

AMERICAN BAR ASSOCIATION
CPR POLICY IMPLEMENTATION COMMITTEE

COMPARISON OF ABA MODEL JUDICIAL CODE AND STATE VARIATIONS

RULE 2.3

Bias, Prejudice, and Harassment

(A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.

(B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.

(C) A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, based upon attributes including but not limited to race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, against parties, witnesses, lawyers, or others.

(D) The restrictions of paragraphs (B) and (C) do not preclude judges or lawyers from making legitimate reference to the listed factors, or similar factors, when they are relevant to an issue in a proceeding.

COMMENT

[1] A judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute.

[2] Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics. Even facial expressions and body language can convey to parties and lawyers in the proceeding, jurors, the media, and others an appearance of bias or prejudice. A judge must avoid conduct that may reasonably be perceived as prejudiced or biased.

[3] Harassment, as referred to in paragraphs (B) and (C), is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.

	<p>[4] Sexual harassment includes but is not limited to sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that is unwelcome.</p> <p>Twelve (12) states have identical language (AR, CO, IN, KS, MS, MT, NE, NV, NH, OH, UT, WY)</p> <p>Ten (10) states have similar language (AZ, CT, HI, IA, MD, MN, MO, NY, OK, TN)</p> <p>Two (2) state have different language (DE, WA)</p>
AL	
AK	
AZ Effective 9/1/09	[4]: adds reference to judiciary sexual harassment policy
AR Effective 7/1/09	Identical
CA (as pro- posed)	CA Canon 3C(2): The Committee proposes adding <i>gender, ethnicity, marital status, and political affiliation</i> to the list of protected categories as in MC.
CO Effective 7/1/10	Identical
CT Effective 1/1/2011	(B): replaces “and shall not...to do so” to end, with “and shall not condone such conduct by court staff, court officials, or others subject to the judge’s direction and control.” [2]: changes “crime” to “criminality”
DE Effective 11/1/08	Title: replaces “Harassment” with “Impropriety” (A): replaces “shall” with “should” (B): similar to second half of Rule 1.2 but replaces “shall” with “should” Deletes(C) and (D) [2]: replaces “must” with “should” in last sentence [3]: similar to first sentence of 1990 Model Code Canon 2B Commentary third paragraph but adds permission to use judicial stationery Deletes [4]
DC	
FL	
HI Effective 1/1/09	(A): deletes “including administrative duties” [3]: adds “personal characteristics” to end
ID	
IL	
IN Effective 1/1/09	Identical
IA Effective 5/3/10	[2] Adds clause after “nationality and crime:” “insensitive statements about crimes against women.”

KS Effective 3/1/09	Identical
KY	
MD Effective 7/1/10	<p>Replaces “judge” with “judicial appointee” throughout; (B): Inserts “appointee’s” between “judicial” and “duties”; deletes “engage in” between “or” and “harassment”; deletes “including but not limited to;” deletes language after “political affiliation” and adds: “<i>A judge shall require lawyers in proceedings before the court, court staff, court officials, and others subject to the judge’s direction and control to refrain from similar conduct.</i>”</p> <p>Deletes Model Rule (C): MD Rule (C) is similar to Model Rule (D); State Rule deletes reference to paragraph (C)</p> <p>[2]: State Rule moves final sentence in Model Rule to first sentence: “<i>A judge must avoid conduct that may reasonably be perceived as prejudiced or biased.</i>”; deletes “but are not limited to” between “include” and “epithets” [3]: Deletes paragraph “(C)” from language [4]: Deletes “but is not limited to” between “includes” and “sexual advances”</p>
MA	
MI	
MN Effective 7/1/09	(c): deletes language after “affiliation”
MO Effective 1/1/2012	<p>(A) Deletes including administrative duties” (B), (C), and [3] Deletes “socioeconomic status, or political affiliation” (D) Replaces “to the listed factors, or similar factors” with “to personal factors or characteristics”</p>
MS (as pro- posed)	Identical
MT Effective 1/1/09	Identical
NE Effective 1/1/2011	Identical
NV Effective 1/19/10	Identical
NH Effective 4/1/2011	Identical
NJ	
NM (as pro- posed)	<p>(B), (C), and [3] Expands prohibited discriminatory grounds by adding to the list: “color,” “ancestry,” “gender identity,” “spousal affiliation;” Replaces “disability” with “physical or mental handicap or serious medical condition” [3] Adds to end: “A judge must avoid conduct that may reasonably be perceived as prejudiced or</p>

	biased.”
NY (as proposed)	Adds “age,” “creed,” and “color” to (B) and (C).
NC	
ND (as proposed)	(B) Replaces “judicial duties” with “the duties of judicial office”
OH Effective 3/1/09	Identical
OK Effective 4/15/2011	[2] Replaces “as prejudiced or biased” at end of last sentence with “as hostility or aversion toward a person on bases such as race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.”
OR	
PA	
SD	
TN (as proposed)	[2] Deletes “...upon stereotypes...” to end of paragraph
TX	
UT Effective 4/1/10	[2]: deletes “negative” [3] Adds “Examples of” to beginning of sentence; changes “is” to “are.”
VT	
VA	
WA Effective 1/1/11	(B) State Code deletes clause, “including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.” (C) State Code deletes clause, “based upon attributes including but not limited to race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.” (D) State Code deletes “legitimate” before “reference,” changes “the listed factors, or similar factor” to simply “factors,” changes “when they are relevant” to “that are relevant.” Adds: [5] <i>“Bias or prejudice” does not include references to or distinctions based upon race, color, sex, religion, national origin, disability, age, marital status, changes in marital status, pregnancy, parenthood, sexual orientation, or social or economic status when these factors are legitimately relevant to the advocacy or decision of the proceeding, or, with regard to administrative matters, when these factors are legitimately relevant to the issues involved.”</i>
WV	
WI	
WY Effective 7/1/09	Identical

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