

**AMERICAN BAR ASSOCIATION
CPR POLICY IMPLEMENTATION COMMITTEE**

COMPARISON OF ABA MODEL JUDICIAL CODE AND STATE VARIATIONS

RULE 3.1 Extrajudicial Activities in General

A judge may engage in extrajudicial activities, except as prohibited by law* or this Code. However, when engaging in extrajudicial activities, a judge shall not:

- (A) participate in activities that will interfere with the proper performance of the judge’s judicial duties;
- (B) participate in activities that will lead to frequent disqualification of the judge;
- (C) participate in activities that would appear to a reasonable person to undermine the judge’s independence,* integrity,* or impartiality;*
- (D) engage in conduct that would appear to a reasonable person to be coercive; or
- (E) make use of court premises, staff, stationery, equipment, or other resources, except for incidental use for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law.

COMMENT

[1] To the extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities. Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects. In addition, judges are permitted and encouraged to engage in educational, religious, charitable, fraternal or civic extrajudicial activities not conducted for profit, even when the activities do not involve the law. See Rule 3.7.

[2] Participation in both law-related and other extrajudicial activities helps integrate judges into their communities, and furthers public understanding of and respect for courts and the judicial system.

[3] Discriminatory actions and expressions of bias or prejudice by a judge, even outside the judge’s official or judicial actions, are likely to appear to a reasonable person to call into question the judge’s integrity and impartiality. Examples include jokes or other remarks that demean individuals based upon their race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, or socioeconomic status. For the same reason, a judge’s extrajudicial activities must not be conducted in connection or affiliation with an organization that practices invidious discrimination. See Rule 3.6.

[4] While engaged in permitted extrajudicial activities, judges must not coerce others or take action that would reasonably be perceived as coercive. For example, depending upon the circumstances, a judge’s solicitation of contributions or memberships for an organization, even as permitted by Rule 3.7(A), might create the risk that the person solicited would feel obligated to respond favorably, or would do so to curry favor with the judge.

Seven (7) states have identical language (CO, MS, MT, NE, NV, NY, WY)

Fifteen (15) states have similar language (AZ, AR, HI, IN, IA, KS, MD, MN, MO, NH, OH, OK, TN, UT)

Two (2) states have different language (DE, WA)

AL	
AK	
AZ Effective 9/1/09	(c): adds “or demean the judicial office” to end (E): deletes “incidental use for” Adds [5]: <i>The telecommunications policy of the Arizona judiciary, which defines the permissible uses of electronic equipment, is set forth in Part 1, Chapter 5, § 1-503 of the Arizona Code of Judicial Administration.</i>
AR	[3]: replaces examples in second sentence with “personal characteristics”

<p>Effective 7/1/09</p>	<p>Adds [5A]: <i>Before speaking or writing about social or political issues, judges should consider the impact of their statements. Comments may suggest that the judge lacks impartiality. See Rule 1.2. They may create the impression that a judge has or manifests bias or prejudice toward individuals with contrary social or political views. See Rule 2.3. Public comments may require the judge to disqualify himself or herself when litigation involving those issues comes before the judge. See Rule 2.11. 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.</i></p>
<p>CA (as pro- posed)</p>	<p>(B) – CA Canon 4A(4) and Commentary: New. Proposed based on the Model Rule. Substantially the same, but CA proposes adding an explanatory sentence: “Because a judge’s judicial duties take precedence over all other activities (see Canon 3A), a judge must avoid extrajudicial activities that might reasonably result in the judge being disqualified.” The commentary would expand the list of classifications. Comment [4] – CA Commentary to Canon 5A – 3d paragraph: The Committee proposes adding the language to discourage judges from unreasonably pressuring potential contributors or endorsers.</p>
<p>CO Effective 7/1/10</p>	<p>Identical</p>
<p>CT Effective 1/1/11</p>	<p>Identical</p>
<p>DE Effective 11/1/08</p>	<p>First paragraph: <i>A judge, subject to the proper performance of judicial duties, may engage in the following law-related activities if in doing so the judge does not cast reasonable doubt on the capacity to decide impartially, independently and with integrity any issue that may come before the judge:</i> <i>(A): similar to 1990 Model Code Canon 4B but deletes “extra-judicial” and replaces language after “justice” with “(including projects directed to the drafting of legislation)”</i> <i>Comment: same as 1990 Model Code Canon 2B Commentary second paragraph third sentence</i> <i>(B) A judge may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of the judge’s office or interfere with the performance of the judge’s judicial duties.</i> Comment: same as 1990 Model Code Canon 4A Commentary first paragraph but replaces “community” with “society” <i>(C) A judge may engage in activities to improve the law, the legal system, and the administration of justice.</i> <i>(D) A judge should not use judicial chambers, resources, or staff to engage in activities permitted by this Canon 3, except for uses that are de minimis.</i> Has no (E) Has no equivalent to Model Code Comments</p>
<p>DC (as pro- posed)</p>	<p>Identical</p>
<p>FL</p>	<p></p>
<p>HI</p>	<p>First paragraph: adds “law-related and other” after “engage in”</p>

