

**AMERICAN BAR ASSOCIATION
CPR POLICY IMPLEMENTATION COMMITTEE**

COMPARISON OF ABA MODEL JUDICIAL CODE AND STATE VARIATIONS

RULE 2.10 Judicial Statements on Pending and Impending Cases	
	<p>(A) A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending* or impending* in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing.</p> <p>(B) A judge shall not, in connection with 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 judicial office.</p> <p>(C) A judge shall require court staff, court officials, and others subject to the judge’s direction and control to refrain from making statements that the judge would be prohibited from making by paragraphs (A) and (B).</p> <p>(D) Notwithstanding the restrictions in paragraph (A), a judge may make public statements in the course of official duties, may explain court procedures, and may comment on any proceeding in which the judge is a litigant in a personal capacity.</p> <p>(E) Subject to the requirements of paragraph (A), a judge may respond directly or through a third party to allegations in the media or elsewhere concerning the judge’s conduct in a matter.</p> <p>COMMENT</p> <p>[1] This Rule’s restrictions on judicial speech are essential to the maintenance of the independence, integrity, and impartiality of the judiciary.</p> <p>[2] This Rule does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity. In cases in which the judge is a litigant in an official capacity, such as a writ of mandamus, the judge must not comment publicly.</p> <p>[3] Depending upon the circumstances, the judge should consider whether it may be preferable for a third party, rather than the judge, to respond or issue statements in connection with allegations concerning the judge’s conduct in a matter.</p> <p>Ten (10) states have identical language (AR, IN, IA, MN, MT, NE, NV, OK, UT, WY) Twelve (12) states have similar language (AZ, CO, HI, KS, MD, MO, MS, NH, NY, OH, TN, WA) One (1) state has different language (DE)</p>
AL	
AK	
AZ Effective 9/1/09	[2]: replaces “official” with “administrative” and “such as a writ of mandamus” with “the judge may comment publicly on the merits of the case. In cases in which the judge is a litigant in a nominal capacity, such as a special action”
AR Effective 7/1/09	Identical
CA	(A) – CA Commentary to Canon 3B(9), 2 nd paragraph: The Committee proposes adding a

(as proposed)	<p>sentence that reinforces the concept that judges may make public comments only if the case is not pending or impending.</p> <p>(B) – CA 2nd half of Canon 2A: The Committee proposes adoption of substantially the same language.</p> <p>(D) – CA Canon 3B(9): The Committee proposes changing the term “court personnel” to “staff and court personnel” to include court reporters and bailiffs not employed by the court. In addition, it proposes deleting the phrase “for public information” from the exception following the deletion by ABA.</p>
CO Effective 7/1/10	<p>(D): Adds: “subject to Canon 1” after “personal capacity”</p> <p>Deletes Comment [3]</p>
CT Effective 1/1/11	<p>(C) Adds to beginning: “A judge may consult with other judges or court staff, court officials, and others subject to the judge’s direction and control whose function is to aid the judge in carrying out the judge’s adjudicative responsibilities;” Adds “However” to beginning of MC paragraph (C);</p> <p>Does not have MC (E);</p> <p>Does not have Comment [3].</p>
DE Effective 11/1/08	<p>(A) <i>A judge should abstain from public comment on the merits of a pending or impending proceeding in any court, and should require similar abstention on the part of personnel subject to the judge's direction and control.</i></p> <p>Comment: <i>The admonition against public comment about the merits of a pending or impending action continues until completion of the appellate process. If the public comment involves a case from the judge's own court, particular care should be taken that the comment does not denigrate public confidence in the integrity and impartiality of the judiciary in violation of Rule 1.2.</i></p> <p><i>"Court personnel" does not include the lawyers in a proceeding before a judge. The conduct of lawyers is governed by the Rules of Professional Responsibility.</i></p> <p>(B) <i>This proscription does not extend to public statements made in the course of the judge's official duties, to the explanation of court procedures, or to a scholarly presentation made for purposes of legal education.</i></p> <p>Comment: <i>This provision does not restrict comments about proceedings in which the judge is a litigant in a personal capacity, but in mandamus proceedings when the judge is a litigant in an official capacity, the judge should not comment beyond the record.</i></p> <p>(C) <i>A judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions, except as authorized by a court rule or administrative directive which has been either promulgated or approved by the Delaware Supreme Court.</i></p> <p>Comment: <i>Temperate conduct of judicial proceedings is essential to the fair administration of justice. The recording and reproduction of a proceeding should not distort or dramatize the proceeding.</i></p> <p>Deletes (D) and (E)</p>
DC	
FL	
HI Effective	<p>(E): adds “A judge shall not discuss the rationale for a decision unless the judge is relating what was already made part of the public record” to end</p>

