

**AMERICAN BAR ASSOCIATION
CPR POLICY IMPLEMENTATION COMMITTEE**

COMPARISON OF ABA MODEL JUDICIAL CODE AND STATE VARIATIONS

| State Rules with No Model Code Equivalent | |
|--|--|
| | Nine (9) states have rules with no Model Code equivalent (AZ, IN, MD, MS, NE, NV, NY, OH, OK) |
| AL | |
| AK | |
| AZ Effective 9/1/09 | <p><i>Rule 3.16: Conducting Weddings.</i></p> <p><i>(A) The performance of wedding ceremonies by a judge is a discretionary function rather than a mandatory function of the court.</i></p> <p><i>(B) A judge shall not interrupt or delay any regularly scheduled or pending court proceeding in order to perform a wedding ceremony.</i></p> <p><i>(C) A judge shall not advertise his or her availability for performing wedding ceremonies.</i></p> <p><i>(D) A judge shall not charge or accept a fee, honorarium, gratuity or contribution for performing a wedding ceremony during court hours.</i></p> <p><i>(E) A judge may charge a reasonable fee or honorarium to perform a wedding ceremony during non-court hours, whether the ceremony is performed in the court or away from the court.</i></p> |
| AR | |
| CA | |
| DE | |
| DC | |
| FL | |
| HI | |
| ID | |
| IL | |
| IN Effective 1/1/09 | <p><i>RULE 2.17: Prohibiting Broadcasting of Proceedings</i></p> <p><i>Except with prior approval of the Indiana Supreme Court, a judge shall prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions, except that a judge may authorize:</i></p> <p><i>(1) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record, or for other purposes of judicial administration;</i></p> <p><i>(2) the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings;</i></p> <p><i>(3) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:</i></p> <p><i>(a) the means of recording will not distract participants or impair the dignity of the proceedings;</i></p> <p><i>(b) the parties have consented, and the consent to being depicted or recorded has been</i></p> |

| | |
|--|---|
| | <p><i>obtained from each witness appearing in the recording and reproduction;</i> <i>(c) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and</i> <i>(d) the reproduction will be exhibited only for instructional purposes in educational institutions.</i></p> <p>RULE 4.6: Political Activities of Nonjudicial Court Employees <i>(A) An appointed judge in an office filled by retention election must require nonjudicial court employees to abide by the same standards of political conduct which bind the judge.</i> <i>(B) A judge in an office filled by partisan or nonpartisan election must not permit nonjudicial court employees to run for or hold nonjudicial partisan elective office or to hold office in a political party's central committee.</i></p> <p><i>Comment</i> <i>[1] Limitations on political activities by court employees are necessary to protect the public's confidence in the independence and impartiality of the judicial system.</i> <i>[2] Unlike appointed judges subject to retention, judges in partisan and nonpartisan elective office are not required to hold their employees to the same limitations on political conduct which apply to the judges.</i> <i>[3] The standards for employees of retention judges set out in Rule 4.6(A) are those which apply to the judges when they are not running in an election.</i> <i>[4] Unlike nonjudicial court employees, court employees who perform judicial functions are bound directly by the Code of Judicial Conduct unless exempted under the Application Section.</i></p> |
| IA | |
| KS | |
| KY | |
| MD Effective 7/1/10 | <p><i>“GENERAL PROVISION, DEFINITIONS, AND PREAMBLE: A. GENERAL PROVISION” and Rules 4.1, 4.2, 4.3, 4.4, 4.5, 4.6.</i></p> <p><i>GENERAL PROVISIONS, DEFINITIONS, AND PREAMBLE</i> <i>A. GENERAL PROVISIONS</i> <i>A-101 - The Maryland Code of Judicial Conduct is divided into five Parts. This introductory Part contains General Provisions, Definitions, and a Preamble. The remaining Parts, titled as Sections 1 through 4, contain both substantive Rules of Judicial Conduct that articulate specific ethical standards and Comments that provide guidance in interpreting those Rules. Those Sections are organized as follows:</i></p> <ul style="list-style-type: none"> <i>• Section 1. Rules Governing Judicial Integrity and the Avoidance of Impropriety (Rules 1.1 through 1.3)</i> <i>• Section 2. Rules Governing the Performance of Judicial Duties (Rules 2.1 through 2.16)</i> <i>• Section 3. Rules Governing Non-Judicial Activities (Rules 3.1 through 3.15)</i> <i>• Section 4. Rules Governing Political Activity (Rules 4.1 through 4.6)</i> <p><i>A-102 - This Code is based in large part on the 2007 Model Code of Judicial Conduct proposed by the American Bar Association (hereafter referred to as “2007 ABA Code”), although this Code differs from the 2007 ABA Code in a number of respects. Some</i></p> |

differences are substantive; others are matters of style or organization. Three differences are worthy of general note:

Consolidation of Prefatory Provisions

This Code consolidates and reorganizes the Preamble, Scope, Application, and Terminology provisions of the 2007 ABA Code into this introductory Part on General Provisions, Definitions, and Preamble. Although these provisions are not in the form of Rules, they are part of this Code.

Elimination of Canons

The 2007 ABA Code proposed a new and much different structure and format. The enforceable ethical commands in previous Codes were stated in the form of specific Canons, to which were appended interpretative Comments. The enforceable ethical commands in the 2007 ABA Code are stated in the form of Rules that are supplemented by interpretative Comments and headed by very brief and general statements denominated as Canons.

The 2007 ABA Code acknowledges that a judge may be disciplined only for violating a Rule, but it regards the Canons as providing guidance in interpreting the Rules. That, however, is more precisely the function of the Comments under each Rule. The Canons themselves appear to be merely descriptive of the subject matter of the Rules. To avoid any ambiguity over the significance of the Canons and to make clear that attention must be focused on the Rules and the Comments, this Code eliminates the Canons and uses instead a descriptive statement of the Rules in each Section.

Political Activity

The 2007 ABA Code contains provisions regarding political activity and financial disclosure by judges. This Code reorganizes those provisions and conforms them to the different manners in which judges are selected and retained in Maryland and to requirements enacted by the Maryland General Assembly or adopted by the Court of Appeals. The intent is to make more clear to each judge and candidate for judicial office what is allowed and what is not allowed.

