

**American Bar Association
CPR Policy Implementation Committee**

Comparison of ABA Model Judicial Code and State Variations

	Application
	<p>II. RETIRED JUDGE SUBJECT TO RECALL</p> <p>A retired judge subject to recall for service, who by law is not permitted to practice law, is not required to comply:</p> <p style="padding-left: 40px;">(A) with Rule 3.9 (Service as Arbitrator or Mediator), except while serving as a judge; or</p> <p style="padding-left: 40px;">(B) at any time with Rule 3.8 (Appointments to Fiduciary Positions).</p> <p>Comment</p> <p>[1] For the purposes of this section, as long as a retired judge is subject to being recalled for service, the judge is considered to “perform judicial functions.”</p> <p>One (1) state has identical language (MN) Seven (7) states have similar language (CO, HI, IA, NV, OH, OK, UT) Seven (7) states have different language (AZ, DE, IN, KS, MO, NH, TN) Nine (9) states do not have (AR, CT, MD, MS, MT, NE, NY, WA, WY)</p>
AL	
AK	
AZ Effective 9/1/09	<p>B: similar to Model Code II but replaces “Subject to Recall” with “Available for Assignment”</p> <p>First paragraph: replaces language between “judge” and “is not required” with “available for assignment to judicial service” and adds “at any time” to end. Moves Model Code II(A) into this paragraph but changes language to “with Rules 3.2 (appearances before governmental bodies and consultation with government officials), 3.3 (acting as a character witness), 3.4 (appointments to governmental positions), 3.7 (participation in educational, religious, charitable, fraternal, or civic organizations and activities), 3.8 (appointments to fiduciary positions), 3.9 (service as arbitrator or mediator), 3.10 (practice of law), 3.11 (financial, business or remunerative activities), 3.12 (compensation for extrajudicial activities), 3.13 (acceptance and reporting of gifts, loans, bequests, benefits, or other things of value), 3.14 (reimbursement of expenses and waivers of fees or charges), 3.15 (reporting requirements), and 4.1(A) (political and campaign activities of judges and judicial candidates in general).</p> <p>Deletes Model Code II(B) and Comments</p>
AR Effective	Does not have

As of September 6, 2011

7/1/09	
CA	
CO (as proposed)	Title: adds "Senior and" to beginning and deletes "Subject to Recall" First paragraph: replaces language before "not" with "Senior judges, while under contract pursuant to the senior judge program, and retired judges, while recalled and acting temporarily as a judge, are" (A): deletes language after "Mediator" (B): deletes "at any time" Deletes [1]
CT Effective 1/1/2011	Does not have
DE Effective 11/1/08	<i>B. A retired judge subject to recall who by law is not permitted to practice law, must comply with this Code during any period of recall, except for Rule 3.8 [acting as a fiduciary].</i>
DC (as proposed)	Not Adopted
FL	
HI Effective 1/1/09	Title: replaces "Subject to Recall" with "Recalled to Service" First paragraph: This Code applies to a retired judge recalled to service, who is not actively engaged in the practice of law, except a retired judge is not required to comply with either of the following: [1]: deletes "subject to being"
ID	
IL	
IN Effective 1/1/09	II. Senior Judge A senior judge is considered to be a periodic part-time judge subject to Part IV of this Application Section.
IA Effective 5/3/10	Title: Adds "Justice or" before "Judge;" adds "for Service under Iowa Code Section 602.1612" to end;" Text of rule: Adds "justice or" before "judge;" [1] Adds to end: This provision does not supercede the restrictions applicable to retired judges participating in the senior judge program."
KS Effective 3/1/09	<i>III. Retired Judge (A) A retired judge under contract to the senior judge program shall be deemed a part-time judge. (B) A retired judge not under contract to the senior judge program but who is recalled for specific cases or specific periods of service shall be deemed a part-time or occasional part-time judge, depending on the repeated or occasional nature of the service. (C) A retired judge who does not accept judicial assignments is not required to comply with this Code.</i>
KY	
MD Effective 7/1/10	Does not have

