

**American Bar Association
CPR Policy Implementation Committee**

Comparison of ABA Model Judicial Code and State Variations

Application
<p>III. CONTINUING PART-TIME JUDGE</p> <p>A judge who serves repeatedly on a part-time basis by election or under a continuing appointment, including a retired judge subject to recall who is permitted to practice law (“continuing part-time judge”),</p> <p style="padding-left: 40px;">(A) is not required to comply:</p> <p style="padding-left: 80px;">(1) with Rules 2.10(A) and 2.10(B) (Judicial Statements on Pending and Impending Cases), except while serving as a judge; or</p> <p style="padding-left: 80px;">(2) at any time with Rules 3.4 (Appointments to Governmental Positions), 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), 3.14 (Reimbursement of Expenses and Waivers of Fees or Charges), 3.15 (Reporting Requirements), 4.1 (Political and Campaign Activities of Judges and Judicial Candidates in General), 4.2 (Political and Campaign Activities of Judicial Candidates in Public Elections), 4.3 (Activities of Candidates for Appointive Judicial Office), 4.4 (Campaign Committees), and 4.5 (Activities of Judges Who Become Candidates for Nonjudicial Office); and</p> <p style="padding-left: 40px;">(B) shall not practice law in the court on which the judge serves or in 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.</p> <p>Comment</p> <p>[1] When a person who has been a continuing part-time judge is no longer a continuing part-time judge, including a retired judge no longer subject to recall, that person may act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto only with the informed consent of all parties, and pursuant to any applicable Model Rules of Professional Conduct. An adopting jurisdiction should substitute a reference to its applicable rule.</p> <p>Thirteen (13) states have similar language (AZ, AR, CO, HI, IN, IA, MN, NV, OH, OK, TN, UT, WY)</p>

	Five (5) states have different language (KS, MO, NE, NH, WA) Six (6) states do not have (CT, DE, MD, MS, MT, NY)
AL	
AK	
AZ Effective 9/1/09	C (compare to Model Code III): A judge who serves repeatedly on a part-time basis by election or under on a continuing or periodic appointment, including a retired judge subject to recall who is permitted to practice law (“continuing part-time judge”) basis, but is permitted to devote time to another profession or occupation and whose compensation is less than that of a full-time judge, is not required to comply: (3): similar to Model Code (B) but adds “specific” before “court” [1]: deletes language beginning with “including” and ending with “recall” and last sentence
AR Effective 7/1/09	(A)(2): does not include Canon 4 rules (B): replaces “or in any court subject to the appellate jurisdiction of the court on which the judge serves” with “shall not appear in any criminal matter in the county in which the judge serves” <i>Adds [2A]: Paragraph (B) does not, as a general rule, prohibit a continuing part-time judge from practicing law. However the position of a judge in presiding over a criminal matter and then appearing as a criminal defense attorney in a court of general jurisdiction and opposing that same prosecutor creates an appearance of impropriety, even when the proceedings are separate. Accordingly, continuing part time judges are prohibited from appearing in any criminal matter in the county where the judge serves, regardless of how the criminal matter arises.</i> <i>Adds [3A]: Because the position of the judge is paramount to the judge’s private law practice, the judge should be particularly sensitive to conflicts that may arise when the judge presides over matters involving particular attorneys and then, in his or her private law practice, appears in adversary proceedings in a court of general jurisdiction opposing the same attorneys who appear before the judge. Opposing counsel may be hampered in vigorous advocacy against an attorney who wears judicial robes and presides over cases involving that counsel. The primacy of judicial service and the obligation to avoid even the appearance of impropriety mandate caution in accepting civil cases in disputed matters.</i>
CA	
CO (as pro- posed)	Title: deletes “Continuing” First paragraph: deletes “repeatedly” and language after “basis” Deletes Model Code (A)(1) (A)(1): similar to Model Code (A)(2) but deletes “at any time” (B): adds “in any comparable level court in the same judicial district on which the judge serves or” before “in any” <i>Adds (C): shall not practice law with respect to any controversies which will or appear likely to come before the court on which the judge serves or any court of the same or comparable jurisdiction within the same judicial district on which the judge serves.</i> <i>[1]: This Canon limits a part-time judge from practicing law in any comparable level court in the same judicial district as the judge serves. However, this prohibition shall not apply to any temporary assignment of a part-time judge to a comparable level court</i>

