

**AMERICAN BAR ASSOCIATION
CPR POLICY IMPLEMENTATION COMMITTEE**

**COMPARISON OF MODEL JUDICIAL CODE PROVISIONS:
ABA TO STATE PROPOSALS, BY RULE**

RULE 3.3 Testifying as a Character Witness	
<p>A judge shall not testify as a character witness in a judicial, administrative, or other adjudicatory proceeding or otherwise vouch for the character of a person in a legal proceeding, except when duly summoned.</p> <p>COMMENT</p> <p>[1] A judge who, without being subpoenaed, testifies as a character witness abuses the prestige of judicial office to advance the interests of another. See Rule 1.3. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.</p> <p>Nine (9) states have identical language (AR, CO, MD, MN, MT, NE, NY, OH, TN) Thirteen (13) states have similar language (AZ, HI, IN, IA, KS, MO, MS, NV, NH, OK, UT, WA, WY) One (1) state has different language (DE)</p>	
AL	
AK	
AZ Effective 9/1/09	Title: replaces “Testifying” with “Acting”
AR Effective 7/1/09	Identical
CA	
CO Effective 7/1/10	Identical
CT Effective 1/1/11	Identical
DE Effective 11/1/08	Rule: same as last sentence of 1990 Model Code Canon 2B but replaces “shall” with “should” Comment: The testimony of a judge as a character witness injects the prestige of the judicial office into the proceeding in which the judge testifies and may be misunderstood to be an official testimonial. This Rule, however, does not afford the judge a privilege against testifying in response to an official summons. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.
DC (as pro-	Identical

posed)	
FL	
HI Effective 1/1/09	Rule: adds last sentence of [1] as last sentence but replaces “Except in” with “Unless there are” [1]: deletes last sentence
ID	
IL	
IN Effective 1/1/09	Adds [2]: <i>This Rule does not prohibit judges from writing letters of recommendation in non-adjudicatory proceedings pursuant to Rule 1.3, Comments [2] and [3].</i> Adds [3]: <i>This Rule applies to attorney and judicial disciplinary proceedings, including reinstatements.</i>
IA Effective 5/3/10	Changes “duly summoned” to “duly subpoenaed.”
KS Effective 3/1/09	[1]: replaces “abuses” with “inappropriately uses”
KY	
MD Effective 7/1/10	Identical
MA	
MI	
MN Effective 7/1/09	Identical
MO Effective 1/1/2012	Deletes “or otherwise vouch for the character of a person in a legal proceeding” [1] Replaces first sentence and reference to Rule 1.3 with: “A judge must not testify voluntarily as a character witness because to do so may lend the prestige of the judicial office in support of the party for whom the judge testifies. Moreover when a judge testifies as a witness, a lawyer who regularly appears before the judge may be placed in the awkward position of cross-examining the judge. A judge may, however, testify when properly subpoenaed. Adds [2]: “Testifying as to the qualifications of a judicial nominee at a confirmation hearing does not violate this Rule 2-3.3.”
MS (as pro- posed)	Changes “summoned” to “subpoenaed”
MT Effective 1/1/09	Identical
NE Effective 1/1/2011	Identical
NV Effective 1/19/10	Adds [2]: <i>This rule does not apply to bar admissions proceedings or attorney or judicial discipline proceedings. A judge may voluntarily appear and testify as to the character of the bar applicant, attorney or judge who is the focus of those proceedings.</i>

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NH Effective 4/1/2011	Adds [2]: <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>
NJ	
NM (as pro- posed)	[1] Replaces “abuses the prestige” with “lends the prestige;” Replaces reference with the corresponding Rule 21-103 NMRA.
NY (as pro- posed)	Identical
NC	
ND (as pro- posed)	Moves “except when duly summoned” to the beginning of the Rule [1] Replaces “abuses” with “lends”
OH Effective 3/1/09	Identical
OK Effective 4/15/2011	Same as MC, but does not adopt comment
OR	
PA	
SD	
TN (as pro- posed)	Identical
TX	
UT Effective 4/1/10	Rule: replaces “summoned” with “subpoenaed”
VT	
VA	
WA Effective 1/1/11	Changes title to “Acting as a Character Witness”. Changes “shall not testify” to “shall not act.”
WV	
WI	
WY Effective 7/1/09	Comment: deletes last sentence

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corrections or additions and the source of that information to John Holtaway, (312) 988-5298, John.Holtaway@americanbar.org