

**AMERICAN BAR ASSOCIATION
CPR POLICY IMPLEMENTATION COMMITTEE**

COMPARISON OF ABA MODEL JUDICIAL CODE AND STATE VARIATIONS

Rule 1.2: Promoting Confidence in the Judiciary

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.

COMMENT

[1] Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both the professional and personal conduct of a judge.

[2] A judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens, and must accept the restrictions imposed by the Code.

[3] Conduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary. Because it is not practicable to list all such conduct, the Rule is necessarily cast in general terms.

[4] Judges should participate in activities that promote ethical conduct among judges and lawyers, support professionalism within the judiciary and the legal profession, and promote access to justice for all.

[5] Actual improprieties include violations of law, court rules or provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge.

[6] A judge should initiate and participate in community outreach activities for the purpose of promoting public understanding of and confidence in the administration of justice. In conducting such activities, the judge must act in a manner consistent with this Code.

Eleven (11) states have identical language (AR, IN, IA, MN, MO, MT, NE, NY, OH, TN, WY)

Twelve (12) states have similar language (AZ, CT, CO, HI, KS, MD, MS, NV, NH, OK, UT, WA)

One (1) state has different language (DE)

AL	
AK	
AZ Effective 9/1/09	[5]: adds to end “ <i>An appearance of impropriety does not exist merely because a judge has previously rendered a decision on a similar issue, has a general opinion about a legal matter that relates to the case before him or her, or may have personal views that are not in harmony with the views or objectives of either party. A judge’s personal and family circumstances are generally not appropriate considerations on which to presume an appearance of impropriety.</i> ” [6]: deletes “community outreach”
AR Effective 7/1/09	Identical
CA	
CO Effective 7/1/10	[5]: Adds “ <i>Impropriety occurs when the conduct compromises the ability of the judge to carry out judicial responsibilities with integrity, impartiality and competence.</i> ”
CT Effective 1/1/2011	Adds: “ <i>The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge’s honesty, impartiality, temperament, or fitness to serve as a judge.</i> ” [1]: Adds “ <i>as defined by this rule</i> ” after “impropriety” [3]: Deletes “ <i>or appears to compromise</i> ” [4]: Changes “should” to “may”; inserts “initiate or” before “participate” Deletes MC [5] [5]: Similar to MC [6]: Changes “should” to “may”; changes “or” between “initiate” and “participate” to “and”
DE Effective 11/1/08	(A) Similar to Model Rule but replaces “shall” with “should,” deletes “independence” and adds “in all activities” to end First Comment includes parts of 1990 Model Code Canon 2A Commentary first paragraph Second Comment includes parts of 1990 Model Code Canon 2A Commentary second paragraph Third Comment: similar to parts of 1990 Model Code Canon 2A Commentary second paragraph Fourth Comment: similar to 2007 Model Code Comment [6] (B) Similar to 1990 Model Code Canon 1A but replaces “shall personally observe” with “should personally observe” and adds “impartiality” after “independence” Comment: <i>Many of the proscriptions in the Code are necessarily cast in general terms, and it is not suggested that disciplinary action is appropriate where reasonable judges might be uncertain as to whether or not the conduct is proscribed. Furthermore, the Code is not designed or intended as a basis for civil liability or criminal prosecution. Finally, the purpose of the Code would be subverted if the Code were invoked by lawyers for mere tactical advantage in a proceeding.</i>
DC (as pro- posed)	Identical
FL	

HI Effective 1/1/09	Comment [5] does not include appearance of impropriety test
ID	
IL	
IN Effective 1/1/09	Identical
IA Effective 5/3/10	Identical
KS Effective 3/1/09	[4]: replaces “promote” with “support” [6]: replaces “should” with “may”
KY	
MD Effective 7/1/10	Separates Rule 1.2 into two separate clauses. “A judge shall act...judiciary” is paragraph (a); Replaces language starting with “and shall avoid” with: <i>(b) A judge shall avoid conduct that would create in reasonable minds a perception of impropriety.</i> [2] Replaces “other citizens” with “other persons;” [5] Replaces “or provisions of this Code;” with “and this Code;” replaces language after “a perception” with “that the judge’s ability to carry out judicial responsibilities with competence, impartiality , and integrity is impaired.”
MA	
MI	
MN Effective 7/1/09	Identical
MO Effective 1/1/2012	[1] Replaces text in the first sentence after “by improper conduct” with “improper conduct by judges.” Replaces second sentence with: “A judge must avoid all impropriety and appearance of impropriety.” [5] Adds “under this standard” after “actual improprieties;” Replaces text in the second sentence after “would create in reasonable minds a perception” with: “that the judge’s ability to carry out judicial responsibilities with integrity, impartiality, and appropriate temperament is impaired.”
MS (as pro-posed)	[5] Replaces language after “whether” with “the judge’s conduct might be questioned as prejudicial to the administration of justice by a reasonable person knowing all the circumstances.”
MT Effective 1/1/09	Identical
NE Effective 1/1/2011	Adds asterisk after first “impropriety”

NV Effective 1/19/10	[5]: adds “Ordinarily, judicial discipline will not be premised upon appearance of impropriety alone but must also involve the violation of another portion of the Code as well” to end
NH Effective 4/1/2011	[5] Replaces text after “the conduct would create” with “in the mind of a reasonable, disinterested person fully informed of the facts a perception that the judge’s ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired.” [6] Replaces “A judge should” with “A judge is encouraged to”
NJ	
NM (as pro- posed)	[2] Adds at the end: “... and should do so freely and willingly. Examples are the restrictions on judicial speech imposed by Rules 210401 and 210402 NMRA that are indispensable to the maintenance of the integrity, impartiality, and independence of the judiciary.” [5] Adds at the end: ... “and undermines a judge’s independence, integrity, or impartiality. The test for appearance of impropriety is a rule of reason that should be applied consistently with constitutional requirements, statutes, other court rules, and decisional law, and with due regard for all relevant circumstances.” [6] Substitutes “should” with “a judge <i>may</i> initiate and...”
NY (as pro- posed)	Identical
NC	
ND (as pro- posed)	Identical
OH Effective 3/1/09	Identical Comment [5] adds “an objective standard that focuses on” before “whether” and “engaged in conduct that is prejudicial to public confidence in the judiciary” before “or engaged”
OK Effective 4/15/2011	[5] Adds: “of other specific” before “provisions of this Code” in the first sentence. [6] Replaces: “should” in the beginning of the sentence with “is permitted and encouraged to”
OR	
PA	
SD	
TN	Identical
TX	
UT Effective 4/1/10	Replaces “shall” with “should” and adds “and shall not undermine” after “promotes” [5] Deletes “violated this Code or,” deletes language starting with “other conduct” and replaces with “impropriety.”
VT	
VA	
WA Effective 1/1/11	[1] First sentence deletes language after “improper conduct” to end. [3] Deletes “or appears to” after compromises; Deletes all of second sentence.
WV	
WI	
WY	Identical

As of September 6, 2011

Effective 7/1/09	
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