

**AMERICAN BAR ASSOCIATION
CPR POLICY IMPLEMENTATION COMMITTEE**

COMPARISON OF ABA MODEL JUDICIAL CODE AND STATE VARIATIONS

RULE 3.11 Financial, Business, or Remunerative Activities	
<p>(A) A judge may hold and manage investments of the judge and members of the judge’s family.* (B) A judge shall not serve as an officer, director, manager, general partner, advisor, or employee of any business entity except that a judge may manage or participate in: (1) a business closely held by the judge or members of the judge’s family; or (2) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge’s family. (C) A judge shall not engage in financial activities permitted under paragraphs (A) and (B) if they will: (1) interfere with the proper performance of judicial duties; (2) lead to frequent disqualification of the judge; (3) involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves; or (4) result in violation of other provisions of this Code.</p> <p>COMMENT [1] Judges are generally permitted to engage in financial activities, including managing real estate and other investments for themselves or for members of their families. Participation in these activities, like participation in other extrajudicial activities, is subject to the requirements of this Code. For example, it would be improper for a judge to spend so much time on business activities that it interferes with the performance of judicial duties. See Rule 2.1. Similarly, it would be improper for a judge to use his or her official title or appear in judicial robes in business advertising, or to conduct his or her business or financial affairs in such a way that disqualification is frequently required. See Rules 1.3 and 2.11. [2] As soon as practicable without serious financial detriment, the judge must divest himself or herself of investments and other financial interests that might require frequent disqualification or otherwise violate this Rule.</p> <p>Ten (10) states have identical language (AR, CO, IA, KS, MS, MT, NV, NH, UT, WY) Ten (10) states have similar language (AZ, HI, MD, MN, MO, NE, OH, OK, TN, WA) Three (3) states have different language (DE, IN, NY)</p>	
AL	
AK	
AZ Effective 9/1/09	<p>Adds [3]: <i>A judge’s uncompensated participation as an officer, director or advisor of an organization concerned with the law, the legal system, or the administration of justice is not prohibited by this rule. See Rule 3.7, Comment 1.</i></p> <p>[4]: <i>To the extent permitted by Rule 1.3, a judge’s participation as a teacher at an educational institution is not prohibited by this rule. See Rule 3.12, Comment 1.</i></p>
AR Effective 7/1/09	Identical
CA (as pro- posed)	Comment [2] – CA Canon 4D(4): The Committee proposes adding a specific one-year time limit to the requirement.
CO Effective	Identical

7/1/10	
CT Effective 1/1/11	(B) Changes “except that...participate in” to “except for.”
DE Effective 11/1/08	<p>(B): replaces “shall” with “should” (B)(1): deletes “the judge or” <i>(C) A judge's participation in a closely held family business may be prohibited if it takes too much time or involves misuse of or is demeaning to the judicial office or if the business is likely to come before the judge's court.</i> <i>(D) A judge should refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of judicial duties, exploit or demean the judicial position, or involve the judge in frequent transactions with lawyers or other persons likely to come before the court on which the judge serves.</i> <i>(E) A judge has the rights of an ordinary citizen with respect to financial affairs, except to the extent that limitations thereon are required to safeguard the proper performance of the judge's duties. Owning and receiving income from investments do not as such affect the performance of a judge's duties.</i> Deletes Comment</p>
DC (as pro- posed)	Identical
FL	
HI Effective 1/1/09	(C)(2) and [2]: adds “or recusal” after “disqualification”
ID	
IL	
IN Effective 1/1/09	<p>Deletes Model Code (A) and (B) <i>(A) A judge shall not engage in any business, financial, or other remunerative activity if engaging in the activity would:</i> (A)(1) – (4): same as Model Code (C)(1) – (4) [1]: replaces first two sentences with “Judges generally are permitted to engage in financial and business activities subject to the requirements of this Rule and all other provisions of the Code” and adds “or to use or permit the use of the judicial position in the judge’s extrajudicial financial activities” after “required” in fourth sentence (same as fifth Model Code sentence)</p>
IA Effective 5/3/10	Identical
KS Effective 3/1/09	Identical
KY	
MD Effective 7/1/10	<p>(b) adds clause to beginning: “Except as permitted by Rule 3.7;” Adds: <i>(d) This Rule does not apply to retired judges approved for recall under Maryland Constitution, Article IV, §3A.</i></p>

