

	<p>NEW HAMPSHIRE</p> <p>Comparison of New Hampshire Revised Code of Judicial Conduct to ABA Model Code of Judicial Conduct (2007)</p> <p>Effective April 1, 2011</p>
Preamble	Same as MC
Scope	[1] and [5] Replaces “Model Code of Judicial Conduct” with “Code of Judicial Conduct”
Terminology	<p>Deletes reference to asterisks; deletes all asterisks throughout the Code. Deletes references to the Rules cited by MC throughout this Section.</p> <ul style="list-style-type: none"> • “Aggregate:” Deleted • Adds: “Compensation:” <i>denotes remuneration for personal services.</i> • Adds: “Court personnel:” <i>does not include the lawyers in a proceeding before a judge.</i> • “Domestic partner:” Replaces references to the Rules at the end with: “but including parties who have entered into a civil union.” • “Judicial candidate:” Replaces all language after “means any person” with: “who has been nominated for judicial office.” • Adds: “Part time judge:” <i>is a judge who serves on a continuous or periodic basis but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full time judge.</i> • Adds: “Pending matter:” <i>is a matter that has commenced. A matter continues to be pending through any appellate process until final disposition.</i> • “Personally solicit:” Deleted • “Political organization:” Deletes the last sentence • “Public election:” Deleted • Adds: “Require:” The rules prescribing that a judge “require” certain conduct of other are, like all of the rules in this Code, rules of reason. The use of the term “require” in that context means a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge’s direction and control.
Application	Does not adopt MC Application I-VI.
	<p>A. <i>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, marital master, special master or referee, is treated as a judge within the meaning of this Code. All judges shall comply with this Code except as provided below.</i></p> <p>B. <i>All retired judges who have elected to take senior active status or who wish to serve as judicial referees or temporary justices of the supreme court shall comply with the provisions of this Code governing part time judges, except</i></p>

that they shall also comply with the provisions of Rule 3.9 if they wish to serve as a private mediator or arbitrator for compensation. A retired judge who does not take senior active status and who does not desire to serve as a judicial referee or a temporary justice of the supreme court is not subject to Rule 3.9 of this Code.

C. Part time Judge. *A part time judge:*

(1) is not required to comply

(a) except while serving as a judge, with Rule 2.10(A);

(b) at any time, with Rules 3.1(B), 3.4, 3.7(A)(6), 3.8, 3.9, 3.10, 3.11(B), 3.11(C), 3.13(A), 3.14 and 3.15;

(c) at any time, with Rule 3.2 but only to the extent that it prohibits appearances before administrative bodies in adjudicatory proceedings; otherwise, a part time judge shall comply with Rule 3.2.

(2) shall not practice law in the court on which the judge serves, in any other court of the same level (e.g., a part time district court judge shall not practice law in any other district court), any court subject to the appellate jurisdiction of the court on which the judge serves, 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.

(3) may serve as counsel to the town wherein the judge's court is located or a town within the judicial district of the judge's court, provided that:

(a) the judge may give no advice to the police of such town and may give no advice to any other officer or employee of the town that could reasonably be expected to influence the exercise of discretion by the police in the performance of their duties;

(b) the judge may give no advice to any officer or employee of the town on a matter that could reasonably be expected to be the subject of any action or suit before the judge's court; and

(c) the judge shall recuse him or herself from sitting as judge on any case in which the judge's advice to the town is directly called into question or in which a ruling could directly affect the interests of the town.

(4) Notwithstanding anything above to the contrary, a part time marital master shall be governed by all of the canons of the Code of Judicial Conduct as provided in Superior Court Administrative Rule 12-7.

D. Clerks, Deputy Clerks, Registers of Probate, Deputy Registers of Probate, any persons performing the duties of a Clerk or Register, and Court Stenographers, Monitors and Reporters shall comply with Rules 2.1, 2.2, 2.3, 2.5, 2.8, 2.10, 2.12, 2.15, and 2.16.