***A-103** - A judge may be disciplined only for violating a Rule. If a Rule contains a permissive term, such as "may" or "should" the conduct being addressed is committed to the personal and professional discretion of the judge or candidate in question, and no disciplinary action should be taken for action or inaction within the bounds of that discretion.*

***Source:** This provision is derived from the Scope section of the 2007 ABA Code.*

***A-104** - The Comments that accompany the Rules contain explanatory material and, in some instances, provide examples of permitted or prohibited conduct. Comments neither add to nor subtract from the binding obligations set forth in the Rules. Therefore, when a Comment contains the term "must," it does not mean that the Comment itself is binding or enforceable but merely signifies that the Rule in question, properly understood, is obligatory as to the conduct at issue. The Comments also may identify aspirational goals for judges. To implement fully the principles of this Code, judges should hold themselves to the highest ethical standards and seek to achieve those aspirational goals, thereby enhancing the dignity of the judicial office.*

***Source:** These provisions are derived from the Scope section of the 2007 ABA Code.*

***A-105** - The Rules in this Code are rules of reason that should be applied in a manner*

*consistent with Constitutional requirements, statutes, other Court Rules, and decisional law and with due regard for all relevant circumstances. The Rules should not be interpreted to impinge upon the essential **independence** of judges in making judicial decisions.*

***Source:** This provision is derived from the Scope section of the 2007 ABA Code.*

***A-106** – Although the text of the Rules is binding and enforceable, it is not contemplated that every transgression will result in the imposition of discipline. Whether discipline should be imposed should be determined through a reasonable and reasoned application of the Rules and should depend upon factors such as the seriousness of the transgression, the facts and circumstances that existed at the time of the transgression, the extent of any pattern of improper activity, whether there have been previous violations, and the effect of the improper activity upon the judicial system or others.*

***Source:** This provision is derived from the Scope section of the 2007 ABA Code.*

***A-107** - This Code is not designed or intended as a basis for civil or criminal liability. It is also not intended to be the basis for litigants to seek collateral remedies against each other or to obtain tactical advantages in proceedings before a court.*

***Source:** This provision is derived from the Scope section of the 2007 ABA Code.*

***A-108** - In interpreting this Code, attention should be given to the opinions of the Judicial Ethics Committee and, if appropriate, that Committee should be asked for a written letter*

of advice or a binding opinion. See Rule 16-812.1 (j)(5), protecting a judge from a charge of violating an ethics provision in this Code if the judge has requested and received an opinion or advice letter from the Committee and is in compliance with that opinion or advice letter.

***Source:** This provision is derived from the Preamble to the former Maryland Code of Judicial Conduct.*

***A-109** - This Code applies to:*

- (1) Incumbent judges of the Court of Appeals, the Court of Special Appeals, the Circuit Courts, and the District Court;*
- (2) Except as otherwise expressly provided in specific Rules, incumbent judges of the Orphans' Courts;*
- (3) Except as otherwise expressly provided in specific Rules, retired judges who are approved for recall for temporary service pursuant to Maryland Constitution, Art. IV, §3A.; and*
- (4) Candidates and applicants for judicial office as defined in Rule 4.1, to the extent that a Rule expressly applies to such candidates or applicants. See Section 4 and Rule 2.11.*

***Source:** This provision is new.*

Rule 4.1. DEFINITIONS

(a) Applicant

- (1) “**Applicant**” means a person who has applied for appointment by the Governor to a judicial office.*
- (2) The person becomes an **applicant** when the person files an application with a judicial nominating commission and remains an **applicant** until the Governor makes an appointment to that judicial office unless, prior to that time, the person formally withdraws the application.*

(3) *If the person is not appointed but, pursuant to an Executive Order of the Governor or other law, remains eligible for appointment to another judicial office without a further application to or recommendation from the judicial nominating commission, the person remains an **applicant** until the Governor makes an appointment to that other judicial office, unless, prior to that time, the person formally withdraws the application.*

Cross reference: Executive Order 01.01.2008.04

(b) Candidate

“Candidate” means a candidate for election or a District Court candidate for retention.

(c) Candidate for election

(1) **“Candidate for election” means a person who:**

- (A) *seeks initial election to a Circuit Court or an Orphans’ Court;*
- (B) *is an incumbent judge of a Circuit Court or Orphans’ Court and seeks to retain that office through an election conducted pursuant to Art. IV, § 3, 5, or 40 of the Maryland Constitution; or*
- (C) *is an incumbent judge of the Court of Appeals or Court of Special Appeals and seeks to retain that office through a retention election conducted pursuant to Art. IV, §5A of the Maryland Constitution.*

(2) **A person becomes a candidate for election:**

- (A) *as to a newly appointed judge, from the date the judge takes the oath of office;*
- (B) *as to any other incumbent judge, from the earlier of:*
 - (i) *the date two years prior to the general election pertaining to that judge’s re-election or subsequent retention; or*
 - (ii) *the date on which a newly appointed judge to that court becomes a **candidate** in the same general election.*
- (C) *as to a judge who seeks election to another judicial office, the earlier of:*
 - (i) *the date on which the judge files a certificate of candidacy in accordance with Maryland election laws, but no earlier than two years prior to the general election for that office; or*
 - (ii) *the date on which a newly appointed judge to that court becomes a **candidate** in the same general election; and*
- (D) *as to a lawyer who seeks a judicial office, the date on which the lawyer files a certificate of candidacy in accordance with Maryland election laws, but no earlier than two years prior to the general election for the office.*

(3) *A person who becomes a **candidate** under paragraph (c) remains a **candidate** until the general election for the office unless, prior to that time, the person files a formal withdrawal of candidacy in accordance with Maryland election laws.*

(d) District Court Candidate for Retention

“District Court candidate for retention” means an incumbent judge of the District Court who seeks retention for an additional term pursuant to Art. IV, §41D of the Maryland Constitution. A District Court judge becomes a **candidate for retention from the date one year prior to the expiration of the judge’s current term.**

*(e) **Political organization***

*“**Political organization**” includes a political party, a political committee, and a partisan organization, as those terms are defined in Maryland Code, Election Article, §1-101.*

***Source:** These definitions are new.*

COMMENT

[1] This Rule is new. It is intended to reflect and focus on the different ways in which judges in Maryland are selected and retained. See Maryland Constitution, Art. IV, §5A (appellate judges), §§3 and 5 (Circuit Court judges), §41D (District Court judges), and §40 (Orphans’ Court judges).

