

**American Bar Association
CPR Policy Implementation Committee**

Comparison of ABA Model Judicial Code and State Variations

Application	
V. PRO TEMPORE PART-TIME JUDGE	
<p>A pro tempore part-time judge who serves or expects to serve once or only sporadically on a part-time basis under a separate appointment for each period of service or for each case heard is not required to comply:</p> <p style="padding-left: 40px;">(A) except while serving as a judge, with Rules 1.2 (Promoting Confidence in the Judiciary), 2.4 (External Influences on Judicial Conduct), 2.10 (Judicial Statements on Pending and Impending Cases), or 3.2 (Appearances before Governmental Bodies and Consultation with Government Officials); or</p> <p style="padding-left: 40px;">(B) at any time with Rules 3.4 (Appointments to Governmental Positions), 3.6 (Affiliation with Discriminatory Organizations), 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), 3.13 (Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value), 3.15 (Reporting Requirements), 4.1 (Political and Campaign Activities of Judges and Judicial Candidates in General), and 4.5 (Activities of Judges Who Become Candidates for Nonjudicial Office).</p> <p>Three (3) states have identical language (AR, CT, MN) Eight (8) states have similar language (IN, IA, KS, NV, OH, OK, TN, UT) Two (2) states has different language (NH, WA) Twelfth (12) states do not have (AZ, CO, CT, DE, HI, MD, MS, MO, MT, NE, NY, WY)</p>	
AL	
AK	
AZ Effective 9/1/09	Does not have
AR Effective 7/1/09	Identical
CA	
CO (as pro- posed)	Does not have

<p>CT Effective 1/1/2011</p>	<p>II. TIME FOR COMPLIANCE</p> <p>A person to whom this Code becomes applicable shall comply immediately with its provisions, except that those judges to whom Rules 3.8 (Appointments to Fiduciary Positions) and 3.11 (Financial, Business, or Remunerative Activities) apply shall comply with those Rules as soon as reasonably possible, but in no event later than one year after the Code becomes applicable to the judge.</p> <p>COMMENT</p> <p>(1) If serving as a fiduciary when selected as judge, a new judge may, notwithstanding the prohibitions in Rule 3.8, continue to serve as fiduciary, but only for that period of time necessary to avoid serious adverse consequences to the beneficiaries of the fiduciary relationship and in no event longer than one year. Similarly, if engaged at the time of judicial selection in a business activity, a new judge may, notwithstanding the prohibitions in Rule 3.11, continue in that activity for a reasonable period but in no event longer than one year.</p>
<p>DE Effective 11/1/08</p>	<p>Does not have</p>
<p>DC (as pro- posed)</p>	<p>Not Adopted</p>
<p>FL</p>	
<p>HI Effective 1/1/09</p>	<p>Does not have</p>
<p>ID</p>	
<p>IL</p>	
<p>IN Effective 1/1/09</p>	<p>Adds (C): <i>shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any proceeding related thereto except as permitted by the Indiana Rules of Professional Conduct.</i></p>
<p>IA Effective 5/3/10</p>	<p>IA Application IV is equivalent to MC Application V. Adds “Special Master, Referee, and other” before “Pro Tempore Part-Time Judge” throughout, including in the title; Adds “sporadically” before “on a part time basis.”</p>
<p>KS Effective 3/1/09</p>	<p>Replaces “pro tempore” with “occasional” throughout (A): compare to Model Code first paragraph but deletes “on a part-time basis” and “is not required to comply” Adds (B): <i>An occasional part-time judge 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> Adds (C): <i>In addition to the provisions of the Code not applicable to part-time judges at any time, the following additional provision of the Code is not applicable to an occasional part-time judge at any time:</i> <i>-Rule 3.13 Acceptance and Reporting of Gifts, Loan, Bequests, Benefits, or Other Things of Value</i> (D): same as Model Code (A)</p>
<p>KY</p>	
<p>MD Effective 7/1/10</p>	<p>Does not adopt.</p>
<p>MA</p>	

