

**AMERICAN BAR ASSOCIATION
CPR POLICY IMPLEMENTATION COMMITTEE**

COMPARISON OF ABA MODEL JUDICIAL CODE AND STATE VARIATIONS

RULE 2.13 Administrative Appointments	
	<p>(A) In making administrative appointments, a judge:</p> <p style="padding-left: 40px;">(1) shall exercise the power of appointment impartially* and on the basis of merit; and</p> <p style="padding-left: 40px;">(2) shall avoid nepotism, favoritism, and unnecessary appointments.</p> <p>(B) A judge shall not appoint a lawyer to a position if the judge either knows* that the lawyer, or the lawyer’s spouse or domestic partner,* has contributed more than \$[insert amount] within the prior [insert number] year[s] to the judge’s election campaign, or learns of such a contribution* by means of a timely motion by a party or other person properly interested in the matter, unless:</p> <p style="padding-left: 40px;">(1) the position is substantially uncompensated;</p> <p style="padding-left: 40px;">(2) the lawyer has been selected in rotation from a list of qualified and available lawyers compiled without regard to their having made political contributions; or</p> <p style="padding-left: 40px;">(3) the judge or another presiding or administrative judge affirmatively finds that no other lawyer is willing, competent, and able to accept the position.</p> <p>(C) A judge shall not approve compensation of appointees beyond the fair value of services rendered.</p> <p>COMMENT</p> <p>[1] Appointees of a judge include assigned counsel, officials such as referees, commissioners, special masters, receivers, and guardians, and personnel such as clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by paragraph (A).</p> <p>[2] Unless otherwise defined by law, nepotism is the appointment or hiring of any relative within the third degree of relationship of either the judge or the judge’s spouse or domestic partner, or the spouse or domestic partner of such relative.</p> <p>[3] The rule against making administrative appointments of lawyers who have contributed in excess of a specified dollar amount to a judge’s election campaign includes an exception for positions that are substantially uncompensated, such as those for which the lawyer’s compensation is limited to reimbursement for out-of-pocket expenses.</p> <p>Nineteen (19) states have similar language (AZ, AR, CO, CT, HI, IN, IA, KS, MD, MN, MO, MT, NE, NV, NH, OH, OK, UT, WY)</p> <p>Four (4) states have different language (DE, NY, TN, WA)</p>
AL	
AK	
AZ Effective 9/1/09	<p>Deletes (B)</p> <p>[2]: adds “Arizona’s antinepotism statute, which applies to judicial officers, is found in A.R.S. § 38-481” to end</p> <p>Deletes [3]</p>
AR Effective 7/1/09	<p>Deletes (B)</p> <p>Adds (D): <i>No judge shall employ a spouse or other relative unless it has been affirmatively demonstrated to the Arkansas Judicial Discipline and Disability Commission that it is impossible for the judge to hire any other qualified person to fill the position.</i></p> <p>Deletes [3]</p>
CA (as pro- posed)	<p>Comment [1] – CA Commentary to Canon 3C(4): The Committee proposes that the definition of “appointees” be deleted as inaccurate, because court personnel and staff are not actually “appointees” of a judge.</p>