(a) In all cases, a vacancy is filled by appointment by the Governor. The appointment of appellate, District Court, and Orphans’ Court judges requires the advice and consent of the Senate; the appointment of Circuit Court judges does not.

(b) Appellate judges then face an uncontested plebiscite election (yes or no for continuance in office) for an additional 10-year term, following which they face another such election for a succeeding term.

(c) Circuit Court judges face a potentially contested primary and general election for a 15-year term, at the end of which, in order to remain in office, they must be appointed by the Governor for a “bridge” term until the next election and then prevail in that election.

(d) District Court judges do not face election but receive a 10-year term, at the end of which, they must be reappointed by the Governor subject to confirmation by the Senate.

(e) Orphans’ Court judges face a potentially contested primary and general election every four years.

*[2] The first context, applicable to all appellate, Circuit Court, and District Court judges and many Orphans' Court judges, is initial appointment by the Governor to fill a vacancy. Except for Orphans' Court judges, that requires an application to and consideration by a judicial nominating commission, which normally interviews the **applicants**, receives information and recommendations from Bar Associations, other interested groups, and members of the public, and sends to the Governor a list of recommended **applicants**. The Governors have agreed, expressly or tacitly, to appoint from the list of applicants recommended by the applicable nominating commission. The applicants may be lawyers seeking initial appointment to the Bench, incumbent Circuit Court judges seeking reappointment, upon the expiration of their 15-year term, for a "bridge" period until the next election, or other judges seeking appointment to a different court. Rule 4.1 (a) defines those persons as "**applicants**."*

*[3] A person seeking election, either through a potentially contested election (Circuit Court and Orphans' Court) or through a plebiscite-type retention election (appellate judges), is defined in Rule 4.1 (c) as a "**candidate for election**." A District Court judge, at the end of the 10-year term, faces confirmation by the Senate for an additional term. That judge is not a **candidate for election** but is defined in Rule 4.1 (d) as a "**District Court candidate for retention**."*

[4] The remaining Rules in Section 4 specify the political activity allowed or not allowed to persons falling within those categories, as well as to incumbent judges who are not within any of them.

[5] *Even when subject to election, a judge plays a role different from that of a legislator or executive branch official. Rather than making decisions based on the expressed views or preferences of the electorate, a judge makes decisions based on the law and the facts of each case. In furtherance of that interest, judges and **candidates** for judicial office must, to the greatest extent possible, be free and appear to be free from political influence and political pressure. The Rules in Section 4 impose narrowly tailored restrictions on the political and campaign activities of all judges and **candidates** for judicial office.*

Source: *This Rule and Comments [1] through [4] are new. Comment [5] is derived from ABA Comment [1] to Rule 4.1 of the 2007 ABA Code.*

Rule 4.2. POLITICAL CONDUCT OF JUDGE WHO IS NOT A CANDIDATE

(a) *A judge who is not a **candidate** shall not engage in any partisan political activity.*

(b) *A judge shall resign when the judge becomes a **candidate** for a non-judicial office, except that a judge may continue to hold judicial office while a **candidate for election** as a delegate to a Maryland Constitutional Convention.*

Source: *Rule 4.2 is derived from former Md. Code of Judicial Conduct Canon 5A.*

Rule 4.3. POLITICAL CONDUCT OF APPLICANT

*An **applicant** for judicial office may initiate communications or contact with a judicial nominating commission or its members and may seek endorsements for the appointment from any other person or organization, other than a **political organization**.*

COMMENT

[1] *Rule 4.3 is derived in part from Rule 4.3 of the 2007 ABA Code but departs from it in one important respect. Under Rule 4.3, an **applicant** may initiate communications or contact with a judicial nominating commission or its members, but neither the Commission nor its members are obliged to respond to such communications or contact. **Applicants** may appear for interviews before the commission and may respond to questions or inquiries from commission members, and they may solicit endorsements from other persons or organizations (other than a **political organization**). If they have a question regarding the procedure or their application, they may contact the Administrative Office of the Courts.*

Source: *This Rule is derived from Rule 4.3 of the 2007 ABA Code. The Comment is new.*

Rule 4.4. POLITICAL CONDUCT OF CANDIDATE FOR ELECTION

A candidate for election:

(a) *shall comply with all applicable election laws and regulations;*

(b) *shall act at all times in a manner consistent with the **independence**, integrity, and **impartiality** of the judiciary and maintain the dignity appropriate to judicial office;*

(c) *subject to the other provisions of this Rule, may engage in partisan political activity allowed by law with respect to such candidacy, and, in that regard:*

(1) *may publicly endorse or oppose **candidates** for the same judicial office;*

(2) *may attend or purchase tickets for dinners or other events sponsored*

by a **political organization** or a **candidate** for public office; and
(3) may seek, accept, and use endorsements from any person or organization; but

(4) shall not act as a leader in or hold office in a **political organization**, make a speech for a **candidate** or **political organization**, or publicly endorse a **candidate** for non-judicial office.

(d) As to statements and materials made or produced during a campaign:

(1) shall review, approve, and be responsible for the content of all campaign statements and materials produced by the **candidate** or by the **candidate's** campaign committee or other authorized agents;

(2) shall take reasonable measures to ensure that other persons do not undertake on behalf of the **candidate** activities that the **candidate** is prohibited from doing by this Rule;

(3) with respect to a case, controversy, or issue that is likely to come before the court, shall not make a commitment, pledge, or promise that is inconsistent with the **impartial** performance of the adjudicative duties of the office;

(4) shall not make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court;

(5) shall not **knowingly**, or with reckless disregard for the truth, misrepresent the **candidate's** identity or qualifications, the identity or qualifications of an opponent, or any other fact, or make any false or misleading statement;

(6) may speak or write on behalf of the **candidate's** candidacy through any medium, including advertisements, websites, or other campaign literature; and

(7) subject to paragraph (b) of this Rule, may respond to a personal attack or an attack on the **candidate's** record.

COMMENT

[1] This Rule is derived in part from former Md. Code of Judicial Conduct Canon 5B and from the 2007 ABA Code, but it has been substantially reorganized into three basic segments: general requirements (paragraphs (a) and (b)); the extent to which **candidates for election** may engage in partisan political conduct (paragraph (c)); and the rules governing campaign statements (paragraph (d)).

