

**AMERICAN BAR ASSOCIATION  
CPR POLICY IMPLEMENTATION COMMITTEE**

**COMPARISON OF MODEL JUDICIAL CODE PROVISIONS:  
ABA TO STATE PROPOSALS, BY RULE**

	<p style="text-align: center;"><b>RULE 3.2 Appearances before Governmental Bodies and Consultation with Government Officials</b></p> <p><b>A judge shall not appear voluntarily at a public hearing before, or otherwise consult with, an executive or a legislative body or official, except:</b></p> <p style="padding-left: 40px;"><b>(A) in connection with matters concerning the law, the legal system, or the administration of justice;</b></p> <p style="padding-left: 40px;"><b>(B) in connection with matters about which the judge acquired knowledge or expertise in the course of the judge’s judicial duties; or</b></p> <p style="padding-left: 40px;"><b>(C) when the judge is acting pro se in a matter involving the judge’s legal or economic interests, or when the judge is acting in a fiduciary* capacity.</b></p> <p><b>COMMENT</b></p> <p>[1] Judges possess special expertise in matters of law, the legal system, and the administration of justice, and may properly share that expertise with governmental bodies and executive or legislative branch officials.</p> <p>[2] In appearing before governmental bodies or consulting with government officials, judges must be mindful that they remain subject to other provisions of this Code, such as Rule 1.3, prohibiting judges from using the prestige of office to advance their own or others’ interests, Rule 2.10, governing public comment on pending and impending matters, and Rule 3.1(C), prohibiting judges from engaging in extrajudicial activities that would appear to a reasonable person to undermine the judge’s independence, integrity, or impartiality.</p> <p>[3] In general, it would be an unnecessary and unfair burden to prohibit judges from appearing before governmental bodies or consulting with government officials on matters that are likely to affect them as private citizens, such as zoning proposals affecting their real property. In engaging in such activities, however, judges must not refer to their judicial positions, and must otherwise exercise caution to avoid using the prestige of judicial office</p> <p>Nine (9) states have identical language (AR, MN, MS, MT, NH, NY, OH, OK, UT) Eleven (11) states have similar language (AZ, CO, HI, IN, IA, KS, MD, NE, NV, TN, WY) Three (3) state have different language (DE, MO, WA)</p>
<b>AL</b>	
<b>AK</b>	
<b>AZ</b> <b>Effective</b> <b>9/1/09</b>	(C): deletes “pro se” and “legal or economic”
<b>AR</b> <b>Effective</b> <b>7/1/09</b>	Identical
<b>CA</b>	CA Commentary to Canons 4C(1) and 4C(3)(d): Since the Committee proposes adding new term

<b>(as proposed)</b>	“the law, the legal system, or the administration of justice” to the terminology section, an asterisk indicating this term and a reference would be added to appropriate sections throughout the CA Code.
<b>CO Effective 7/1/10</b>	Identical
<b>CT Effective 1/1/11</b>	Comment (3) Replaces “judges must not...positions” with “a judge should state affirmatively that the judge is not acting in his or her official capacity.”
<b>DE Effective 11/1/08</b>	(A): compare to 1990 Model Code Canon 4C(1). Replaces “shall not” with “may,” deletes “except” and replaces language after “justice” with “to the extent that it would generally be perceived that a judge’s knowledge or experience as acquired in the course of the judge’s judicial duties provides special expertise in the area.” Comment: A judge may participate in the process of judicial selection by cooperating with appointing authorities and screening committees seeking names for consideration, and by responding to official inquiries concerning a person being considered for a judgeship. (B): similar to Model Code (C) but replaces language through “pro se” with “A judge acting <i>pro se</i> may also appear before or consult with such officials or bodies” Has no (C) or Model Code Commentary
<b>DC (as proposed)</b>	Identical
<b>FL</b>	
<b>HI Effective 1/1/09</b>	(B): replaces “judge’s judicial duties” with “duties of judicial office” [1]: deletes “governmental bodies and” and replaces “branch” with “bodies or” [2]: replaces “undermine” with “materially impair” and adds “temperament, or fitness to fulfill the duties of judicial office” to end
<b>ID</b>	
<b>IL</b>	
<b>IN Effective 1/1/09</b>	(C): adds “or those of members of the judge’s family residing in the judge’s household” after “interests” Adds [4]: <i>A judge is not prohibited under this Rule from appearing before an executive or legislative body or official in connection with an extrajudicial position held in accordance with Rule 3.4.</i>
<b>IA Effective 5/3/10</b>	[1] Adds “the provision of legal services” after “the legal system.”
<b>KS Effective 3/1/09</b>	Deletes (B)
<b>KY</b>	
<b>MD Effective 7/1/10</b>	(c) Replaces “acting pro se” with “self-represented” [3] “persons” replaces “citizens”
<b>MA</b>	