MI	
MN Effective 7/1/09	Identical
MS (as pro- posed)	Does not have
MO Effective 1/1/2012	Deleted
MT Effective 1/1/09	Does not have
NE Effective 1/1/2011	Does not adopt
NV Effective 1/19/10	<p><i>IV. Pro Tempore Part-Time Judge</i></p> <p><i>(A) A pro tempore part-time judge is a judge who serves or expects to serve sporadically on a part-time basis under a separate appointment for each period of service or for each case heard.</i></p> <p><i>(B) A pro tempore part-time judge is not required to comply</i></p> <p><i>(1) except while serving as a judge, with:</i></p> <p style="padding-left: 40px;"><i>(a) Rules 2.10(A), 2.10(B), and 2.10(C) (Judicial Statements on Pending and Impending Cases);</i></p> <p style="padding-left: 40px;"><i>(b) Rule 2.14 (Disability and Impairment);</i></p> <p style="padding-left: 40px;"><i>(c) Rule 2.15 (Responding to Judicial and Lawyer Misconduct); and</i></p> <p style="padding-left: 40px;"><i>(d) Rule 3.3 (Testifying as a Character Witness);</i></p> <p><i>(2) except while serving as a judge or when a judicial candidate 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) (Political and Campaign Activities of Judges and Judicial Candidates in General); or</i></p> <p><i>(3) at any time with:</i></p> <p style="padding-left: 40px;"><i>(a) Rules 3.1(B) and 3.1(D) (Extrajudicial Activities in General);</i></p> <p style="padding-left: 40px;"><i>(b) Rule 3.2 (Appearances Before Governmental Bodies and Consultation with Government Officials);</i></p> <p style="padding-left: 40px;"><i>(c) Rule 3.4 (Appointments to Governmental Positions);</i></p> <p style="padding-left: 40px;"><i>(d) Rule 3.7(A) (Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities)</i></p> <p style="padding-left: 40px;"><i>(e) Rule 3.8 (Appointments to Fiduciary Positions);</i></p> <p style="padding-left: 40px;"><i>(f) Rule 3.9 (Service as Arbitrator or Mediator);</i></p> <p style="padding-left: 40px;"><i>(g) Rule 3.10 (Practice of Law);</i></p> <p style="padding-left: 40px;"><i>(h) Rules 3.11(B), 3.11(C)(3), Financial, Business, or Remunerative Activities);</i></p> <p style="padding-left: 40px;"><i>(i) Rule 3.13 (Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value);</i></p> <p style="padding-left: 40px;"><i>(j) Rule 3.14(C) (Reimbursement of Expenses and Waivers of Fees or Charges);</i></p> <p style="padding-left: 40px;"><i>(k) Rule 3.15 (Reporting Requirements);</i></p> <p style="padding-left: 40px;"><i>(l) Rules 4.1(A)(1) to (4) (Political and Campaign Activities of Judges and Judicial</i></p>

	<p><i>Candidates in General); and</i> <i>(m) Rule 4.5(A) Activities of Judges Who Become Candidates for Nonjudicial Office).</i> <i>A person who has been a pro tempore part-time judge 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, except as otherwise permitted by Rule 1.2(a) of the Nevada Rules of Professional Conduct.</i></p>
<p>NH Effective 4/1/2011</p>	<p>Does not adopt MC Application I-VI.</p> <p>A. <i>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>B. <i>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>C. Part time Judge. A part time judge:</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 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</i></p>

	<p><i>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><i>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.</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)	<p>Similar to NM Application IV, but:</p> <p>(A) Changes references to Rules: “21-204 (External influences on judicial conduct), 21-302 NMRA (Appearances before governmental bodies and consultation with government officials); and 21-401(C)(1) through (6) NMRA (Political activity and elections for judges who are not currently running in either a partisan or retention election)</p> <p>(B) Changes references to Rules “21-304 (Appointments to governmental positions), 21-308(A) (Appointments to fiduciary positions), 21-309 (Service as arbitrator or mediator), 21-310 (Practice of law), and 21-311(B)(Financial or business activities).</p>
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	<p>Changes title to: “Acting Judge”</p> <p>Replaces language with :</p> <p><i>This code applies to an acting judge who serves or expects to serve once or only sporadically on a parttime basis by appointment made pursuant to R.C. 1901.10, 1902.12, or 1907.14, except that an acting judge is not required to comply with any of the following:</i></p> <p><i>(A) Rules 1.2, 2.4, 2.10, 3.2, 3.12, or 3.13, except while serving as an acting judge; Rules 3.4, 3.7, 3.8, 3.9, 3.10, 3.11, 3.15, 4.1, 4.2, 4.3, 4.4, 4.5, and 4.6, at any time.</i></p>
OK Effective 4/15/2011	<p>(A) Deletes reference to Rules 1.2 and 2.10</p> <p>(B) Cites Rules 3.8 and 3.11 as 3.8(A) and 3.11(B), respectively; Deletes reference to Rule 4.1.</p>
OR	
PA	
SD	
TN	(A) Deletes Rules 1.2 and 2.10 from rules with which a judge is not required to comply. Adds Rule 4.1 (Political and Campaign Activities of Judges and Judicial Candidates in General) (A)(1) through (A)(7); or

As of September 6, 2011

	(B) Deletes Rules 3.6, 3.7, 3.13, 3.15, 4.1, and 4.5 from rules with which a judge is not required to comply. Deletes comment
TX	
UT Effective 4/1/10	IV: compare to Model Code V Title: adds “Judge” before “Pro” and deletes language after “Tempore” First paragraph: A judge pro tempore appointed under Rule 11-202 of the Rules of Judicial Administration shall not practice law in the same small claims division in which the judge serves. The same small claims division means the courthouse at which the judge serves and includes small claims appeals heard at that courthouse. A judge pro tempore is not required to comply: (B) Deletes reference to Rule 3.15, adds reference to Rule 4.2 (Political and Campaign Activities of Judges in Retention Elections), changes Rule 4.5 to 4.3.
VT	
VA	
WA Effective 1/1/11	Model Code similar to State Code Application III, but with the title changed to “Judge Pro Tempore.” State Code deletes “who serves...for each case heard” in body of Section. (A) Similar to State Code Application III(A), but State Code deletes reference to Rule 3.2 and adds reference to “Rule 3.1 (Extrajudicial Activities in General).” (B) Similar to State Code Application III(B), but State Code deletes reference to Rules 3.13, 3.15, 4.1, and 4.5 and adds reference to “Rule 3.2 (Appearances before Governmental Bodies and Consultation with Government Officials),” “3.3 (Acting as a Character Witness),” and “3.12 (Compensation for Extrajudicial Activities).”
WV	
WI	
WY Effective 7/1/09	Does not have

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