance when he or she is charged in court by misdemeanor citation, prosecutorial complaint, information, or indictment with any crime in the United States as specified below. Crimes that must be reported are: (1) all crimes, other than those that would be considered misdemeanors not involving moral turpitude or infractions under California law; and (2) all misdemeanors involving violence (including assaults), the use or possession of controlled substances, the misuse of prescriptions, or the personal use or furnishing of alcohol. A judge also shall promptly report in writing upon conviction of such crimes.”423

Judges have been disciplined for failure to make such a report on be-

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423 Cal. Code Jud. Ethics, canon 3D(3). The canon requires judges serving in the As-
ing charged with driving under the influence of alcohol. In one of these cases, a judge failed to report his arrest and conviction (by no contest plea) and ignored instructions by two different presiding judges that he must self-report. The matter came to the attention of the Commission on Judicial Performance because someone other than the judge made the report. In spite of the statements from the presiding judges, the judge claimed that it was not clear to him when he was supposed to make the report, and that he decided to report when the three-year probationary period ended. The commission found that the language of canon 3D(3) of the Code of Judicial Ethics was clear and unambiguous. The canon requires that the report be made “promptly” after both the charging of the offense or conviction thereof. The commission explained that self-reporting assists the commission in performing its “constitutional mandate and in protecting the public. . . . To protect the public, when a judge is charged with an alcohol-related charge, it is the commission’s policy to investigate not only the charged incident but also whether there is a substance abuse problem that is affecting the judge’s performance of judicial duties. A judge’s failure to report as required by canon 3D(3) impedes the commission’s performance of these constitutionally mandated duties.”

**Matters that need not be reported.** Except as provided in canon 3D(3), a judge does not have a duty to report every incident of his or her own misconduct to the Commission on Judicial Performance. It is clear, however, that the commission regards the fact that a judge self-reported misconduct, even though not required to do so, as a mitigating factor. The Ethics Committee of the California Judges Association advised that a judge who lost his temper and told a lawyer to “‘shut up,’” and later apologized, had no duty to self-report. The judge, however, on realization of such loss of control, had a duty to do something to avoid such conduct in the future.

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425 *Public Admonishment of Judge Alvarez, supra*, pp. 1–2.
426 *Id*. at p. 2.
427 *Ibid*.
428 *Ibid*.
429 *Id*. at p. 3.
§ 5:67 Appropriate action regarding attorneys

A judge who has "personal knowledge, or concludes in a judicial decision, that a lawyer has committed misconduct or has violated any provision of the Rules of Professional Conduct, shall take appropriate corrective action."431 It should be noted that the duty to report another judge requires a lesser level of information ("reliable information") than the duty to report an attorney ("personal knowledge").432 This, of course, does not mean that a judge is prohibited from reporting an attorney if the report is based upon something other than "personal knowledge."

Judicial obligations under the Business and Professions Code. If a contempt holding against an attorney involves conduct that may warrant discipline by the State Bar, as in the case of a breach of the duties set forth in Business and Professions Code section 6068, the court "shall notify the State Bar" by transmitting a copy of the final order of contempt, relevant minutes and transcript if one exists.433

In addition, a judge is required to report an attorney "[w]henever a modification or reversal of a judgment . . . is based in whole or in part on the misconduct, incompetent representation, or willful misrepresentation of an attorney."434 A court is also required by statute to notify the State Bar of "any judicial sanctions against an attorney, except sanctions for failure to make discovery or monetary sanctions of less than one thousand dollars ($1,000)."435

In each of the above instances, the court is required to notify the attorney involved that the matter has been referred to the State Bar.436

There are two rules of court that provide additional information about (1) who specifically in the court is responsible for notifying the State Bar and the attorney who is the subject of the notification, and (2) what the notifications must contain. For trial court judges, the judge who issues the order that triggers the reporting requirement is responsible for notifying the State Bar and the attorney, although the judge may direct court staff to perform these tasks.437 The rule also specifies that the notice must include the attorney’s name and State Bar number, if known, as well as a copy of the order that triggered the notification requirement.438