CO Effective 7/1/10	Deletes Model Code (B) (B): Identical to Model Code (C) Deletes Comment [C]
CT Effective 1/1/11	(A) is equivalent to Model Code but changes language: <i>(A) In making or facilitating administrative appointments, a judge:</i> <i>(1) shall act impartially and on the basis of merit; and</i> <i>(2) shall avoid nepotism, favoritism, and unnecessary appointments.</i> Does not have Model Code (B); (B) is the same as Model Code (C); Comment (1) Adds clause, “but are not limited to” after “include;” changes “bailiffs” to “judicial marshalls;” Does not have Model Code Comment [3].
DE Effective 11/1/08	(A): same as 1990 Model Code Canon 3C(4) first sentence but replaces “shall” with “should” Deletes (A)(1) and (2) Comment: same as Model Code [1] first sentence but deletes “assigned counsel” (B): similar to 1990 Model Code Canon 3C(4) second and third sentences but replaces “shall” with “should” and deletes “impartially” (C): replaces “shall” with “should” Comment: same as Model Code [1] second sentence Deletes remainder of Comment
DC	
FL	
HI Effective 1/1/09	Deletes (B) [2]: replaces introductory clause with “For the purposes of this Rule” and language after “hiring of” with “a member of the judge's family or any relative who falls within the third degree of relationship of the judge” Deletes [3]
ID	
IL	
IN Effective 1/1/09	Title: adds “Hiring and” to beginning (A): adds “In hiring court employees and” to beginning Deletes (B) [1]: adds “but is not limited to” after “includes.” Deletes second sentence [3] <i>A judge should consult the staff of the Indiana Commission on Judicial Qualifications or its advisory opinions to determine whether hiring or appointing a relative as defined by Comment [2] may be justifiable under the circumstances.</i> [4]: same as second sentence of Model Code [1] but adds cross-reference to (C)
KS Effective 3/1/09	Deletes (B) [1]: replaces “referees” with “case managers, appraisers” Deletes [3]
IA Effective 5/3/10	Does not have MR (B); [1] Adds “mediators” after “assigned counsel;” adds “district associate judges, magistrates” before “referees;” replaces “bailiffs” with “court reporters;” Does not have MR [3].
KY	

MD Effective 7/1/10	(B) is identical to MR (C): <i>A judicial appointee shall not approve compensation of appointees beyond the fair value of services rendered.</i> Deletes (B) (1)- (3) Deletes [3]
MA	
MI	
MN Effective 7/1/09	Deletes (B) [2]: replaces language after first usage of “spouse” with “a person in an intimate relationship with the judge, a member of the judge’s household, or the spouse or person in an intimate relationship with such person” Deletes [3]
MO Effective 1/1/2012	(A) Deleted MO (B) is the same as MC (C) [1] Adds at the end: “and (B)” [2] Replaces text after “any relative” with: “within the fourth degree of relationship by consanguinity or affinity. See Mo. Const. article VII, section 6.” [3] Deleted
MS (as proposed)	(B) Deletes “domestic partner” and adds instead “person residing within the lawyer’s household,” changes “contibuted more than” to “made aggregate contributions of more than,” amount is \$2,500 and number of years is 4; Changes [2] to: <i>Nepotism is the appointment or hiring or any person related by blood or marriage within the third degree of relationship to either the judge or the judge’s spouse or person living in the judge’s household;</i>
MT Effective 1/1/09	Rule 2.14 same as Model Code 2.13 but deletes (B) and [3]
NE Effective 1/1/2011	(B): Reserved; [2] Changes “third” to “fourth;” [3] Reserved
NV Effective 1/19/10	Deletes (B) and [3] [1]: deletes language after “guardians” in first sentence
NH Effective 4/1/2011	NH (B) is the same as MC (C) MC (B): Deleted [3]: Deleted
NJ	
NM (as proposed)	(A) Adds “including the appointment of lawyers” after “In making administrative decisions” Adds (A)(3): <i>shall avoid the appearance of impropriety.</i> Deletes MC (B) NM (B) is the same as MC (C) [3]: Deleted
NY (as proposed)	Changes (B) to: <i>(B) A judge shall not appoint or vote for the appointment of any person as a member of the judge’s staff or that of the court of which the judge is a member, or as an appointee in</i>

	<p><i>a judicial proceeding, who is a relative within the fourth degree of relationship of either the judge or the judge’s spouse or domestic partner or the spouse or domestic partner of such a person. A judge shall refrain from recommending a relative within the fourth degree of relationship of either the judge or the judge’s spouse or domestic partner or the spouse or domestic partner of such person for appointment or employment to another judge serving in the same court. A judge also shall comply with the requirements of Part 8 of the Rules of the Chief Judge (22 NYCRR Part 8) relating to the Appointment of relatives of judges. Nothing in this paragraph shall prohibit appointment of the spouse or domestic partner of the town or village justice, or other member of such justice’s household, as clerk of the town or village court in which such justice sits, provided that the justice obtains the prior approval of the Chief Administrator of the Courts, which may be given upon a showing of good cause.</i></p> <p>Does not adopt [2] or [3].</p>
NC	
ND (as pro- posed)	<p>(B): Deleted ND (B) is the same as MC (C) [3]: Deleted</p>
OH Effective 3/1/09	<p>(A) Adds at the end: “a judge shall do both of the following:” Deletes (B). [1]: replaces “referees” with “magistrates” Deletes [3]</p>
OK Effective 4/15/2011	<p>(B) Replaces “domestic partner” with “a member of the lawyer’s household;” Replace language after “has contributed” and before “or learns of such a contribution... unless” with: “to the judge’s election campaign an amount which a reasonable person would believe could affect the appointment” [2] Replaces language after “or the judge’s spouse” with: “member of the judge’s household or the spouse of such relative or member of the judge’s household” [3] Replaces “specified dollar amount” with “reasonable dollar amount”</p>
OR	
PA	