MA	
MI	
MN Effective 7/1/09	(A): adds “and of persons with whom the judge has an intimate relationship or who are members of the judge’s household” to end (B)(1): adds “or by a person with whom the judge has an intimate relationship or who is a member of the judge’s household” to end (B)(2): adds “or a person with whom the judge has an intimate relationship or who is a member of the judge’s household” to end [1]: adds “and for those with whom they have intimate relationships or who are members of their households” after “families”
MO Effective 1/1/2012	(B) Deleted MO (B) is the same as MC (C), but Replaces the introductory sentence with: “A judge shall not serve as an officer, director, manager, general partner, advisor, or employee of any business entity if it will:” [1] Replaces “disqualification” with “recusal” [2] Replaces “disqualification” with recusal;” Adds “Rule 2-3.11” to “this Rule”
MS (as pro- posed)	Identical
MT Effective 1/1/09	Identical
NE Effective 1/1/2011	Adds (D): <i>As soon as practicable without serious financial detriment, the judge shall divest himself or herself of investments and other financial interests that might require frequent disqualification or otherwise violate this Rule;</i> [2] Reserved.
NV Effective 1/19/10	Identical
NH Effective 4/1/2011	Identical
NJ	
NM (as pro- posed)	Changes title to: “Financial or business activities” Adds C(4): <i>May reasonably be perceived to exploit the judge’s judicial position; or</i> MC (C)(4) is the same as NM C(5) [1] Adds “or unduly burdens” before “the performance of judicial duties;” Replaces references with respective Rules 21-201 NMRA and 21-103 and 21-211 NMRA. Adds [3]: <i>When a judge acquires information in a judicial capacity, such as material contained in filings with the court, that is not yet generally known, the judge must not use the information for private gain.</i> Adds [4]: <i>A judge must avoid financial and business dealings that involve the judge in frequent transactions or continuing business relationships with persons likely to come wither before the judge</i>

	<p><i>personally or before other judges on the judge’s court. In addition, a judge should discourage members of the judge’s family from engaging in dealings that would reasonably appear to exploit the judge’s judicial position. This rule is necessary to avoid creating an appearance of exploitation of relatives of judge with law firms appearing before the judge, see Rule 21-211 NMRA relating to disqualification.</i></p>
<p>NY (as proposed)</p>	<p><i>Rule 3.11: Financial, Business or Remunerative Activities</i></p> <p><i>A) A judge shall not engage in financial and business dealings that:</i></p> <ol style="list-style-type: none"> <i>1) may reasonably be perceived to exploit the judge’s judicial position;</i> <i>2) involve the judge with any business, organization or activity that ordinarily will come before the judge;</i> <i>3) involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves;</i> <p><i>or</i></p> <ol style="list-style-type: none"> <i>4) result in violation of other provisions of these Rules or any other law.</i> <p><i>B) A judge, subject to the requirements of these Rules, may hold and manage investments of the judge and members of the judge’s family*, including real estate.</i></p> <p><i>C) A full-time judge shall not serve as an officer, director, manager, general partner, advisor, employee or other active participant of any business entity, except that:</i></p> <ol style="list-style-type: none"> <i>1) A judge, subject to the requirements of this Part, may manage and participate in a business entity engaged solely in investment of the financial resources of the judge or members of the judge’s family*; and</i> <i>2) Any person who may be appointed to fill a full-time judicial vacancy on an interim or temporary basis pending an election to fill such vacancy may apply to the Chief Administrator of the Courts for exemption from this paragraph during the period of such temporary or interim appointment.</i> <p><i>D) A judge shall manage the judge’s investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge shall divest himself or herself of investments and other financial interests that might require frequent disqualification.</i></p> <p>Does not adopt MR [2] but adds instead:</p> <p><i>[2] The New York State Constitution prohibits certain full-time judges from “hold[ing] any other public office or trust except an office in relation to the administration of the courts, member of a constitutional convention or member of the armed forces of the United States or of the State of New York. . . .” N.Y. Const., Article 6, § 20.</i></p>
<p>NC</p>	
<p>ND (as proposed)</p>	<p>(C)(1) Replaces “judicial duties” with “the duties of judicial office”</p> <p>[1] Replaces “judicial duties” with “the duties of judicial office”</p>

As of September 6, 2011

OH Effective 3/1/09	(B): adds “or independence contractor for” after “employee of” and replaces “manage or participate in” with “do” (B)(1) and (2): adds “manage or participate in” to beginning Adds (B)(3): Write or teach. Adds (D): same as Model Code [2] [1]: adds “With regard to writing or teaching relationships authorized by division (B)(3), also see Rule 3.12” to end Deletes Model Code [2]
OK Effective 4/15/2011	(A) Adds “and members of the judge’s household” after “members of the judge’s family” (B)(1) and (2) Adds “or members of the judge’s household” after “members of the judge’s family” [1] Adds at the end of first sentence: “or members of the judge’s household”
OR	
PA	
SD	
TN (as pro- posed)	[2]: Adds “ <i>See Application VT</i> ”
TX	
UT Effective 4/1/10	Identical
VT	
VA	
WA Effective 1/1/11	<u>State Code adds Paragraph (D):</u> “As soon as practicable without serious financial detriment, the judge must divest himself or herself of investments and other financial interests that might require frequent disqualification or otherwise violate this Rule.”
WV	
WI	
WY Effective 7/1/09	Identical

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