

XXXXX, J. concurring

I concur with the majority opinion. In his blog, “Hercules and the Umpire,” Judge Kopf has expressed a lack of respect for members of the legal system, as well as for the legal system itself. In doing so, I concur with the court in determining that Judge Kopf has violated various provisions of the ABA Judicial Code of Conduct (JCOC) including Rule 2.3, Rule 1.2, and Rule 3.1. I also concur with the majority opinion that Judge Kopf has not violated Rule 1.3.

First, I believe Judge Kopf has violated the ABA JCOC Rule 2.3, which states that a judge shall not manifest any form of prejudice or harassment in his judicial activities. In his blog, Judge Kopf has engaged in commentary about a female attorney whose appearance he was fond of. Though he did not outwardly say this to the attorney, the blog is a public forum, and she could easily have access to it. This is a form of sexual harassment, even if the attorney does not see the post. Sexual harassment should not be present in the workplace, especially in a public service setting. Additionally, by engaging in such activity, the judge is depicting himself as a person who is not capable of representing the interests of the public. A person should be confident that a member of the judiciary would not discriminate against someone based on age, gender, race, etc. By mentioning the appearance of a female attorney, Judge Kopf has shown that a person should pick the correct attorney, a female who is physically attractive, to have his or her interests represented. Though this may not be true, by expressing this opinion on his blog, Judge Kopf could lead a reasonable person to believe that he cannot be impartial when a female attorney is in front of him. The defense that the Judge is not in violation of this rule because he does not post about impending matters holds no weight. The issue here is the public’s opinion of the judiciary, not whether or not he is keeping information about pending cases confidential. Whether he is discussing past or future matters, the judge must always ensure he is not acting

prejudicially or harassing any person. He must always promote a view of impartiality and independence, regardless of the forum.

Second, Judge Kopf has admitted to violating the ABA Judicial Code of Conduct Rule 1.2, which states “a judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.” As stated before, Judge Kopf mentioned a female attorney and her appearance in his blog. Judge Kopf has also used very vulgar language in his blog, clearly giving an appearance of impropriety. A member of the public who reads the blog could believe that Judge Kopf often lets his personal views get in the way of his professional duties, causing him to rule in favor of female attorneys that he finds appealing. One of the most important things for the judiciary is the support of the public. This rule was put in place to guarantee that judges would not engage in conduct that would lead the public to believe that the judge was anything but impartial. By violating this rule, Judge Kopf has given the public reason to doubt our system.

Third, Judge Kopf has violated Rule 3.1 of the ABA JCOC, which states that a judge’s extrajudicial activities must not undermine the judge’s independence, integrity, or impartiality. This blog, as stated before, decreases the public’s confidence in the judiciary. By engaging in harassment, prejudicial, and other inappropriate behavior, the judge has not portrayed himself as someone suited to deliver just judgments. The activities mentioned above support this conclusion. Additionally, in admitting that his blog, an extrajudicial activity, is in violation of Rule 1.2, Judge Kopf has indirectly admitted that he has violated this rule as well. This rule is necessary to verify that judges will promote confidence in the judiciary in all of the activities, not only while sitting on the bench. The defense that the Judge did not violate this rule fails to understand that the rule is based on the public’s view of the judiciary. Though his extrajudicial

activities may not *actually* cause him to be impartial or take away from his judicial activities, a reasonable person of the public could easily believe that the representations he makes on his blog invade his decision making process.

Finally, I do not believe that Judge Kopf has violated Rule 1.3 of the APA JCOC, which states that a judge may not advance any private interests with his extrajudicial activities. The blog is nothing but a public posting of opinion from which the judge, or any other third party, gets no private or economic benefit.

I concur with the majority opinion in regard to the sanctions for Judge Kopf and his blog “Hercules and the Umpire,” though I believe there should be additional sanctions imposed. The biggest problem with this blog is the fact that it discourages the public’s confidence in the judicial system. I believe that it is necessary that Judge Kopf post a public apology on his blog. This apology would only start to repair the damage the Judge has done to the public’s view. Additionally, Judge Kopf should cease posting on his blog. I believe that to continue to allow Judge Kopf to post on the blog while periodically monitoring his posts is a waste of the resources of the Bar. It would be someone’s job to monitor the post, and their valuable time could be used elsewhere. By ceasing to post, Judge Kopf will no longer be publicly expressing his opinions and will not give the public any reason to believe his is anything but impartial. Judge Kopf should also enroll in conduct courses so he can be reminded of appropriate ways to act as a member of the judiciary. It is important that a judge holds himself to the highest standard, and clearly Judge Kopf needs to be reminded of this. Finally, I believe that Judge Kopf should participate in a workshop that explains the importance of refraining from sexual harassment so that he can be reminded that he may not view or treat female attorneys any differently than their male counterparts.