For appellate courts, the senior justice who issues the order or the

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432 Compare id., canon 3D(1) with id., canon 3D(2).
433 Bus. & Prof. Code, § 6086.7, subd. (a)(1).
434 Id., § 6086.7, subd. (a)(2).
435 Id., § 6086.7, subd. (a)(3).
436 Id., § 6086.7, subd. (b).
437 Cal. Rules of Court, rule 10.609(a) & (c).
438 Id., rule 10.609(b).
justice who authors the opinion that prompts the notification is responsible for reporting the matter to the State Bar and notifying the attorney. The justice may direct the Clerk to submit the report and inform the attorney.\textsuperscript{439} The notice must include the attorney’s name and bar number, if known, and a copy of the order or opinion that triggered the reporting requirement.\textsuperscript{440}

A court rendering a judgment finding a lawyer liable “for fraud, misrepresentation, breach of fiduciary duty, or gross negligence committed in a professional capacity” is also required to report that fact to the State Bar.\textsuperscript{441}

Finally, the clerk of the court in which an attorney is convicted of a crime is required, within 48 hours, to transmit to the State Bar the record of conviction.\textsuperscript{442}

**Impropriety of lodging or threatening to lodge an unfounded complaint.** A note of caution is appropriate regarding reporting an attorney or, for that matter, a judicial colleague. It is improper for a judge to lodge an unfounded or insubstantial report in order to retaliate against the attorney.\textsuperscript{443} Thus, while a judge has a duty to report an attorney under the circumstances discussed above, improper reporting, e.g., in apparent retaliation for the attorney’s criticism of the judge, may subject the judge to discipline.\textsuperscript{444} A judge was disciplined for reporting an attorney to the State Bar after the attorney refused to endorse a plea bargain. The basis for the report was that the judge heard from an unspecified source the attorney had a conflict of interest.\textsuperscript{445}

It is also improper for a judge to threaten to report an attorney to the State Bar without a valid basis.\textsuperscript{446} A judge was disciplined for, in the presence of the attorney’s client, threatening to report an attorney to the State Bar when the attorney sought to continue a preliminary hearing on the day of the hearing (without advance notice to the prosecution) and was unable to proceed.\textsuperscript{447}

**Determination that counsel is incapable of performing duties.** Judges are occasionally in the position to observe attorneys in court who are under the influence of alcohol or drugs, or are suffering from mental

\textsuperscript{439} Id., rule 10.1017(a) & (c).

\textsuperscript{440} Id., rule 10.1017(b).

\textsuperscript{441} Bus. & Prof. Code, § 6086.8, subd. (a).

\textsuperscript{442} Id., § 6101, subd. (c).


or medical conditions that impair the attorney’s ability to competently represent his or her client. In such circumstances, the judge has a duty to take appropriate action, which may include discussing the matter with the attorney or reporting the matter to the State Bar.448

When a judge permits a defendant to withdraw his guilty plea due to incompetence of counsel, and the judge determines that the attorney has “intentionally, recklessly, or repeatedly fail[ed] to perform legal services with competence,”449 the judge must take appropriate corrective action, which would include reporting the conduct to the State Bar.450

**Contacting an attorney’s supervisor.** Depending on the circumstances, it may be appropriate for a judge to contact an attorney’s supervisor as “appropriate corrective action.”451

**Fraud on the court.** The Ethics Committee of the California Judges Association has advised that a judge, who has personal knowledge that a declarant died before the date on the declaration submitted to the court by an attorney, has a duty to report the conduct both to law enforcement and the State Bar.452

**Suspended lawyers.** A judge has a duty to report a suspended attorney to the State Bar if that attorney appears in court while suspended.453

**Temporary judge.** A judge has a duty to take corrective action when a temporary judge improperly uses that position during a traffic stop, in advertising, in writing articles about “how to win,” and to gain an unfair advantage in litigation.454

§ 5:68 Reporting crimes

Judges are in a special position in the courtroom to observe potential criminal conduct, whether it be the perjury of a witness or revelations of crimes emerging from the evidence. What is the judge’s ethical obligation to report such criminal conduct? And even if a judge is not obligated to report a crime, are there ethical implications if a judge decides to do so?