E. Time for Compliance. *A person to whom this Code becomes applicable shall comply immediately with all provisions of this Code except Sections 4D(2), 4D(3), and 4E, and shall comply with these sections as soon as reasonably possible and shall do so in any event within the period of one year.*

NH Comment [1] is similar to MR Comment [1] to Application III, but replaces “including a retired judge no longer subject to recall” with “(no longer

	<p>accepts appointments); Replaces “informed consent” with “express consent;” Replaces language after “pursuant” with “to Rules 1.12(a) of the N.H. Rules of Professional Conduct.” NH Comment [2] is similar to MR Comment [1] to Application VI, but replaces references to Rules 3.8 and 3.11 with Sections 4E and 4D(3). NH Comment [3] is the same as MR Comment [3] to Application I.</p>
Canon 1	Same as MC
Rule 1.1	Same as MC
Rule 1.2	<p>[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”</p>
Rule 1.3	[3] Adds at the end: “Testifying as to the qualifications of a judicial nominee at a confirmation hearing is not to be construed as a violation of this rule.”
Canon 2	Same as MC
Rule 2.1	Same as MC
Rule 2.2	<p>Adds (B): <i>A judge may make reasonable efforts, consistent with the law and court rules, to facilitate the ability of all litigants, including self-represented litigants, to be fairly heard.</i> [4] Replaces with: <i>The growth in litigation involving self-represented litigants and the responsibility of courts to promote access to justice warrant reasonable flexibility by judges, consistent with the law and court rules, to ensure that all litigants are fairly hears.</i></p>
Rule 2.3	Same as MC
Rule 2.4	Same as MC
Rule 2.5	<p>[2]: Deleted NH [2] and [3] are the same as MC [3] and [4]</p>
Rule 2.6	<p>Adds [4]: <i>Court-ordered meditation is not considered coercion.</i></p>
Rule 2.7	[1] Deletes first sentence.
Rule 2.8	Same as MC
Rule 2.9	Same as MC
Rule 2.10	[2] Deletes “or represents a client as permitted by these Rules.”
Rule 2.11	<p>(A)(4): Deleted NH (A)(4) is the same as MC (A)(5) NH (A)(5) is the same as MC (A)(6), but MC(A)(6)(d) is deleted</p>
Rule 2.12	Same as MC
Rule 2.13	<p>NH (B) is the same as MC (C) MC (B): Deleted [3]: Deleted</p>

Rule 2.14	Same as MC
Rule 2.15	Same as MC
Rule 2.16	Same as MC
Canon 3	Same as MC
Rule 3.1	<p>MC Rule is the same as NH Section (A)(1)-(5). Adds:</p> <p><i>(B) Avocational Activities. A judge may speak, write, lecture, teach and participate in other extra-judicial activities concerning the law, the legal system, the administration of justice and non-legal subjects, subject to the requirements of this Code.</i></p> <p><i>(1) A judge who intends to enter into a teaching contract shall obtain written approval, in advance, from the chief justice of the supreme court.</i></p> <p><i>(2) A judge who is otherwise in compliance with the provisions of Canon 2 relating to the precedence of his or her judicial duties and the timely and competent disposition of the business of the court may, in any calendar year derive income from such activities not to exceed 15% of the judge's salary. For good cause shown and in extraordinary circumstances, exceptions to this limitation may be approved, in advance by formal and unanimous vote of the supreme court. Such approval shall be in writing and shall state the reasons for and terms of the exception.</i></p> <p style="text-align: center;"><u>Comment</u></p> <p><i>[1] As a judicial officer and person specifically learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that time permits, a judge is encouraged to do so, either independently or through a bar association, judicial conference or other organization dedicated to the improvement of the law. Judges may participate in efforts to promote the fair administration of justice, the independence of the judiciary and the integrity of the legal profession and may express opposition to the persecution of lawyers and judges in other countries because of their professional activities.</i></p> <p><i>[2] The 15% income limitation is consistent with Title VI of the Ethics Reform Act of 1989, 5 U.S.C. app. 4, sections 501-505, which limits the income that federal judges may receive from quasi-judicial activities.</i></p> <p><i>[3] In this and other sections of Canon 3, the phrase "subject to the requirements of this Code" is used, notably in connection with a judge's governmental, civic or charitable activities. This phrase is included to remind judges that the use of permissive language in various sections of the Code does not relieve a judge from the other requirements of the Code that apply to the specific conduct.</i></p>
Rule 3.2	Same as MC
Rule 3.3	<p>Adds [2]:</p> <p><i>Testifying as to the qualifications of a judicial nominee at a confirmation hearing is not to be construed as a violation of this rule.</i></p>