	<p><i>outside the judicial district as the judge serves. In addition, this prohibition shall not apply to a one-time assignment of a part-time judge to a court of higher jurisdiction (such as a one-time assignment under order in a district court case) either within, or outside of, the judicial district in which the judge serves. A part-time judge serving on temporary assignment is not thereby precluded from practicing law in the court to which that judge may be temporarily assigned. During such period of temporary assignment, however, the judge shall not actively participate as counsel in any case pending before the court to which the judge is temporarily assigned.</i></p> <p><i>Adds [2]: A part-time judge who practices law must avoid undertaking or continuing any relationship which precludes the judge from maintaining the integrity of the bench which he or she serves and at the same time providing the undivided loyalty to clients which the exercise of professional judgment on behalf of a client demands. Being “of counsel” is deemed to be the practice of law, whereas acting as a mediator or arbitrator is not deemed to be the practice of law. Necessarily, the professional responsibilities of a part-time judge who practices law limit the practice of law by the judge’s partners and associates.</i></p>
CT Effective 1/1/2011	Does not have
DE Effective 11/1/08	Does not have
DC (as pro- posed)	Not Adopted
FL	
HI Effective 1/1/09	<p>Title: deletes “Continuing”</p> <p><i>(A) This Code applies to a part-time judge, including a retired judge recalled to service who is permitted to practice law and a per diem judge (“part-time judge”), except that a part-time judge is not required to comply with either of the following:</i></p> <p>(B): deletes “or in any court subject to the appellate jurisdiction of the court on which the judge serves”</p> <p>Adds (C): <i>Courts Distinguished. For purposes of Part III(b) of this section, the District Family Courts and the District Courts are separate courts. A part-time judge assigned to preside solely in District Court is not disqualified from practicing before the District Family Court, and a part-time judge assigned to preside solely in the District Family Court is not disqualified from practicing before the District Court.</i></p> <p>[1]: deletes “continuing”</p>
ID	
IL	
IN Effective 1/1/09	<p>First paragraph: deletes language starting with “including” and ending with “law”</p> <p>(A)(2): does not include Canon 4 rules</p> <p>Deletes [1]</p>
IA Effective 5/3/10	<p>Title: Adds “Magistrate and Other” to beginning;</p> <p>Text: Deletes “by election;” deletes “including...to practice law;”</p> <p>(A)(2) Does not include reference to Rules 4.1 through 4.5;</p>

	<p>(B) Adds to beginning: “except as provided in paragraph (C);” deletes “or in any...judge serves;” Adds: <i>(C) when not otherwise prohibited by the Iowa Rules of Professional Conduct, may appear as counsel for a client in a matter that is within the jurisdiction of a magistrate so long as the matter is heard by a district judge or a district associate judge. Partners or associates of a magistrate may appear before a magistrate other than their partner or associate;”</i> [1] Deletes clause, “including...subject to recall;” deletes last sentence: “An adopting jurisdiction...applicable rule.”</p>
<p>KS Effective 3/1/09</p>	<p><i>IV. Part-time Judge</i> (A) <i>A part-time judge is a judge who serves or expects to serve repeatedly on a part-time basis whether by election or under an appointment for a period of time or for each case heard.</i> (B) <i>A part-time judge shall not practice law of the type which the judge is assigned to hear in 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 proceeding related thereto.</i> (C): <i>similar to Model Code (A)(2)</i> (D): <i>similar to Model Code (A)(1)</i> [2] (follows VI): <i>similar to Model Code [1]: deletes “continuing” throughout and replaces language starting with “including” and ending with “recall” with “(no longer accepts appointments) or whose service as an occasional part-time judge in a proceeding has concluded”</i></p>
KY	
<p>MD Effective 7/1/10</p>	Does not adopt.
MA	
MI	
<p>MN Effective 7/1/09</p>	<p>First paragraph: deletes “by election or” and language after “appointment” (B): replaces first use of “court” with “district court of the county” and adds “or, if the court is divided into divisions, in the division of the court on which the judge serves” after “serves”</p>
<p>MS (as pro- posed)</p>	Does not have
<p>MO Effective 1/1/2012</p>	<p>Replaces with: <i>A judge, other than a Senior Judge, who serves on a part-time basis as a municipal judge by election or appointment, shall comply with all provisions of this code:</i> (A) <i>except:</i> (1) <i>Rules 2-3.2 to 2-3.15 and Rules 2-4.1 to 2-4.2; and</i> (2) <i>Rule 2-2.10 (Judicial Statements on Pending and Impending Cases), while not serving as a judge;</i> (B) <i>but shall not:</i> (1) <i>practice law in the municipal division of the circuit court on which the judge serves;</i></p>