[2] Rule 4.4 (a) requires **candidates for election** to comply with all election laws and regulations. The Election Law Article of the Maryland Code contains laws governing **candidates**, campaign contributions, finance, expenditures, and reporting. Those requirements are supplemented by regulations adopted by the State Board of Elections. **Candidates for election** must become familiar with applicable laws and regulations and comply with them.

[3] Public confidence in the **independence** and **impartiality** of the judiciary is eroded if judges or **candidates** for judicial office are perceived to be subject to political influence. Although they may register to vote as members of a political party, they are prohibited by Rule 4.4 (c) (4) from assuming leadership roles in **political organizations**.

[4] Rule 4.4 (c) (4) also prohibits **candidates for election** from making speeches on

behalf of **political organizations** or publicly endorsing or opposing **candidates** for public office, to prevent them from abusing the prestige of judicial office to advance the interests of others. See Rule 1.3. Rule 4.4 does not prohibit **candidates for election** from (a) campaigning on their own behalf, (b) endorsing or opposing **candidates for election** to the same judicial office for which they are running, or (c) from having their name on the same sample ballot as a **candidate** for another public office.

[5] Although members of the families of **candidates for election** are free to engage in their own political activity, including running for public office, there is no "family exception" to the prohibition in Rule 4.4 (c) (4) against publicly endorsing **candidates** for public office. A **candidate for election** must not become involved in, or be publicly associated with, a family member's political activity or campaign for public office. To avoid public misunderstanding, **candidates for election** should take, and should urge members of their families to take, reasonable steps to avoid any implication that they endorse any family member's candidacy or other political activity.

[6] Judicial **candidates** must be scrupulously fair and accurate in all statements made by them and by their campaign committees. Rule 4.4 (d) (5) obligates them to refrain from making statements that are false or misleading, or that omit facts necessary to make the communication considered as a whole not materially misleading. Rule 4.4 (d) (1) requires the **candidate** to review and approve the content of statements made by the **candidate's** campaign committee or other authorized agents and makes the **candidate** responsible for those statements.

[7] **Candidates for election** are sometimes the subject of false, misleading, or unfair allegations made by opposing **candidates**, third parties, or the media. As long as the **candidate for election** does not violate Rule 4.4 (d), he or she may make a factually accurate public response, although it is preferable for someone else to respond if the allegations relate to a pending case. If an independent third party has made unwarranted attacks on a **candidate for election's** opponent, the **candidate for election** may disavow the attacks and request the third party to cease and desist.

[8] Rule 4.4 (d) (3) prohibits **candidates for election**, with regard to cases or issues likely to come before the court, from making a commitment, promise, or pledge that is inconsistent with the **impartial** performance of the adjudicative duties of the office. The making of a commitment, promise, or pledge is not dependent on, or limited to, the use of any specific words or phrases. The totality of the statement must be examined to determine if a reasonable person would believe that the **candidate** has specifically undertaken to reach a particular result. Commitments, promises, and pledges must be contrasted with statements or announcements of personal views on legal, political, or other issues, which are not prohibited. When making such statements, a judge should acknowledge the overarching judicial obligation to apply and uphold the law, without regard to his or her personal views.

Source: This Rule is derived in part from Rule 4.1 of the 2007 ABA Code and in part from Canon 5 of the former Maryland Code of Judicial Conduct. The Comments are derived from the ABA Comments to Rule 4.1 of the 2007 ABA Code.

Rule 4.5. POLITICAL CONDUCT OF DISTRICT COURT CANDIDATE FOR RETENTION

A District Court candidate for retention:

- (a) may contact and communicate with the Governor and members of the State Senate regarding the **candidate's** reconfirmation;
- (b) may seek, accept, and use endorsements from any person or organization;
- (c) shall act at all times in a manner consistent with the **independence**, integrity, and **impartiality** of the judiciary and maintain the dignity appropriate to judicial office;
- (d) subject to paragraph (c) of this Rule, may respond to a personal attack or an attack on the **candidate's** record;
- (e) with respect to a case, controversy, or issue that is likely to come before the court, shall not make a commitment, pledge, or promise that is inconsistent with the **impartial** performance of the adjudicative duties of the office; and
- (f) shall not **knowingly** or with reckless disregard for the truth misrepresent the **candidate's** identity or qualifications or any other fact.

COMMENT

[1] Because a **District Court candidate for retention** does not face an election, the political activity allowed is much more limited. It is reasonable to permit the judge to contact the Governor, who must transmit the judge's name to the Senate, and members of the Senate, regarding the judge's reconfirmation, and to seek endorsements that may be helpful to the judge in that regard. The constraints in paragraphs (c) through (f), which are taken from Rule 4.4, are applicable as well to even this political activity.

Source: This Rule and the Comment are new.

Rule 4.6. APPLICABILITY AND DISCIPLINE

(a) A **candidate** who is a judge shall comply with the Rules in this Section 4. A **candidate** who is a lawyer shall comply with Rule 8.2 of the Maryland Lawyers' Rules of Professional Conduct (Maryland Rule [16-812](#)).

(b) A successful **candidate** and a judge who unsuccessfully sought a different judicial office are subject to judicial discipline for campaign conduct. An unsuccessful **candidate** who is a lawyer is subject to attorney discipline for campaign conduct.

Source: This Rule is derived from Canon 5D of the former Maryland Code of Judicial Conduct.