Rule 3.4	Adds at the end: “A judge may, however, represent a country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities.”
Rule 3.5	Same as MC
Rule 3.6	Same as MC
Rule 3.7	Same as MC
Rule 3.8	Same as MC
Rule 3.9	<p>NH Rule:</p> <p><i>(A) Except as provided in subsection B below, a judge shall not provide services as a private arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law.</i></p> <p><i>(B) A judge who is in senior active service pursuant to RSA 493-A:1 or who has reached age 70 but continues to sit as a judicial referee pursuant to RSA 493-A:1-a may serve as a private mediator or arbitrator, and may be privately compensated for such services in accordance with this subsection. To the extent the senior judge or judicial referee provides mediation services pursuant to Superior Court Rule 170 or 170-B, he or she shall comply with the certification requirements of those rules.</i></p> <p><i>(1) A senior judge or judicial referee may be associated with entities that are solely engaged in offering mediation or other alternative dispute resolution services but that are not otherwise engaged in the practice of law. However, such senior judge or judicial referee shall not associate with a law firm, or advertise or solicit business in a manner that identifies his or her position as a senior active judge or judicial referee or prior service as a judge, but he or she may include the fact of prior service as a judge, along with other background and experience, in a resume or curriculum vitae.</i></p> <p><i>(2) A senior judge or judicial referee who serves as a mediator or arbitrator shall disclose to the parties to the mediation or arbitration whether he or she has presided over a case involving any party to the mediation or arbitration within the past three years. A senior judge or judicial referee shall not solicit service as a mediator or arbitrator in any case in which he or she is or has been presided or in which he or she has ruled upon any issues other than routine scheduling matters, but he or she may serve as a mediator or arbitrator in such a case if requested to do so by all parties to the case; provided, however, that once a senior judge or judicial referee serves as a mediator or arbitrator in such a case, he or she shall not thereafter preside over any aspect of the case or rule upon any issue in the case in a judicial capacity.</i></p> <p><i>(3) A senior judge or judicial referee shall disclose if he or she is being utilized or has been utilized as a mediator or arbitrator by any party, attorney or law firm involved in the case pending before the senior judge or judicial referee. Absent express consent from all parties, a senior judge or judicial referee is prohibited from presiding over any case involving any party, attorney or law firm that is utilizing or has utilized the senior judge or judicial referee as a mediator within the previous</i></p>

