

**AMERICAN BAR ASSOCIATION  
CPR POLICY IMPLEMENTATION COMMITTEE**

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

<b>RULE 3.5 Use of Nonpublic Information</b>	
	<p><b>A judge shall not intentionally disclose or use nonpublic information* acquired in a judicial capacity for any purpose unrelated to the judge’s judicial duties.</b></p> <p><b>COMMENT</b></p> <p>[1] In the course of performing judicial duties, a judge may acquire information of commercial or other value that is unavailable to the public. The judge must not reveal or use such information for personal gain or for any purpose unrelated to his or her judicial duties.</p> <p>[2] This rule is not intended, however, to affect a judge’s ability to act on information as necessary to protect the health or safety of the judge or a member of a judge’s family, court personnel, or other judicial officers if consistent with other provisions of this Code.</p> <p>Eleven (11) states have identical language (AR, CO, IN, MN, MO, MS, NV, NH, NY, WA, WY) Thirteen (13) states have similar language (AZ, DE, HI, IA, KS, MD, MT, NE, OH, OK, TN, UT)</p>
<b>AL</b>	
<b>AK</b>	
<b>AZ</b> <b>Effective</b> <b>9/1/09</b>	[2]: replaces language starting with “the judge” and ending with “officers” with “any individual”
<b>AR</b> <b>Effective</b> <b>7/1/09</b>	Identical
<b>CA</b>	
<b>CO</b> <b>Effective</b> <b>7/1/10</b>	Identical
<b>CT</b> <b>Effective</b> <b>1/1/11</b>	<p>Changes “Nonpublic” to “Confidential” in title; Adds to end: “unless the judge is acting on information necessary to protect the health or safety of the judge, a member of the judge’s family, court personnel, a judicial officer or any other person if consistent with other provisions of this Code;”</p> <p>Does not have Model Code Comment [2].</p>
<b>DE</b> <b>Effective</b> <b>11/1/08</b>	<p>Rule: replaces language through “capacity” with “Information acquired by a judge in the judge's judicial capacity should not be used or disclosed by the judge in financial dealings or”</p> <p>Deletes Comment</p>
<b>DC</b> <b>(as pro-</b> <b>posed)</b>	Identical
<b>FL</b>	

<b>HI</b> Effective 1/1/09	Replaces “intentionally” with “knowingly” [2]: replaces language after “of the judge” with “or anyone else”
<b>ID</b>	
<b>IL</b>	
<b>IN</b> Effective 1/1/09	Identical
<b>IA</b> Effective 5/3/10	[2] Replaces “of the judge...officers” with “of any individual.”
<b>KS</b> Effective 3/1/09	[2]: replaces language between “judge or” and “if” with “others”
<b>KY</b>	
<b>MD</b> Effective 7/1/10	Adds: <i>Nonpublic information means information that is not available to the public. It may include information that is (a) sealed or shielded pursuant to law or court order, (b) impounded, (c) communicated in camera, or (d) offered in grand jury proceedings, pre-sentencing reports, dependency cases, or psychiatric reports.</i> [2] Deletes last clause, “if consistent with other provisions of this Code.”
<b>MA</b>	
<b>MI</b>	
<b>MN</b> Effective 7/1/09	Identical
<b>MO</b> Effective 1/1/2012	Replaces “intentionally” with “knowingly” [2] Adds “Rule 2-2.5” to “this rule;” Adds “or members of the public” after “other judicial officers”
<b>MS</b> (as pro- posed)	Identical
<b>MT</b> Effective 1/1/09	Rule: adds “known or” before “acquired” and “in contravention of or” before “unrelated Adds [1]: <i>A judge is, by definition, uniquely privy to the inclination of the court to resolve a matter or issue pending before it in a particular manner. A judge shall not, under any circumstances, disclose such information to a third party in advance of the court’s release of its decision. With respect to the parties in the case, a judge shall not disclose such information to a party or counsel unless the court simultaneously shares such information openly with all parties to the proceeding.</i>
<b>NE</b> Effective 1/1/2011	Adds [3]: <i>This rule does not prohibit the judge from acting on or disclosing nonpublic information to prevent reasonably certain death or substantial bodily harm, if consistent with other provisions of the Code.</i>
<b>NV</b> Effective 1/19/10	Identical
<b>NH</b>	Identical

<b>Effective 4/1/2011</b>	
<b>NJ</b>	
<b>NM (as pro- posed)</b>	[2] Replaces “the judge or a member of a judge’s family, court personnel, or other judicial officers” with “any member of the general public”
<b>NY (as pro- posed)</b>	Identical
<b>NC</b>	
<b>ND (as pro- posed)</b>	Replaces “intentionally” with “knowingly;” Replaces “the judge’s judicial duties” with “the duties of judicial office”
<b>OH Effective 3/1/09</b>	<p>Rule: replaces “intentionally” with “knowingly”</p> <p>Adds [1A]: <i>The premature disclosure of confidential information regarding the outcome of pending cases gives the appearance of partiality and fosters obvious public distrust of the judiciary and legal profession. Among other things, premature disclosure creates the potential for the release of inaccurate information and allows attorneys, litigants, and others with access to the information to use it for personal gain before it becomes public knowledge.</i></p> <p>Adds [3]: <i>Nothing in this rule shall prohibit the disclosure of any of the following: (1) a decision that has been announced on the record or in open court, but that has not been journalized in a written opinion, entry, or other document; (2) information regarding the probable or actual decision in a pending case or legal proceeding to a judge or employee of the court in which the matter is pending; (3) other information that is a matter of public record or that may be disclosed pursuant to law.</i></p> <p>Adds [4]: <i>The imposition of discipline upon a judge for violation of this rule shall not preclude prosecution for a violation of any applicable provision of the Revised Code, including, but not limited to, R.C. 102.03(B).</i></p>
<b>OK Effective 4/15/2011</b>	[2] Deletes “however” in the beginning of the sentence; Replaces “the judges or a member of a judge’s family, court personnel, or other judicial officers” after “protect the health of safety” with “any individual”
<b>OR</b>	
<b>PA</b>	
<b>SD</b>	
<b>TN (as pro- posed)</b>	[1]: Deletes “of commercial or other value”; Adds: <i>“The judge should take special care to ensure that court staff, court officials, and others subject to the judge’s direction and control are aware of this rule and shall require them to act in a manner consistent with the judge’s obligations under this Code. See Rule 2.12(A).”</i>
<b>TX</b>	
<b>UT Effective 4/1/10</b>	[2]: deletes “court personnel, or other judicial officers”
<b>VT</b>	
<b>VA</b>	
<b>WA Effective</b>	Identical

As of September 6, 2011

<b>1/1/11</b>	
<b>WV</b>	
<b>WI</b>	
<b>WY</b> <b>Effective</b> <b>7/1/09</b>	Identical

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