MA

| | |
|--------------------------|--|
| MI | |
| MN | |
| MS (as pro- posed) | <p style="text-align: center;">APPLICATION</p> <p>(A) <u>Parties Affected</u>. Anyone whether or not a lawyer, who is an officer of a judicial system and who performs judicial functions, including an officer such as a magistrate, court commissioner, special master or referee, is a judge within the meaning of this Code. All judges shall comply with this Code except as provided below.</p> <p>(B) <u>Part-time Judge</u>. A part time judge shall not be subject to the restrictions and limitations of Rule 3.2, 3.4, 3.7, 3.9, 3.10, and 3.11(C) except as regards practice in the court in which the part-time judges serves, and Rules 3.12 and 3.14.</p> <p>(C) <u>Special Judge</u>. A special judge shall not, except while serving as a judge, be subject to the restrictions and limitations of Rule 3.1. A special judge shall not, at any time be subject to the restrictions and limitations of Rule 3.8, 3.9, 3.10 and 3.11. A special judge, except while serving as a special judge or while a candidate for judicial office, shall not be subject to the restrictions of Rule 4.6.</p> <p>(D) Magistrates, court commissioners, special masters and referees shall not at any time be subject to the restrictions and limitations of Rules 3.1, 3.2, 3.4, 3.8, 3.9, 3.10, and 3.11. Magistrates, court commissioners, special masters and referees, except while a candidate for judicial office, shall not be subject to the restrictions of Rule 4.6</p> <p>(E) <u>Time for Compliance</u>. A person to whom this Code becomes applicable shall comply immediately with all provisions of this Code except Rule 3.11 and shall comply with that Rule as soon as reasonably possible and shall do so in any event within the period of one year. See Rule 3.11, Comment [2].</p> <p>(F) <u>Effective Date</u>. The separate provisions of this Code shall govern acts, events and conduct of those subject to the provisions from and after the effective date of the adoption of each such provision. Acts, event and conduct which occur prior to the adoption of each provision shall be governed by the provisions of the Code effective at the time of such acts, events and conduct.</p> <p>Rule 4.6: Standards of Judicial Conduct Advisory Committee</p> <p>(A) <u>Applicability</u>. Canon 4 generally applies to all incumbent judges and judicial candidates. In addition, the Standards of Judicial Conduct Advisory Committee may respond to campaign speech even though those responsible for the speech are not subject to discipline under the Code of Judicial Conduct or the Mississippi Rules of Professional Responsibility.</p> <p>(B) <u>Standards of Judicial Conduct Advisory Committee</u>.</p> <p style="padding-left: 40px;">(1) <u>Purpose</u>. A Standards of Judicial Conduct Advisory Committee (“Judicial Advisory Committee”) shall be created, whose responsibility shall be as follows:</p> <p style="padding-left: 80px;">(a) To provide voter and judicial candidate education as to the rule of the judiciary in our justice system.</p> <p style="padding-left: 80px;">(b) To discourage unethical campaign conduct and to respond to campaign conduct and prohibited false speech as</p> |

necessary to protect the independence, integrity, and impartiality of the judiciary.

- (c) To assist and publish advisory opinions concerning judicial ethics, and including but not limited to opinions concerning campaign conduct.*

The Judicial Advisory Committee membership, forms, and operating procedures shall be posted on the Mississippi Supreme Court website.

- (2) Composition. The Committee shall be composed of nine members chosen as follows:*

(a) The Chief Justice of the Mississippi Supreme Court shall appoint three attorney members to the Committee, with one of the appointments designated for an attorney practicing primarily criminal law.

(b) The Governor shall appoint one attorney from any practice discipline and one non-attorney to the Committee.

(c) The Lieutenant Governor shall appoint one attorney and one non-attorney to the Committee

(d) The Speaker of the House of Representatives shall appoint one attorney and one non-attorney to the Committee

- (3) Disqualifications. The disqualification provisions of the Mississippi Code of Judicial Conduct shall apply to the members of the Judicial Advisory Committee. Committee operating procedures shall establish procedures for motions to disqualify Committee members.*

- (4) Voting. Any action of the Judicial Advisory Committee shall require the vote of at least six members. If necessary to ensure the participation of nine members, the Chief Justice, or, if the Chief Justice is a candidate, the next senior justice not a candidate, may appoint temporary alternates to ensure a full complement of nine members are available to participate.*

- (5) Terms. Members shall be appointed to four-year terms. They shall serve without compensation but shall enjoy the same immunity from suit and from liability as if they were judges.*

- (6) Administrative Support. The Judicial Advisory Committee shall have such administrative support as the Mississippi Supreme Court determines.*

- (7) Advisor Opinions. Any judge or judicial candidate may at the time request, and, upon request the Judicial Advisory Committee may issue, advisory opinions on compliance with the Mississippi Code of Judicial Conduct in election campaigns and otherwise. The confidentiality of the judge requesting an advisory opinion shall be protected by redacting identifying names and data. The Committee will publish its opinions on its website. The opinions will be advisory only, but the Commission on Judicial Performance, the Mississippi Supreme Court, and all other regulatory and enforcement authorities shall take into account reliance by a judge or judicial candidate on such an opinion when considering any disciplinary action.*

- (8) Judicial Candidate Meeting. The Judicial Advisory Committee, including its chairman and any other designee, shall meet with all the judicial*

candidates in an educational session to be held within 20 days of the qualifying deadline. The Committee, in consultation with the Supreme Court, will determine the course curriculum. At the session, each judicial candidate will receive a copy of the Mississippi Code of Judicial Conduct, statutes applicable to judicial campaign conduct, Committee operating procedures, summaries of previously issued Committee opinions, Committee web/contact information, and campaign conduct complaint procedures.

(9) *Written Certification by the Candidate of Receipt, Agreement, and Understanding.*

(a) Receipt of Materials and Agreements to be Bound. Each candidate and campaign chairman in a contested election must certify that the candidate has received and read the material provided. Each candidate must also certify that the candidate agrees to be bound by the Mississippi Code of Judicial Conduct during the course of the campaign. Failure to so certify in writing within 10 days after the candidate meeting will authorize the Judicial Advisory Committee to immediately publicize that failure.

(b) Understanding Concerning Prohibited False Speech. Each candidate in a contested election must also specifically certify his or her understanding that certain false speech is prohibited. Prohibited false speech is speech that, in the opinion of the Judicial Advisory Committee, (i) makes or implies a false statement of fact with knowing or reckless disregard for its falsity; and (ii) undermines the public's respect for the independence, impartiality and integrity of the judiciary.

Failure to so certify in writing within 10 days after the candidate meeting will authorize the Judicial Advisory Committee to immediately publicize that failure.