There is no easy answer, although some authorities indicate that

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448See Cal. Judges Assn., Judicial Ethics Update (1999), p. 3. Rules Prof. Conduct, rule 3-110(A), requires that a lawyer not “intentionally, recklessly, or repeatedly fail to perform legal services with competence.” Rules Prof. Conduct, rule 3-110(B), provides that “competence” includes the “mental, emotional, and physical ability reasonably necessary for the performance of such service.”

449Rules Prof. Conduct, rule 3-110(A).


451See Handbook, § 3:16 (propriety of contacting an attorney’s supervisor).

452Ibid.

453Ibid.

454Id. at pp. 3-4.
there is no additional legal duty imposed on a judge that is different from the duty of an ordinary citizen. Generally, with limited exceptions, an ordinary citizen has no duty to report a crime. Only those who witness certain violent crimes against children under the age of 14, and mandated reporters who know of or reasonably suspect abuse or neglect of children, e.g., teachers, social workers, therapists, clergy, are required to report such offenses. Based on different provisions in the Code of Judicial Ethics, there are arguments on both sides of the issue whether a judge is required to report crimes.

Canon 2A of the Code of Judicial Ethics provides that a judge “shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” Thus, one can argue that judges have a special duty to promote public confidence in the judicial institution, which confidence would be eroded if the public perceived that judges look the other way when they hear evidence that a crime has been committed by any of the parties in a case pending before the judge. Under this view, a judge might be expected to do more than an ordinary citizen would be required to do upon learning that someone else had committed a crime.

On the other hand, canon 3 requires that judges perform all of their judicial duties impartially. Thus, given the enormous burden to remain impartial and be perceived as such throughout proceedings before the court, a judge could properly conclude that his or her impartiality, or the perception of the same, would be impaired were the judge to initiate prosecution of those appearing before the court. It is one thing for a judge to render decisions against people who commit crimes, but it is quite another thing to be the initiator of a criminal prosecution against a party.

The obligation of a judge to report a crime that takes place in the courtroom is the same as that of an ordinary citizen, unless the judge is the only person who has knowledge of the criminal conduct. A judge was disciplined for failing to report substantial and uncontroverted evidence, learned during an in-chambers conference, that court-appointed attorneys were misappropriating funds. This case suggests that, although a judge may have the same duty as an ordinary citizen to report criminal conduct, if a judge is in a position in which he or she is the only person with knowledge of the criminal conduct, he or she may be obliged to report it.

Perjury and tax fraud (especially in family law cases) are two crimes that may be revealed in the course of court proceedings. In such cases,

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456Pen. Code, § 152.3.
457Id., §§ 11164–11174.3.
the lawyers and parties, as well as the courtroom visitors, clerks, court reporters, and bailiffs are all not only aware of what is taking place, but are also in a position to report it. In such circumstances, some judges believe they should report the criminal conduct, whereas others do not, for the reasons noted above.

The Ethics Committee of the California Judges Association has advised that “[a] judge presiding over a trial and learning of a tax fraud by a litigant does not have a duty to report the crime or wrong by a litigant greater than any other citizen. However, if the judge is the only one in a position to report the fraud and does not do so, this may erode the public confidence in the integrity of the judiciary.”

The judge’s principal objective while presiding in court proceedings is the impartial administration of justice. A judge is not expected to bear the additional burden of trying to figure out whether or not the judge is the only person “in a position” to report the criminal conduct, or whether law enforcement is aware of a particular crime. If that were the rule, a judge would have a far greater duty than an ordinary citizen. If, however, the judge is the only person aware of the circumstances, then the judge should act.

Typically, in the ordinary courtroom context, the parties, lawyers, and many other people have the necessary information to report and the interest in doing so. Under these circumstances, the judge is not required to take any action.