<b>MI</b>	
<b>MN Effective 7/1/09</b>	Identical
<b>MO Effective 1/1/2012</b>	<p>Replaces text with:</p> <p>(A) Judges possess special expertise in matter of law, the legal system, and the administration of justice and may properly share that expertise with governmental bodies and executive or legislative branch officials.</p> <p>(B) A judge also may consult with governmental bodies and executive or legislative branch officials when the judge is self-represented in a matter involving the judge or the judge’s legal or economic interests.</p> <p>(C) In all other respects, a judge shall not appear voluntarily at a public hearing before, or otherwise consult with, an executive or a legislative body or official.</p> <p>[1] Deleted</p> <p>[2] MO single comment is the same, but Deletes “or consulting with government officials” after “governmental bodies;” Replaces text after “in extrajudicial activities that would” with: “appear to a reasonable person to undermine the judge’s independence, integrity, or impartiality.”</p>
<b>MS (as pro- posed)</b>	Identical
<b>MT Effective 1/1/09</b>	Identical
<b>NE Effective 1/1/2011</b>	<p>(A) Adds asterisk after “the law;”</p> <p>(B) Adds asterisk after “knowledge;”</p> <p>(C) Adds asterisk after “economic interests.”</p>
<b>NV Effective 1/19/10</b>	[1]: adds “A judge may actively support public agencies or interests or testify on public matters concerning the law, the legal system, the provision of legal services, and the administration of justice.”
<b>NH Effective 4/1/2011</b>	Identical
<b>NJ</b>	
<b>NM (as pro- posed)</b>	<p>(A) Deletes “the law” before “the legal system”</p> <p>(B): Deleted</p> <p>MC (C) is the same as NM (B)</p> <p>[1] Deletes “matters of law” before “the legal system;” Adds to end: “Judges shall not, however, testify about substantive legal issues that may come before them for decision.”</p> <p>[2] Adds to start: “For example, it may be necessary for the Chief Justice or judges who have budgetary responsibilities for the courts to provide testimony about budgetary or administrative matters. So too, judges may have special expertise that would be of benefit to committees or groups constituted to study issues relating to law and social policy. A judge’s participation in such settings is not prohibited by this rule.” Replaces references to corresponding MN Rules 21-103, 21-210 and 21-301(C), respectively.</p>
<b>NY (as pro-</b>	Identical

As of September 6, 2011

<b>posed)</b>	
<b>NC</b>	
<b>ND (as pro- posed)</b>	(B) Replaces “the judge’s judicial duties” with “performing the duties of judicial office”
<b>OH Effective 3/1/09</b>	Identical
<b>OK Effective 4/15/2011</b>	Identical
<b>OR</b>	
<b>PA</b>	
<b>SD</b>	
<b>TN (as pro- posed)</b>	(C): Replaces “acting pro se” with “self-represented”
<b>TX</b>	
<b>UT Effective 4/1/10</b>	Identical
<b>VT</b>	
<b>VA</b>	
<b>WA Effective 1/1/11</b>	(C) State Code deletes “pro se,” changes “the judge’s legal or economic interests” to “the judge’s, the judge’s marital community’s, or the judge’s domestic partnership’s legal or economic interests, or those of the judge’s immediate family residing in the judge’s household,” adds sentence to the end of the paragraph: “In engaging in such activities, however, judges must exercise caution to avoid abusing the prestige of judicial office.”
<b>WV</b>	
<b>WI</b>	
<b>WY Effective 7/1/09</b>	[2]: adds: “These rules should not be construed to prohibit a judge from contacting and/or consulting with legislative and/or executive officials concerning judicial budgets, compensation and benefits as a whole” to end.

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