(10) *Contact Information.* *The judicial candidate and their committees shall provide the Judicial Advisory Committee contact information, including email addresses, fax numbers, and mailing address, for receipt of notice of complaints of unethical campaign conduct or for the receipt of other communications from the Committee. A judicial candidate shall maintain current contact information, including telephone number, fax number, email address, and mailing address with the Committee and shall check for email or mail on a daily basis.*

(11) *Written Notice of Complaint of Unethical Conduct of Prohibited False Speech.* *When the Judicial Advisory Committee takes or receives notice that unethical conduct or prohibited false speech may have occurred, it shall notify the offending candidate, committee, or other person of the alleged unethical conduct or prohibited false speech. The notice shall provide an opportunity for written rebuttal and state the time period within which a rebuttal should be received. Notice to parties or groups not subject to the Code of Judicial Conduct or the Mississippi*

Rules of Professional Responsibility shall also inform such person of the content of this rule.

- (12) **Rebuttal to Complaint.** *A written rebuttal submitted in response to notice of an allegation of unethical conduct or prohibited false speech may be submitted to the Judicial Advisory Committee at the address published on the Committee's website within the response period stated in the notice. The response may include evidence relevant to the complaint or response.*
- (13) **Investigation and Deliberation.** *The Judicial Advisory Committee may investigate facts alleged in either a complaint or in a rebuttal. All proceedings under this rule shall be informal and non-adversarial. The Committee may convene and conduct meetings either in person or by electronic media. The Committee may act on information duly gathered in its investigation without any requirement that it take testimony or hear oral argument.*
- (14) **Confidentiality.** *Complaints and Judicial Advisory Committee action on such complaints will remain confidential until the Committee determines to release information.*
- (15) **Evidentiary Standard.** *If, after a fair opportunity for rebuttal has been provided, at least six members of the Judicial Advisory Committee determine that facts clearly and convincingly show the unethical conduct or prohibited false speech has occurred, the Committee may take appropriate corrective measures.*
- (16) **Corrective Measures.** *The Judicial Advisory Committee's response to unethical conduct or prohibited false speech may include:*
- (a) **Confidential Admonishment.** *Written notice of the unethical conduct or prohibited false speech and an admonishment to the offending person.*
 - (b) **Amends.** *A request to the offending person to correct unethical conduct or the prohibited false speech.*
 - (c) **Disavow.** *A request to a candidate to publicly disavow unethical conduct or prohibited false speech by a third party if the conduct or speech would appear to a reasonable person to have been endorsed by the candidate.*
 - (d) **Committee Disavowal and Publication.** *The Judicial Advisory Committee may itself disavow unethical conduct or prohibited false speech and publish its own factual response. The Committee may also publicize the names of judicial candidates who have refused amend, or disavow unethical conduct or prohibited false speech.*
 - (e) **No Disciplinary Power.** *In no event shall the Judicial Advisory Committee have the authority to institute disciplinary action, criminal action, or civil actions.*
- (17) **Voter Guide.** *The Judicial Advisory Committee shall public a voter guide on the Committee's website. The vote guide shall generally describe the judicial branch of state government, state the functions of the different*

courts, and set forth the role that judges play in the judicial process.

Comment

[1] The prior version of the Code of Judicial Conduct did not apply to justice court judges or municipal judges. Canon 5F of the current Code does apply to candidates for justice court positions. The need for professionalism in all judicial elections, and the need to ensure that candidates for justice court and municipal positions are adequately informed of their ethical responsibilities, justified applying the responsibilities of this Rule to justice court and municipal court races.

*[2] Any operating procedures adopted by the Judicial Conduct Advisory Committee are subject to approval of the Mississippi Supreme Court acting pursuant to its inherent authority under the Constitution of the State of Mississippi. See *Newell v. Mississippi*, 308 So. 2d 71 (Miss. 1975)*

2.03, Canon 5 A JUDGE AND CERTAIN OF THE JUDGE'S EMPLOYEES SHALL REFRAIN FROM INAPPROPRIATE POLITICAL ACTIVITY

* * *

B. Campaign Conduct.

(1) A candidate, including an incumbent judge, for a judicial office that is filled either by public election between competing candidates or on the basis of the non-partisan court plan:

(a) shall maintain the dignity appropriate to judicial office and shall encourage members of the candidate's family to adhere to the same standards of political conduct that apply to the candidate;

(b) shall comply with all applicable election, election campaign, and election campaign fund-raising laws and regulations;

(c) shall not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office;

(d) shall review and approve the content of all campaign statements and materials produced by the candidate before their dissemination;

(e) shall not knowingly or with reckless disregard for the truth make any false or misleading statement or misrepresent the candidate's identity, qualifications, present position, or other fact; and

(f) shall prohibit public officials or employees subject to the candidate's direction or control from doing for the candidate what the candidate is prohibited from doing under this Canon 5; and except to the extent authorized under Canon 5B(2) or Canon 5B(3), such candidate shall not allow any other person to do for the candidate what the candidate is prohibited from doing under this Canon 5.

(2) A candidate, including an incumbent judge, for a judicial office that is filled by public election between competing candidates shall not solicit or accept campaign funds in a courthouse or on courthouse grounds. Such candidate shall not solicit in person campaign funds from persons likely to appear before the judge. A candidate may make a written campaign solicitation for campaign funds of any person or group, including any person or group likely to appear before the judge.

The candidate may establish committees of responsible persons to secure and manage the expenditure of funds for the campaign. Such committees are not prohibited from soliciting campaign contributions in person and may distribute the candidate's written requests for campaign funds.