MA	
MI	
MN Effective 7/1/09	<p><i>“Contribution” means money, a negotiable instrument, or a donation in kind that is given to a political committee, political fund, principal campaign committee, or party unit as defined in Minn. Stat. 10A.01. “Contribution” includes a loan or advance of credit to a political committee, political fund, principal campaign committee, or party unit, if the loan or advance of credit is: (1) forgiven; or (2) repaid by an individual or an association other than the political committee, political fund, principal campaign committee, or party unit to which the loan or advance of credit was made. If an advance of credit or a loan is forgiven or repaid as provided in this paragraph, it is a contribution in the year in which the loan or advance of credit was made. “Contribution” does not include services provided without compensation by an individual volunteering personal time on behalf of a candidate, ballot question, political committee, political fund, principal campaign committee, or party unit, or the publishing or broadcasting of news items or editorial comments by the news media. See Rules 4.1 and 4.4.</i></p> <p>Deletes “domestic partner”</p> <p>Economic interest: in (2) deletes “domestic partner” and adds “a person with whom the judge has an intimate relationship, or a member of the judge’s household” after “child”</p> <p>Adds <i>“Intimate relationship” means a continuing relationship involving sexual relations as defined in Rule 1.8(j)(1) of the Rules of Professional Conduct.</i></p> <p>Judicial candidate: deletes “or retention in”</p> <p>Adds <i>“Leader in a political organization” is one who holds an elective, representative, or appointed position in a political organization. See Rule 4.1.</i></p> <p>Member of the candidate’s family and Member of the judge’s family: deletes “domestic partner”</p> <p>Public election: deletes language after first use of “election”</p>
MS (as pro- posed)	Does not have
MO Effective 1/1/2012	<p>Replaces with:</p> <p><i>A retired judge who has an application on file with the clerk of the Supreme Court or who is otherwise appointed by the Supreme Court to serve as a senior judge pursuant to article V, section 26.3 of the Missouri Constitution, shall comply with all provisions of this code except Rule 2-3.9 (Service as Arbitrator or Mediator) so long as the judge is in full compliance with Rule 11.9 (Senior Judge Limitations).</i></p>
MT Effective 1/1/09	Does not have
NE Effective 1/1/2011	<p>Does not adopt Model Code.</p> <p>II. PART-TIME CHILD SUPPORT REFEREES, PART-TIME CLERK MAGISTRATES, AND REFEREES</p> <p><i>(A) Part-time child support referees are not required to comply with Rules 3.4, 3.8, 3.9, 3.10, 3.11(B), 3.11(C)(2), or 3.11(D) and shall not practice law in the court upon which they serve, but may practice law in any other court in matters not related to any proceedings in which they have served as child support referees.</i></p>

	<p><i>(B) Referees, appointed in civil or disciplinary proceedings, while acting as such, are not required to comply with sections Rules 3.4, 3.8, 3.9, 3.10, 3.11(B), 3.11(C)(2), 3.11(D), 3.14(C), or 3.15. Persons who have served as such a referee shall not act as lawyers in any proceeding in which they have served as referees or in any related proceedings.</i></p> <p><i>(C) Part-time clerk magistrates are not required to comply with Rules 3.4, 3.8, 3.9, 3.10, 3.11(B), 3.11(C)(2), or 3.11(D) and shall not practice law in the court in which they serve, but may practice law in any other court in matters not related to any proceedings in which they have served as a clerk magistrate.</i></p>
<p>NV Effective 1/19/10</p>	<p>Combines (A) and (B) and adds Rule 3.15(A)(1). A retired judge subject to recall for service, who by law is not permitted to practice law, is not required to comply at any time with Rule 3.8 (Appointments to Fiduciary Positions), Rule 3.9 (Service as Arbitrator or Mediator), and Rule 3.15(A)(1) (Reporting Requirements).</p>
<p>NH Effective 4/1/2011</p>	<p>Does not adopt MC Application I-VI.</p> <p><i>A. Anyone, whether or not a lawyer, who is an officer of a judicial system and who performs judicial functions, including an officer such as a magistrate, court commissioner, marital master, special master or referee, is treated as a judge within the meaning of this Code. All judges shall comply with this Code except as provided below.</i></p> <p><i>B. All retired judges who have elected to take senior active status or who wish to serve as judicial referees or temporary justices of the supreme court shall comply with the provisions of this Code governing part time judges, except that they shall also comply with the provisions of Rule 3.9 if they wish to serve as a private mediator or arbitrator for compensation. A retired judge who does not take senior active status and who does not desire to serve as a judicial referee or a temporary justice of the supreme court is not subject to Rule 3.9 of this Code.</i></p> <p><i>C. Part time Judge. A part time judge:</i></p> <p><i>(1) is not required to comply</i></p> <p><i>(a) except while serving as a judge, with Rule 2.10(A);</i></p> <p><i>(b) at any time, with Rules 3.1(B), 3.4, 3.7(A)(6), 3.8, 3.9, 3.10, 3.11(B), 3.11(C), 3.13(A), 3.14 and 3.15;</i></p> <p><i>(c) at any time, with Rule 3.2 but only to the extent that it prohibits appearances before administrative bodies in adjudicatory proceedings; otherwise, a part time judge shall comply with Rule 3.2.</i></p> <p><i>(2) shall not practice law in the court on which the judge serves, in any other court of the same level (e.g., a part time district court judge shall not practice law in any other district court), any court subject to the appellate jurisdiction of the court on which the judge serves, and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.</i></p> <p><i>(3) may serve as counsel to the town wherein the judge's court is located or a town within the judicial district of the judge's court, provided that:</i></p> <p><i>(a) the judge may give no advice to the police of such town and may give no advice to any other officer or employee of the town that could reasonably be expected to influence the exercise of discretion by the police in the performance of their duties;</i></p> <p><i>(b) the judge may give no advice to any officer or employee of the town on a</i></p>