	<p>(2) <i>act as a lawyer in any matter wherein any underlying facts occurred within the geographic boundaries of the political subdivision for which the judge serves and which matter could be brought by a proceeding in the municipal division of the circuit court in which the judge serves; or,</i></p> <p><i>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>MT Effective 1/1/09</p>	<p>Does not have</p>
<p>NE Effective 1/1/2011</p>	<p>Does not adopt Model Code.</p> <p><i>III. RETIRED JUDGES</i></p> <p><i>(A) A retired judge who does not file with the Nebraska Supreme Court a statement of consent to be recalled for temporary judicial service or who is ineligible for judicial service need not comply with this Code, except as specifically provided.</i></p> <p><i>(B) A retired judge who consents to be recalled for temporary judicial service shall comply with this Code. However, such judge is not required to comply with Rules 3.4, 3.8, 3.9, or 3.12. A retired judge who is subject to recall shall not practice law and shall refrain from accepting assignment in any case in which the retired judge's financial or business dealings, investments, or other extrajudicial activities might be directly or indirectly affected.</i></p> <p><i>(C) A retired judge shall not act as a lawyer in any proceeding in which the retired judge has served as a judge or in any other proceeding related thereto.</i></p> <p><i>(D) A retired judge is a person who has voluntarily terminated full-time judicial service or has been retired for disability.</i></p>
<p>NV Effective 1/19/10</p>	<p>(A): similar to first paragraph of Model Code but differs in language structure and organization; adds 2.10(C) to rules a continuing part-time judge is not required to comply with</p> <p>(B) and (B)(1): similar to Model Code (A) and (A)(1)</p> <p>Adds (B)(2) “<i>or when a judicial candidate</i>” with Rules 4.1(A)(6), 4.1(A)(7), 4.1(A)(11), 4.1(A)(12), 4.1(A)(13) and 4.1(B) (<i>Political and Campaign Activities of Judges and Judicial Candidates in General</i>); or</p> <p>(B)(3) and (B)(3)(a) – (g): similar to Model Code (A)(2) but deletes Rules 3.14 (Reimbursement of Expenses and Waivers of Fees or Charges), 4.2 (Political and Campaign Activities of Judicial Candidates in Public Elections), 4.3 (Activities of Candidates for Appointive Judicial Office), 4.4 (Campaign Committees), and 4.5 (Activities of Judges Who Become Candidates for Nonjudicial office)</p> <p>(C): similar to Model Code (B)</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</i></p>

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.

C. Part time Judge. *A part time judge:*

(1) is not required to comply

(a) except while serving as a judge, with Rule 2.10(A);

(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;

(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.

(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.

(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:

(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;

(b) the judge may give no advice to any officer or employee of the town on a matter that could reasonably be expected to be the subject of any action or suit before the judge's court; and

(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.

(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.

D. 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.

E. 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.*

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.”