**MO
Effective
2/8/10**

| | |
|---|---|
| | <p><i>A candidate shall not use or permit the use of campaign contributions for the private benefit of the candidate or members of the candidate's family.</i></p> <p><i>(3) An incumbent judge who is a candidate for retention in or reelection to office without a competing candidate, and whose candidacy has drawn active opposition, may campaign in response thereto and may obtain publicly stated support and campaign funds in the manner provided in Canon 5B(2).</i></p> <p><i>Commentary</i></p> <p><i>Under Rule 4-8.2(b) a lawyer who is a candidate for judicial office must comply with the applicable provisions of the Code of Judicial Conduct.</i></p> <p><i>A candidate for judicial office should consider whether his or her conduct may create grounds for recusal for actual bias or a probability of bias pursuant to Caperton v. A.T. Massey Coal Co., ___ U.S. ___ (2009), or whether the conduct otherwise may create grounds for recusal under this Rule 2 if the candidate is elected to or retained in judicial office.</i></p> |
| <p>MT</p> | |
| <p>NE Effective 1/1/2011</p> | <p>RULE 3.16 <i>Conducting Marriage Ceremonies.</i></p> <p><i>(A) The performance of marriage ceremonies by a judge during courthouse hours is permitted if there is no gift, honorarium, or payment of any kind received for such service. Courthouse hours include all hours when the court is open and in session, including noon/lunch hours.</i></p> <p><i>(B) A judge may accept a reasonable fee, honorarium, gratuity, gift or contribution* to perform a marriage ceremony during non-courthouse hours, whether the ceremony is performed in the court or away from the court.</i></p> <p><i>(C) Compensation, fees, honorarium, gratuities, gifts or contributions derived from marriages shall be subject to public reporting. See Rule 3.15.</i></p> |
| <p>NV Effective 1/19/10</p> | <p>Application VI. CONFLICT WITH LEGISLATION <i>In the event of conflict between the provisions of this Code and any statutes covering the same subject matter, activities or reports, the terms of this Code shall prevail.</i></p> <p>COMMENT <i>[1] Part VI specifically applies to A.B. 190, 1991 Nev. Stat., ch. 517, at 571, amending NRS Chapter 281 as it applies to ethics in government, which amendments shall have no application to the judicial branch of government, and S.B. 166 §§ 2, 3 and 4, 1991 Nev. Stat., ch. 585, at 1922-24, amending NRS 294A, which shall also have no application to the judiciary. This provision of the Code recognizes and reaffirms the principles provided by the Nevada Constitution (art. 3, § 1) and various case decisions, including Halverson v. Hardcastle, 123 Nev. 29, 163 P.3d 428 (2007), and Dunphy v. Sheehan, 92 Nev. 259, 549 P.2d 332 (1976), wherein the Nevada Supreme Court declared:</i></p> <p><i>The doctrine of separation of powers is fundamental to our system of government. Galloway v. Truesdell, 83 Nev. 13, 422 P.2d 237 (1967). The judicial department may not invade the legislative and executive province. State v. District Court, 85</i></p> |

| | |
|---|---|
| | <p><i>Nev. 485, 457 P.2d 217 (1969). Neither may the legislative and executive branches of government exercise powers properly belonging to the judicial department. Graves v. State, 82 Nev. 137, 413 P.2d 503 (1966). Out of deference to the doctrine of separation of powers the legislature specifically excluded members of the judiciary from the Ethics in Government Law. Such exclusion was constitutionally mandated. In re Kading, 235 N.W.2d 409 (Wis. 1975).</i></p> <p><i>The function of the judicial department is the administration of justice. The judiciary, as a coequal branch of government, possesses the inherent power to protect itself and to administer its affairs. Sun Realty v. District Court, 91 Nev. 774, 542 P.2d 1072 (1975). The promulgation of a Code of Judicial Ethics is a measure essential to the due administration of justice and within the inherent power of the judicial department of this State. In re Kading, supra.</i></p> <p><i>Id. at 265-66, 549 P.2d at 336-37. It is noted, however, that the judicial branch of government is under strong constraints to maintain the highest level of ethical conduct. In that regard, it is emphasized that this Code incorporates higher and more stringent standards of conduct than the referenced legislation would have imposed if it had been deemed applicable to the judiciary. Although violations of the areas addressed by the referenced legislation and superseded as to the judiciary by this Code are not criminal misdemeanors under the Code, as they are in the statutes, violations of this Code are cognizable by the constitutionally empowered Commission on Judicial Discipline. The Commission on Judicial Discipline has the power to censure, retire or remove all sitting judges, including senior or part-time judges.</i></p> |
| <p>NH</p> | |
| <p>NJ</p> | |
| <p>NM</p> | |
| <p>NY (revised 5/3/10)</p> | <p>Does not adopt Model Code Application Section. Has instead:</p> <p style="text-align: center;">Canon 5 APPLICATION</p> <p>Rule 5.1: Application of the Rules of Judicial Conduct</p> <p>(A) General application. All judges in the unified court system and all other persons to whom by their terms these rules apply, e.g., candidates for elective judicial office, shall comply with these rules of judicial conduct, except as provided below. All other persons, including judicial hearing officers, who perform judicial functions within the judicial system shall comply with such rules in the performance of their judicial functions and otherwise shall so far as practical and appropriate use such rules as guides to their conduct.</p> <p>(B) Part-time judge. A part-time judge:</p> <p style="padding-left: 40px;">(1) is not required to comply with Rules 3.2, 3.4(A), 3.7(A)(4)(b), 3.8(A) and (B), 3.9, 3.10, 3.11(C), and 3.12;</p> <p style="padding-left: 40px;">(2) shall not practice law in the court on which the judge serves, or in any other court in the county in which his or her court is located, before a judge who is permitted to practice law, and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto;</p> |

| | |
|----|--|
| | <p><i>(3) shall not permit his or her partners or associates to practice law in the court in which he or she is a judge, and shall not permit the practice of law in his or her court by the law partners or associates of another judge of the same court who is permitted to practice law, but may permit the practice of law in his or her court by the partners or associates of a judge of a court in another town, village or city who is permitted to practice law;</i></p> <p><i>(4) may accept private employment or public employment in a Federal, State or municipal department or agency, provided that such employment is not incompatible with judicial office and does not conflict or interfere with the proper performance of the judge's duties.</i></p> <p><i>(5) Nothing in this rule shall further limit the practice of law by the partners or associates of a part-time judge in any court to which such part-time judge is temporarily assigned to serve pursuant to section 106(2) of the Uniform Justice Court Act or section 107 of the Uniform City Court Act in front of another judge serving in that court before whom the partners or associates are permitted to appear absent such temporary assignment.</i></p> <p><i>(C) Administrative law judges. The provisions of this Part are not applicable to administrative law judges unless adopted by the rules of the employing agency.</i></p> <p><i>(D) Time for compliance. A person to whom these rules become applicable shall comply immediately with all provisions of this Part, except that, with respect to Rules 3.11(C) and 3.8, such person may make application to the Chief Administrator for additional time to comply, in no event to exceed one year, which the Chief Administrator may grant for good cause shown.</i></p> <p><i>Parallel Provisions: Rule 100.6.</i></p> <p><i>Comment</i></p> <p><i>[1] The provisions of the Rules of Judicial Conduct should be applied by the employing agency to administrative law judges with due consideration for the characteristics of the particular administrative law judges. In general, the provisions addressing political activity, partiality and conflicts of interest may be applicable to persons performing quasi-judicial functions.</i></p> <p><i>[2] If serving as a fiduciary when selected as a judge, a new judge may, notwithstanding the prohibitions in Rule 3.8, continue to serve as fiduciary but only for the period of time necessary to avoid serious adverse consequences to the beneficiary of the fiduciary relationship and in no event longer than one year, and only on approval of the Chief Administrator of the Courts for good cause shown. Similarly, if engaged at the time of judicial selection in a business activity, a new judge may, notwithstanding the prohibitions in Rule 3.11(C), continue in that activity for a reasonable period but in no event longer than one year, and only on approval of the Chief Administrator of the Courts for good cause shown.</i></p> |
| NC | |
| ND | |