**It is not improper to report a crime, but the judge should avoid becoming an advocate or embroiled.** If a judge decides to report a crime, the judge must not attempt to use his or her judicial office, become an advocate in the matter or otherwise attempt to influence the decision of the prosecutorial authority. In a family law case, the court had before it a motion to modify child support from the Ventura County Department of Child Support Services. During the hearing, the father and mother both provided evidence concerning income and expenses. The trial court made findings that both parties had intentionally misrepresented their income and expenses, and made certain determinations.

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459 Cal. Judges Assn., Judicial Ethics Update (1990), p. 3. See also Cal. Judges Assn., Judicial Ethics Update (2001), p. 5 (if a judge was aware that a prosecutor committed a crime and believed the prosecutor’s supervisor would not report it, and the judge was the only person who had knowledge of the criminal conduct, the judge had a duty to report to law enforcement if it was a substantial violation of the law); Cal. Judges Assn., Judicial Ethics Update (2000), p. 3 (if a judge receives reliable information in trial that a crime has been committed, the judge has the same duty as any other citizen to report the crime and should report any significant violations of the law not otherwise known to law enforcement).


461 Id. at pp. 32–33.
increasing the amount of support owed from the father.\textsuperscript{462} The Court of Appeal, in affirming the trial court's order, made the following comment:

“The courts cannot prevent parties to a dissolution from lying to each other. But, when they lie to the court they do so under penalty of perjury subjecting themselves to criminal prosecution. A trial court is not required to refer such cases to the district attorney or the Internal Revenue Service and the Franchise Tax Board when it believes a crime has been committed. But, it should not be faulted for doing so. [Citation.] If a trial court, in the exercise of its discretion, elects to report a crime to an appropriate agency, it should not become an advocate. It should simply make the referral and let the agency exercise its powers whether or not to go forward.\textsuperscript{463}

The judge must also avoid becoming embroiled. In one case, a judge who was presiding over a marriage dissolution trial began to suspect that the husband had committed a crime by neglecting to report a loan on his statement of economic interests as required under the Political Reform Act of 1974. When the husband was testifying, the judge questioned him independently about whether he had disclosed the loan. After ordering and reviewing a transcript of the trial and consulting with two colleagues, the judge concluded that he was obligated to report the violation. He sent the transcript to the litigant's employer instead of the district attorney or the Fair Political Practices Commission, which is responsible for addressing violations of the Political Reform Act.\textsuperscript{464}

The Commission on Judicial Performance found that the judge reported the litigant to his employer for a purpose wholly unrelated to the dissolution action before him and that he had “join[ed] the fray” through his investigation and pursuit of the issue.\textsuperscript{465} The commission noted that when there are others in the courtroom who have become aware of a potential crime as a result of the proceedings, the judge “is not obliged to report the crime but it is not necessarily improper for the judge to do so. [Citation.] In deciding whether to report a potential crime, a judge must be sensitive to the obligation to remain impartial.\textsuperscript{466} The commission concluded that the judge became so personally embroiled as to make him unfit to conduct further proceedings.\textsuperscript{467}

\textit{Obligation to take appropriate corrective action under canon 3D.} The “ordinary citizen” rule does not apply to canon 3D obligations to take appropriate corrective action for violations of the Code of Judicial Ethics or the Rules of Professional Conduct. It should be made clear that a judge’s duty to take appropriate corrective action, including

\textsuperscript{462}Id. at pp. 33-34.
\textsuperscript{463}Id. at p. 38, quoting Rothman, Cal. Judicial Conduct Handbook (2d ed. 1999) § 5.68.
\textsuperscript{465}Id. at p. 337.
\textsuperscript{466}Id. at pp. 337-338, citing Rothman, Cal. Judicial Conduct Handbook (3d ed. 2007) § 5.68, pp. 253-255.
\textsuperscript{467}Inquiry Concerning McBrien, supra, at p. 338.
reporting crimes and misconduct, in regard to other judicial officers and attorneys is an affirmative obligation under canon 3D, and is not the same duty as that possessed by an ordinary citizen.468