SD	
TN (as proposed)	<p>Title: Administrative Responsibilities</p> <p>(B) Replaces clause “has contributed more...matter, unless” with “<i>has made contributions or given such support to the judge’s campaign that the judge’s impartiality might be questioned, or learns of such contribution or support by means of a timely motion by a party or other person properly interested in the matter, unless:</i>”</p> <p>(B)(2) deletes “or given support” after “contributions”</p> <p>Adds (D): <i>When a judge refers litigants to community resources as a condition or requirement relating to litigation, such referrals shall be made impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. For purposes of this provision, a “community resource” is any person or organization providing services such as, but not limited to: counseling services; driver education or traffic safety programs; mental health, substance abuse, or other treatment programs; parenting classes; private probation services; and similar types of services.</i></p> <p>[1]: Adds “magistrates” between “referees” and “commissioners”; adds “special judges, substitute judges” after “special masters”;</p> <p>[2]: <i>Nepotism is the appointment or hiring of any relative within the third degree of relationship of either the judge or the judge’s spouse or domestic partner, or the spouse or domestic partner of such relative, as well as those relatives defined in Tennessee Code Annotated sections 8-31-101 et. seq. the Tennessee State Employees Union Nepotism Policy.</i></p> <p>[3]: <i>The rule against making administrative appointments of lawyers who have provided such contributions or support to a judge’s election campaign that the judge’s impartiality might reasonably be questioned includes an exception for positions that are substantially uncompensated such as those for which the lawyer’s compensation is limited to reimbursement for out-of-pocket expenses. In determining whether a judge’s impartiality might reasonably be questioned in connection with such appointments, a judge should consider the following factors among others:</i></p> <p>(1) <i>The level of support or contributions given, directly or indirectly, by a lawyer, the lawyer’s firm or the lawyer’s spouse or domestic partner, in relation both to aggregate support (direct and indirect) for the individual judge’s campaign and to the total amount spent on candidates for that judgeship;</i></p> <p>(2) <i>If the support is monetary, whether any distinction between direct contributions or independent expenditures bears on the question of the judge’s impartiality; and</i></p> <p>(3) <i>The timing of the support or contributions in relation to the appointment.</i></p> <p>Adds [4]: <i>It is increasingly common for trial judges, either directly or acting through court employees or court-affiliated agencies, to refer litigants to a variety of community resources. For example, litigants may be required by a court to complete treatment programs, parenting classes, driver education or traffic safety programs, etc., or to be monitored by private probation services. Paragraph (D) requires that such referrals be made impartially and on the basis of merit, and without nepotism or favoritism.</i></p>
TX	
UT Effective 4/1/10	<p>(B): amount set at \$50, time set at three years and “election” replaced with “retention”</p> <p>(B)(2) deletes “political” before “contributions”</p> <p>[1] Deletes language in first sentence after “and guardians”</p> <p>[3]: “election” replaced with “retention”</p>
VT	
VA	

As of July 27, 2011

WA Effective 1/1/11	(A) Changes section, “if the judge either knows...interested in the matter,” to “under circumstances where it would be reasonable to be interpreted to be quid pro quo for campaign contributions or other favors, unless:”; [3] Does not adopt Comment [3].
WV	
WI	
WY Effective 7/1/09	Deletes Paragraph (B) of ABA Model Code; Paragraph (C) of Model Code becomes Paragraph (B) of Wyoming Code; Deletes [3].

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