RULE 4.6 Definitions

As used in Canon 4:

(A) "Aggregate" means not only contributions in cash or in-kind made directly to a candidate's campaign committee, but also all contributions made indirectly with the understanding that they will be used to support the election of a candidate or to oppose the election of the candidate's opponent.

(B) "Contribution" has the same meaning as in R.C. 3517.01 and includes an in-kind contribution.

(C) "Immediate family" means a spouse or domestic partner or any of the following who are related by blood or marriage to the judicial candidate:

- (1) Parent;*
- (2) Child;*
- (3) Brother or sister;*
- (4) Grandparent;*
- (5) Grandchild;*
- (6) Uncle or aunt;*
- (7) Nephew or niece;*
- (8) Great-grandparent;*
- (9) First cousin.*

(D) "Independence," "integrity," "impartiality," "impending," and "pending" have the same meaning as in the Terminology section of this code.

(E) "In-kind contribution" has the same meaning as in R.C. 3517.01.

(F) "Judicial candidate" means a person who has made a public announcement of candidacy for judicial office, declared or filed as a candidate for judicial office with the election authority, or authorized the solicitation or receipt of contributions or support for judicial office, whichever occurred first.

(G) "Knowingly" means actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

(H) "Law firm" means a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship, or other association authorized to practice law or lawyers engaged in a private or public legal aid or public defender organization, a legal services organization, the legal department of a corporation or other organization, or the attorney general, prosecuting attorney, law director, or other public office.

(I) "Loan" means an advance of money with an absolute promise to pay, with or without interest, and includes loan guarantees.

(J) "Organization" means any entity or combination of two or more persons, other than a political party, including, but not limited to, a corporation, nonprofit corporation, partnership, limited liability company, association, professional association, continuing association, estate, trust, business trust, political action committee as defined in R.C. 3517.01, law firm, organization affiliated with a political party, labor organization, campaign committee of another candidate for public office, or caucus campaign committee.

(K) "Organization affiliated with a political party" means a combination of two or more persons, other than a political party or an organization, that is identified by its name or association with a national, state, or county political party or expressly promotes the interests, philosophy, or candidates of a political party.

OH
Effective
3/1/09

| | |
|-------------------------------------|--|
| | <p>(L) “Political action committee” has the same meaning as in R.C. 3517.01. (M) “Political party” has the same meaning as in R.C. 3517.01 and includes any national, state, or county political party.</p> |
| <p>OK (as proposed)</p> | <p>RULE 4.6 STATEMENT OF CANDIDATE FOR JUDICIAL OFFICE (A) In all judicial elections within ten (10) days after formally announcing and/or qualifying for election or reelection (whichever is earlier) to any judicial office in the State of Oklahoma, all candidates, including incumbent judges, shall forward written notice of such candidacy, together with the candidate’s correct mailing address, current telephone number, e-mail address, facsimile (telefax) number and actual physical address to the Administrative Director of the Courts. (B) Upon receipt of the notice, the Administrative Director shall by Certified Mail, Return Receipt Requested, cause to be distributed to each candidate who has filed a notice copies of the following: (1) The Code of Judicial Conduct (2) Summaries of all previous Formal Advisory Opinions, if any, issued by the Judicial Ethics Panel which relate in any way to campaign conduct and practices. (3) The Acknowledgment Form (C) The Acknowledgment Form shall be executed and returned by the candidate to the Administrative Director of the Courts within ten (10) days of its delivery to the candidate as shown by the Certified Mail Receipt. (D) The Acknowledgment Form shall certify that the candidate has received, has read, and understands the requirements of the Oklahoma Code of Judicial Conduct and agrees to comply with and be bound by the Code during the course of his/her campaign for the judicial office. The Acknowledgment Form shall be in substantially the following form: STATEMENT OF CANDIDATE FOR JUDICIAL OFFICE I, _____, a candidate for judicial office in the State of Oklahoma, have received, have read, understand and agree to comply with the Oklahoma Code of Judicial Conduct during the course of my campaign for judicial office. I specifically understand that if I were to violate the terms of the Code I would be subject to discipline under the Code or under the Rule of Professional Conduct for lawyers. _____ Date _____ Signature of Candidate (E) The failure of a candidate to file the notice as required in Rule 4.6(A) or to file the Acknowledgment Form as required in Rule 4.6(C) shall constitute a Per Se Violation of Canon 4 of the Oklahoma Code of Judicial Conduct and will be a basis for discipline under the Code. (F) Upon request, the documents executed by a candidate for judicial election in accordance with this Rule shall be made available to the Oklahoma Supreme Court, The General Counsel of the Oklahoma Bar Association, The Professional Responsibility Panel on Judicial Elections and the Council on Judicial Complaints.</p> |
| OR | |
| PA | |
| SD | |
| TX | |
| UT | Adds |

As of January 6, 2011

| | |
|-----------------------------|---|
| Effective 4/1/10 | <i>APPLICATION V. SENIOR JUDGE</i> <i>A senior judge is not required to comply with the provisions of this Code.</i> |
| VT | |
| VA | |
| WA | |
| WV | |
| WI | |
| WY | |

Copyright © 2011 American Bar Association. All rights reserved. Nothing contained in this chart is to be considered the rendering of legal advice. The charts are intended for educational and informational purposes only. We make every attempt to keep these charts as accurate as possible. If you are aware of any inaccuracies in the charts, please send your corrections or additions and the source of that information to John Holtaway, (312) 988-5298, jholtaway@staff.abanet.org.