	<p><i>three years. A senior judge or judicial referee also shall disclose any negotiations or agreements for the provision of mediation or arbitration services between the senior judge or judicial referee and any of the parties or counsel to the case.</i></p> <p><i>(C) The provisions of subsections (B)(2) and (B)(3) above do not apply when a judge, senior judge or judicial referee is performing mediation services for the judicial branch and without private compensation pursuant to Superior Court Rules 170 or 170-B.</i></p> <p>[1] Deletes the last sentence.</p>
Rule 3.10	Same as MC
Rule 3.11	Same as MC
Rule 3.12	<p>Adds at the beginning: “Subject to Rule 3.1(B), a judge may accept...”</p> <p>[1] Adds at the beginning: “Subject to Rule 3.1(B), a judge is permitted...”</p>
Rule 3.13	[5]: Deleted
Rule 3.14	Same as MC
Rule 3.15	<p>NH Rule:</p> <p><i>(A) For each calendar year up to and including calendar year 2006, a judge shall report on or before April 15 of each year, with respect to the preceding calendar year, whether or not the judge has received any compensation other than judicial salary, and, if so, the nature of the activity for which the compensation was received, the name of the payor and the amount of the compensation so received. The report shall be filed as a public document in the office of the clerk of the New Hampshire Supreme Court.</i></p> <p><i>(B) For calendar year 2007, and each calendar year thereafter, a judge shall file a fully-completed New Hampshire Judicial Branch Financial Disclosure Statement on or before April 15 of each year, with respect to the preceding calendar year. The New Hampshire Judicial Branch Financial Disclosure Statement shall be filed as a public document in the office of the clerk of the New Hampshire Supreme Court. The form of the New Hampshire Judicial Branch Financial Disclosure Statement shall be approved, by order, by the New Hampshire Supreme Court, and shall require at a minimum that a judge report whether or not the judge has received any compensation other than judicial salary, and, if so, the nature of the activity for which the compensation was received. Blank forms may be obtained by request from the clerk of the New Hampshire Supreme Court, and shall also be available on the New Hampshire Judicial Branch website.</i></p> <p style="text-align: center;"><u>Comment</u></p> <p><i>[1] Disclosure of a judge’s income, debts, investments or other assets is required only to the extent provided in this Canon and in Rule 2.11, or as otherwise required by law.</i></p>
Canon 4	<p>NH Canon 4:</p> <p><i>A judge or judicial candidate shall refrain from inappropriate political</i></p>

	<i>activity.</i>
Rule 4.1	<p>Changes title to: “Political Conduct in General”</p> <p>NH Rule 4.1:</p> <p>(A) A judge shall not:</p> <p>(1) act as a leader or hold any office in a political organization;</p> <p>(2) make speeches for a political organization or candidate or publicly endorse a candidate for public office;</p> <p>(3) solicit funds for or pay an assessment or make a contribution to a political organization of candidate, attend political gatherings, or purchase tickets for political party dinners, or other functions.</p> <p>(B) A judge shall resign from judicial office upon becoming a candidate either in a party primary or in a general election, except that the judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention or a moderator of any governmental unit, if the judge is otherwise permitted by law to do so.</p> <p>(C) A judge shall not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice.</p> <p>[1]-[15]: Deleted</p>
Rule 4.2	<p>Changes title to: “Judicial Candidates”</p> <p>NH Rule 4.2:</p> <p>(A) <i>A candidate for judicial office:</i></p> <p>(1) <i>shall maintain the dignity appropriate for judicial office and act in a manner consistent with the impartiality, integrity and independence of the judiciary, and shall encourage members of the candidate’s family to adhere to the same standards of political conduct in support of the candidate as apply to candidate; and</i></p> <p>(2) <i>shall not:</i></p> <p>(a) <i>with respect to cases, controversies, or issues that are likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office; or</i></p> <p>(b) <i>knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or any other candidate or potential candidate.</i></p> <p style="text-align: center;"><u><i>Comment</i></u></p> <p><i>[1] Section 4.2(A) prohibits a candidate for judicial office from making statements that commit the candidate regarding cases, controversies or issues likely to come before the court. As a corollary, a candidate should emphasize in any public statement the candidate’s duty to uphold the law regardless of his or her personal views. See also Section 2.10, the general rule on public comment by judges. Section 4.2(A)(2) does not prohibit a</i></p>

	<p><i>candidate from making pledges or promises respecting improvements in court administration. Nor does this Section prohibit an incumbent judge from making private statements to other judges or court personnel in the performance of judicial duties. This Section applies to any statement made in the process of securing judicial office, such as statements to commissions charged with recommending judicial selection and executive officials and bodies charged with nominating or confirming appointment. See also Rule 8.2 of the NH Rules of Professional Conduct.</i></p> <p><i>[2] This section is not intended to prohibit a judge from attending a candidates' night to which all candidates for a particular office have been invited.</i></p>
Rule 4.3	Deleted
Rule 4.4	Deleted
Rule 4.5	Deleted

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