	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). NH Comment [3] is the same as MR Comment [3] to Application I.
NJ	
NM (as proposed)	Similar to NM Application II, but: Deletes all text after “or under a continuing appointment” (A)(1) Changes reference to “Rules 21-401(C) through (6) NMRA (Political activity and elections for judges who are not currently running in either a partisan or retention election) (A)(2) Changes citations to corresponding Rules 21-304, 21-308(A), 21-309, 21-310, and 21-311(B) NMRA [1] is similar to NM [4], but NM Deletes “including a retired judge no longer subject to recall;” Deletes “Model” before “rules of professional conduct”
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	Changes title to : “Parttime Judge” Replaces language with: <i>(A) This code applies to a judge who serves repeatedly on a parttime basis by election or appointment, except that a parttime judge is not required to comply with Rules 3.4, 3.8, 3.9, 3.10, and 3.11(A) and (B), at any time.</i> <i>A parttime judge shall not practice law in the court on which the judge serves or in 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 related proceeding.</i>
OK Effective 4/15/2011	Deletes “including a retired judge ... part-time judge’” (A)(1) Replaces reference with “4.1 (Political and Campaign Activities of Judges and Judicial Candidates in General (A)(1) through (7))” (A)(2) Makes references to rules more specific by citing 3.8(A) and 3.11(B). Deletes all references after “Rule 3.15 (Reporting Requirements).” [1] Replaces “retired judge no longer subject to recall” with “retired judge not on active service;” Replaces “Model Rule” with “Oklahoma Rules and adds thereafter: “including Rule 1.12.” Deletes the last sentence.
OR	
PA	
SD	
TN (as proposed)	Adds: <i>is a “continuing part time judge”</i> after “continuing appointment.” Replaces phrase “including a retired judge... permitted to practice law” and section (A) with <i>“These include, but are not limited to, part-time general sessions judges, part-time juvenile judges, part-time municipal judges, part-time divorce referees, part-time juvenile referees, and part-time judicial commissioners. A continuing part-time judge:”</i> <i>(A) is not required to comply at any time with Rules 3.4 (Appointments to Governmental</i>

	<p><i>Positions), 3.8 (A) (Appointments to Fiduciary Positions), 3.9 (Service as Arbitrator or Mediator), 3.10 (Practice of Law), and 3.11(B) (Financial, Business, or Remunerative Activities), and</i></p> <p>Deletes (A)(1) and (A)(2)</p> <p>[1] Deletes “including a retired judge no longer subject to recall”, Replaces “pursuant to any applicable” with “<i>only to the extent authorized.</i>”</p>
TX	
UT Effective 4/1/10	<p>Title: deletes “Continuing” and adds “Justice Court” before “Judge”</p> <p>First paragraph: A part-time justice court judge, including an active senior justice court judge appointed under Rule 11-203 of the Rules of Judicial Administration</p> <p>(A)(1): adds Rule 3.14</p> <p>(A)(2): does not include reference to Rule 3.15 or Canon 4 rules</p> <p>(B): replaces language starting with “or” and ending with “not” with “nor”</p> <p>[1]: deletes “person who has been a continuing,” adds “justice court” before first use of “judge,” replaces language between “longer” and “that person” with “serving as a judge;”</p> <p>Deletes last sentence</p>
VT	
VA	
WA Effective 1/1/11	<p>Renames title “Continuing Part-Time Judge” to “Judge Pro Tempore”;</p> <p>Combined with Application IV, similar to State Code Application II*, but State Code moves body of Application III and IV to Terminology section: “Part-Time Judge.”</p> <p>(A)(1) State Code lists only “Rule 2.10,” not “Rule 2.10(A) and 2.10(B).”</p> <p>(2) State Code deletes everything after “3.14 (Reimbursement of Expenses and Waivers of Fees or Charges).”</p> <p>(B) Deletes clause up to “judge serves”; Second sentence of Model Code identical to State Code Application II(B).</p> <p>Adds:</p> <p>(C) “<i>When a person who has been a part-time judge is no longer a part-time judge, that person may act as a lawyer in a proceeding in which he or she served as a judge or in any other proceeding related thereto only with the express consent of all parties pursuant to the Rules of Professional Conduct.</i>”</p> <p>Does not adopt Comment [1]; adds instead</p> <p>[1] “<i>Part-time judges should be alert to the possibility of conflicts of interest and should liberally disclose on the record to litigants appearing before them the fact of any extrajudicial employment or other judicial role, even if there is no apparent reason to withdraw.</i>”</p> <p>[2] “<i>in view of Rule 2.1, which provides that the judicial duties of judges should take precedence over all other activities, part-time judges should not engage in outside employment which would interfere with their ability to sit on cases that routinely come before them.</i>”</p>
WV	
WI	
WY Effective 7/1/09	<p>II: similar to Model Code III</p> <p>Title: deletes “Continuing”</p> <p>First paragraph: deletes “repeatedly” and “subject to recall,” adds “retention” before “election” and replaces language after “who” with “has been given a general or special</p>

As of September 6, 2011

	appointment to hear cases by the Wyoming Supreme Court” (A)(1): adds “for matters heard or pending before him or her” after “except” (B): deletes language through second use of “shall” Deletes [1]
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