<p>Effective 1/1/09</p>	<p>(A): replaces “judge’s judicial duties” with “duties of judicial office” (B): same as 1990 Model Code Canon 4A(2) (C): replaces “undermine” with “materially impair” and adds “temperament, or fitness to fulfill the duties of judicial office” to end Deletes (E) [1]: adds second sentence “However, when engaging in extrajudicial activities, a judge shall not participate in activities that will lead to frequent disqualification or recusal of the judge.” [3]: replaces “judge’s judicial or official actions” with “duties of judicial office” and adds “marital status” and “political affiliation, or personal characteristics” to list of examples</p>
<p>ID</p>	
<p>IL</p>	
<p>IN Effective 1/1/09</p>	<p>(E): deletes language after “justice”</p>
<p>IA Effective 5/3/10</p>	<p>In first paragraph, adds “However” before “when engaging.”</p>
<p>KS Effective 3/1/09</p>	<p>(c): adds “or demeans the judicial office” to end Deletes (E)</p>
<p>KY</p>	
<p>MD Effective 7/1/10</p>	<p>Deletes “However,” before “when engaging” (e) Changes language to read: <i>make inappropriate use of court premises, staff, stationery, equipment, or other resources.</i> [1] Deletes “appropriate” before “extrajudicial activities”</p>
<p>MA</p>	

MI	
MN Effective 7/1/09	(E): adds “or Judicial Branch policy” to end
MO Effective 1/1/2012	<p>(B) Replaces “disqualification” with “recusal”</p> <p>(C) Replaces text after “activities that would” with: “demean the judicial office or cast reasonable doubt on the judge’s capacity to act impartially as a judge”</p> <p>(E) Deleted</p> <p>[1] Replaces text with: <i>Complete separation of a judge from extrajudicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives. As a judicial officer and person specially 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 the 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. A judge may speak, write, lecture, teach, and participate in other extrajudicial activities concerning the law, the legal system, the administration of justice and nonlegal subjects, subject to the requirements of this Rule 2-3.1.</i></p> <p>[3] Deleted</p> <p>[4] Deleted</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	<p>MC Rule is the same as NH Section (A)(1)-(5). Adds: <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> <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> <i>(2) A judge who is otherwise in compliance with the provisions of Canon 2 relating to the precedence of his of her judicial duties and the timely and competent disposition of the</i></p>

	<p><i>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><i>Comment</i></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>
NJ	
NM (as proposed)	<p>Adds “or court policy” at the end of the first sentence before “this Code.”</p> <p>(E) Deletes “or unless such additional use is permitted by law” at the end.</p> <p>[1] Replaces reference at the end with corresponding Rule 21-307 NMRA</p> <p>[3] Adds “ancestry” as a ground for prohibited discrimination; Replaces “disability” with “physical or mental handicap;” Replaces reference at the end with corresponding Rule 21-306 NMRA.</p> <p>[4] Replaces reference at the end with corresponding Rule 21-307(A) NMRA</p>
NY (as proposed)	Identical
NC	
ND (as proposed)	(A) Replaces “the judge’s judicial duties” with “duties of judicial office”
OH Effective 3/1/09	<p>First paragraph: deletes “or this Code”</p> <p>(E): adds “extrajudicial” before “activities” and deletes language through “permitted”</p> <p>[1]: adds “(2) <i>participating in judicial or bar association activities; or (3) serving on a board, commission, committee or task force established by the Supreme Court or a judicial or bar association</i>” after “projects” and adds “<i>However, a judge should consider whether engaging in a particular extrajudicial activity could give rise to an unlawful interest in a public contract as prohibited by R.C. 2921.42</i>” as last sentence</p>
OK	(E) Deletes the last sentence.

As of September 6, 2011

Effective 4/15/2011	[1] Combines first and second sentences by adding at the end of first sentence: “that concern the law, the legal system, and the administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects.” [3] Deletes the third sentence. Adds [4] <i>A judge’s extrajudicial activities must not be conducted in connection or affiliation with an organization that practices invidious discrimination.</i>
OR	
PA	
SD	
TN (as pro- posed)	(A): Adds: “ <i>and timely</i> ” after “proper” (E): <i>make inappropriate use of court premises, staff, stationery, equipment, or other resources.</i> [4]: Replaces “permitted extrajudicial activities” with “personal or extrajudicial activities”
TX	
UT Effective 4/1/10	(B): adds “unreasonably” before “frequent” Deletes (D) (E): adds “inappropriate” after “make” and deletes languages after “resources” [1]: adds crossreference to 3.12 Deletes [4]
VT	
VA	
WA Effective 1/1/11	(B) State Code adds to end of paragraph, “except activities expressly allowed under this code. This rule does not apply to national or state military service” (C) State Code deletes clause, “appear to a reasonable person to” (D) State Code deletes clause, “appear to a reasonable person to” (E) State Code changes “makes use” to “makes extrajudicial or personal use;” deletes “for activities...such additional use.”
WV	
WI	
WY Effective 7/1/09	Identical

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