1/1/09	[3]: adds “A judge may respond to criticism by reiterating without elaboration what is set forth in the public record in a case, including pleadings, documentary evidence, and the transcript of proceedings held in open court” to beginning
ID	
IL	
IN Effective 1/1/09	Identical
IA Effective 5/3/10	Identical
KS Effective 3/1/09	Deletes (E) and [3]
KY	
MD Effective 7/1/10	<p>(A): Replaces “not make any” with “abstain;” replaces “statement” with “comment;” inserts “that relates to a proceeding pending or impending in any court” between “public statement” and “that might reasonably...”; replaces wording after “fairness” with “of that proceeding and shall require similar abstention on the part of court personnel subject to the judges direction and control. This Rule does not prohibit a judge from making public statements in the course of official duties or from explaining for public information the procedures of the court” to end.</p> <p>(B): Deletes “A judge shall not, in connection with cases” at beginning of sentence, replaces with “With respect to a case, controversy, or issue...”; inserts “a judge shall not make a commitment, pledge, or promise” between “court” and “that” and replaces “is” for “are” before “inconsistent...”; “judicial office” now referred to as “the office”</p> <p>Deletes MR (C);</p> <p>(C): Similar to MR (D) but adds reference to paragraph (b); replaces “personal” with “non-judicial”</p> <p>Deletes MR (E)</p> <p>Deletes MR [3], Replaces with new comment: <i>“Court personnel,” as used in paragraph (a) of this Rule does not include the lawyers in a proceeding before the judge. The comment of lawyers in this regard is governed by Rule 3.6 of the Maryland Lawyers' Rules of Professional Conduct.</i></p>
MA	

MI	
MN Effective 7/1/09	Identical
MO Effective 1/1/2012	(B) Adds at the end: “unless the judge recuses under Rule 2-2.11(A)(4) [1] Replaces “This Rule’s restrictions on judicial speech” with “The restrictions on judicial speech by this Rule 2-2.10” [2] Deleted MO [2] is the same as MC [3]
MS (as pro- posed)	[1] Adds to end: “The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition.”
MT Effective 1/1/09	Renumbered as 2.11
NE Effective 1/1/2011	Identical
NV Effective 1/19/10	Identical
NH Effective 4/1/2011	[2] Deletes “or represents a client as permitted by these Rules.”
NJ	
NM (as pro- posed)	[1] Adds to end: “A pending proceeding is one that has begun but has not yet reached final disposition. An impending proceeding is one that is anticipated but has not yet begun. The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process until final disposition. [2] Deletes second part of the first sentence after “in a personal capacity;” Changes the last sentence to: “The judge must not comment publicly on cases in which the judge is a litigant in an official capacity, such as a writ of mandamus.” [3] Deletes “depending upon circumstances” in the beginning.
NY (as pro- posed)	(A) Deletes “that might reasonably...in any court” and adds instead: “about a matter pending* or impending* in any court within the United States or its territories” and adds to end: “in such a court;” Does not adopt (E); Does not adopt [3]
NC	
ND (as pro- posed)	(D) Deletes “make public statements ... and may” (E) Replaces language after “a judge may” with “make public statements in the course of performing the duties of judicial office, may explain court procedures, and may respond directly or through a third party to allegations in the media or elsewhere concerning the judge’s conduct in a matter.”

As of July 27, 2011

OH Effective 3/1/09	(D): adds “nonjudicial” after “personal” [2]: adds “nonjudicial” after “personal” and replaces “official” with “judicial”
OK Effective 4/15/2011	OK [2] and [3] are equivalent to MC [3] and [2], respectively
OR	
PA	
SD	
TN (as pro- posed)	[2] Adds: “ <i>or represents a client as permitted in these rules</i> ” after “personal capacity”
TX	
UT Effective 4/1/10	Identical
VT	
VA	
WA Effective 1/1/11	(A) State Code changes “might reasonably” with “would reasonably,” change “might substantially” with “would reasonably be expected to”; Adds: [4] “ <i>A judge should use caution in discussing the rationale for a decision and limit such discussion to what is already public record or controlling law.</i> ”
WV	
WI	
WY Effective 7/1/09	Identical

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