	<p><i>matter that could reasonably be expected to be the subject of any action or suit before the judge's court; and</i></p> <p><i>(c) the judge shall recuse him or herself from sitting as judge on any case in which the judge's advice to the town is directly called into question or in which a ruling could directly affect the interests of the town.</i></p> <p><i>(4) Notwithstanding anything above to the contrary, a part time marital master shall be governed by all of the canons of the Code of Judicial Conduct as provided in Superior Court Administrative Rule 12-7.</i></p> <p>D. <i>Clerks, Deputy Clerks, Registers of Probate, Deputy Registers of Probate, any persons performing the duties of a Clerk or Register, and Court Stenographers, Monitors and Reporters shall comply with Rules 2.1, 2.2, 2.3, 2.5, 2.8, 2.10, 2.12, 2.15, and 2.16.</i></p> <p>E. <i>Time for Compliance. A person to whom this Code becomes applicable shall comply immediately with all provisions of this Code except Sections 4D(2), 4D(3), and 4E, and shall comply with these sections as soon as reasonably possible and shall do so in any event within the period of one year.</i></p> <p>NH Comment [1] is similar to MR Comment [1] to Application III, but replaces “including a retired judge no longer subject to recall” with “(no longer accepts appointments); Replaces “informed consent” with “express consent;” Replaces language after “pursuant” with “to Rules 1.12(a) of the N.H. Rules of Professional Conduct.”</p> <p>NH Comment [2] is similar to MR Comment [1] to Application VI, but replaces references to Rules 3.8 and 3.11 with Sections 4E and 4D(3).</p> <p>NH Comment [3] is the same as MR Comment [3] to Application I.</p>
NJ	
NM (as proposed)	Deleted
NY (as proposed)	Does not adopt. Adds Canon 5 instead (see “Extra Rules” chart)
NC	
ND (as proposed)	Does not adopt.
OH Effective 3/1/09	First paragraph: Adds “This code applies to” to beginning and “except that a retired judge” after “law” Deletes “(Service as Arbitrator or Mediator)” and “(Appointments to Feduciary Positions)”
OK Effective 4/15/2011	Changes title to: RETIRED JUDGE ON ACTIVE STATUS” Replaces “retired judge subject to recall for service” with “retired judge on active status” in throughout the text, including in Comment [1] (B) Adds reference to Rule 3.8(A)
OR	
PA	
SD	
TN	Title: Senior Judge

As of September 6, 2011

(as proposed)	<i>A judge designated as a senior judge or justice, who by law is not permitted to practice law, is required to comply with the provision of this Code to the same extent as a full time judge. [1] For the purposes of this section, a senior judge is considered to “perform judicial functions.” Tennessee Code Annotated section 17-2-302 specifically prohibits senior judges from practicing law and further requires their compliance with this Code.</i>
TX	
UT Effective 4/10/09	Title: Active Senior Judge First paragraph: replaces language before “is not required” with “An active senior judge appointed under Rule 11-201 of the Rules of Judicial Administration” Adds (C): “at any time with Rule 3.11(B) (Financial, Business, or Remunerative Activities). [1]: replaces “as long as a retired” with “an active senior” and language after “subject to” with “this Code during any term of office to which he or she has been appointed to serve”
VT	
VA	
WA Effective 1/1/11	Does not have
WV	
WI	
WY Effective 7/1/09	Does not have

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