

**AMERICAN BAR ASSOCIATION
CPR POLICY IMPLEMENTATION COMMITTEE**

COMPARISON OF ABA MODEL JUDICIAL CODE AND STATE VARIATIONS

RULE 3.8 Appointments to Fiduciary Positions	
<p>(A) A judge shall not accept appointment to serve in a fiduciary* position, such as executor, administrator, trustee, guardian, attorney in fact, or other personal representative, except for the estate, trust, or person of a member of the judge’s family,* and then only if such service will not interfere with the proper performance of judicial duties.</p> <p>(B) A judge shall not serve in a fiduciary position if the judge as fiduciary will likely be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves, or one under its appellate jurisdiction.</p> <p>(C) A judge acting in a fiduciary capacity shall be subject to the same restrictions on engaging in financial activities that apply to a judge personally.</p> <p>(D) If a person who is serving in a fiduciary position becomes a judge, he or she must comply with this Rule as soon as reasonably practicable, but in no event later than [one year] after becoming a judge.</p> <p>COMMENT [1] A judge should recognize that other restrictions imposed by this Code may conflict with a judge’s obligations as a fiduciary; in such circumstances, a judge should resign as fiduciary. For example, serving as a fiduciary might require frequent disqualification of a judge under Rule 2.11 because a judge is deemed to have an economic interest in shares of stock held by a trust if the amount of stock held is more than de minimis.</p> <p>Eleven (11) states have identical language (AZ, AR, CO, IN, IA, KS, MS, NV, NH, WA, WY) Eleven (11) states have similar language (HI, MN, MT, MD, MO, NE, NY, OH, OK, TN, UT) One (1) state has different language (DE)</p>	
AL	
AK	
AZ Effective 9/1/09	Identical
AR Effective 7/1/09	Identical
CA	
CO Effective 7/1/10	Identical
CT Effective	Identical

1/1/11	
DE Effective 11/1/08	(A): similar to 1990 Model Code Canon 4E(1) but replaces “shall” with “should” Comment: Mere residence in the household of a judge is insufficient for a person to be considered a member of the judge's family for the purposes of this Rule. The person must be treated by the judge as a member of the judge's family. (B) As a family fiduciary, a judge is subject to the following restrictions: (B)(1): similar to Model Code (B) but replaces “shall” with “should” (B)(2): similar to Model Code (D) Comment: similar to 1990 Model Code Canon 4E Commentary second paragraph
DC (as pro- posed)	Adds Comment: <i>[2] Judges are cautioned that, pursuant to D.C. Code §20-303 (2001), a judge of “any court established under the laws of the United States” is prohibited from serving as a personal representative of a decedent’s estate in the District of Columbia unless the judge is “the surviving spouse or domestic partner of the decedent or is related to the decedent within the third degree.”</i>
FL	
HI Effective 1/1/09	(A): adds “conservator” to list
ID	
IL	
IN Effective 1/1/09	Identical
IA Effective 5/3/10	(D) Length of time is six months.
KS Effective 3/1/09	Identical
KY	
MD Effective 7/1/10	Adds: <i>(e) Paragraph (a) of this Rule does not apply to retired judges approved for recall under Maryland Constitution, Article IV, §3A.</i>
MA	

MI	
MN Effective 7/1/09	(A): adds “a person with whom the judge has an intimate relationship, or a member of the judge’s household” after “family”
MO Effective 1/1/2012	(A) Adds “conservator” after “trustee” (D) Adds “Rule 2-3.8” to “this Rule;” specifies the period of one year for compliance [1] Replaces “disqualification” with “recusal”
MS (as pro- posed)	(D) Amount of time is one year.
MT Effective 1/1/09	[1]: adds “This Rule does not prohibit a judge from assuming guardianship of a minor child, as authorized by law” to end
NE Effective 1/1/2011	(A) Adds “personal representative” before “executor;” adds “conservator” before “attorney in fact;” deletes “personal” after “or other;” (D) Length of time is “one year.”
NV Effective 1/19/10	Identical
NH Effective 4/1/2011	Identical
NJ	
NM (as pro- posed)	(D) Specified time period is one year. [1] Replaces reference with respective Rule 21-211 NMRA
NY (as pro- posed)	(A) Adds, after “personal representative:” “designated by an instrument executed after January 1, 1974;” adds to end: “For good cause shown, a judge may apply to the Chief Administrator of the Courts for exemption from the provisions of this Rule;” (D) Adds to end: “For good cause shown, a judge may apply to the Chief Administrator of the Courts for exemption from this provision;” Adds: <i>(E) Any person who may be appointed to fill a full-time judicial vacancy on an interim or temporary basis pending an election to fill such vacancy may apply to the Chief Administrator of the Courts for exemption from the provisions in paragraphs (A) and (B) of this Rule during the period of such interim or temporary appointment.</i>
NC	
ND (as pro- posed)	(A) Replaces “fiduciary position” with “fiduciary capacity;” Adds “conservator” before “or other personal representative;” Replaces “judicial duties” at the end with “the duties of judicial office” (B) Replaces “fiduciary position” with “fiduciary capacity” (D) Replaces “fiduciary position” with “fiduciary capacity;” Establishes a 1-year compliance period
OH Effective 3/1/09	(D): time period is six months
OK	(A) Adds “or member of the judge’s household” after “a member if the judge’s family”

As of September 6, 2011

Effective 4/15/2011	(D) Length of time is “one year.”
OR	
PA	
SD	
TN (as pro- posed)	(A): Adds “conservator” between “guardian” and “attorney in fact”;
TX	
UT Effective 4/1/10	(A): deletes language between “position” and “except” and adds “as a fiduciary” after “except” (D): replaces “must” with “shall”
VT	
VA	
WA Effective 1/1/11	Identical
WV	
WI	
WY Effective 7/1/09	Identical

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