

**American Bar Association  
CPR Policy Implementation Committee**

**Comparison of ABA Model Judicial Code and State Variations**

**Scope**

[1] The Model Code of Judicial Conduct consists of four Canons, numbered Rules under each Canon, and Comments that generally follow and explain each Rule. Scope and Terminology sections provide additional guidance in interpreting and applying the Code. An Application section establishes when the various Rules apply to a judge or judicial candidate.

[2] The Canons state overarching principles of judicial ethics that all judges must observe. Although a judge may be disciplined only for violating a Rule, the Canons provide important guidance in interpreting the Rules. Where a Rule contains a permissive term, such as “may” or “should,” the conduct being addressed is committed to the personal and professional discretion of the judge or candidate in question, and no disciplinary action should be taken for action or inaction within the bounds of such discretion.

[3] The Comments that accompany the Rules serve two functions. First, they provide guidance regarding the purpose, meaning, and proper application of the Rules. They contain explanatory material and, in some instances, provide examples of permitted or prohibited conduct. Comments neither add to nor subtract from the binding obligations set forth in the Rules. Therefore, when a Comment contains the term “must,” it does not mean that the Comment itself is binding or enforceable; it signifies that the Rule in question, properly understood, is obligatory as to the conduct at issue.

[4] Second, the Comments identify aspirational goals for judges. To implement fully the principles of this Code as articulated in the Canons, judges should strive to exceed the standards of conduct established by the Rules, holding themselves to the highest ethical standards and seeking to achieve those aspirational goals, thereby enhancing the dignity of the judicial office.

[5] The Rules of the Model Code of Judicial Conduct are rules of reason that should be applied consistent with constitutional requirements, statutes, other court rules, and decisional law, and with due regard for all relevant circumstances. The Rules should not be interpreted to impinge upon the essential independence of judges in making judicial decisions.

[6] Although the black letter of the Rules is binding and enforceable, it is not contemplated that every transgression will result in the imposition of discipline. Whether discipline should be imposed should be determined through a reasonable and reasoned application of the Rules, and should depend upon factors such as the seriousness of the transgression, the facts and circumstances that existed at the time of the transgression, the extent of any pattern of improper activity, whether there have been previous violations, and the effect of the improper activity upon the judicial system or others.

[7] The Code is not designed or intended as a basis for civil or criminal liability. Neither is it

	intended to be the basis for litigants to seek collateral remedies against each other or to obtain tactical advantages in proceedings before a court.  Nine (10) states have identical language (AR, CO, IN, IA, MN, MO, NH, OH, TN, WY) Eleven (11) states have similar language (AZ, CT, HI, KS, MS, MT, NE, NV, NY, OK, UT) One (1) state has different language (WA) Two (2) states do not have (MD and DE)
<b>AL</b>	
<b>AK</b>	
<b>AZ</b> Effective 9/1/09	Combines third and fourth paragraphs, deleting last two sentences of third paragraph. Fifth paragraph similar to Model Code sixth paragraph but replaces “contemplated” with “intended, however”
<b>AR</b> Effective 7/1/09	Identical
<b>CA</b>	
<b>CO</b> (as pro- posed)	Identical
<b>CT</b> Effective 1/1/2011	Deletes “judicial candidate” throughout [6]: Replaces “others” with “other persons”
<b>DE</b> Effective 11/1/08	Did not adopt
<b>DC</b> (as pro- posed)	Identical
<b>FL</b>	
<b>HI</b> Effective 1/1/09	[1]: deletes “or judicial candidate” [2]: adds “and not a Canon” after “violating a Rule” and deletes “or candidate” before “in question” [6]: replaces “improper activity” and “violation” with “transgression”
<b>ID</b>	
<b>IL</b>	
<b>IN</b> Effective 1/1/09	Identical
<b>IA</b> Effective 5/3/10	Identical
<b>KS</b> Effective 3/1/09	[2]: deletes language after first sentence [3]: same as Model Code [5] [4]: combines Model Code [3] and [4] and deletes last sentence of Model Code [3] [5]: <i>When this Code uses “shall” or “shall not,” binding obligations are imposed, the violation</i>

	<p><i>of which can result in disciplinary action. When “should” or “should not” is used, the text is cautionary and a statement of what is or is not appropriate conduct but not a binding rule under which a judge may be disciplined. “May” denotes permissible discretion or, depending on the context, action that is not covered by specific prosecutions.</i></p>
<p><b>KY</b></p>	
<p><b>MD Effective 7/1/10</b></p>	<p>Does not adopt.          However, Model Code Scope serves as the basis for parts of “A. GENERAL PROVISIONS” of the Maryland Code “GENERAL PROVISIONS, DEFINITIONS, AND PREAMBLE” section, including: A-103 through A-107:</p> <p><i>A-103 - A judge may be disciplined only for violating a Rule. If a Rule contains a permissive term, such as "may" or "should" the conduct being addressed is committed to the personal and professional discretion of the judge or candidate in question, and no disciplinary action should be taken for action or inaction within the bounds of that discretion.</i></p> <p><i>Source: This provision is derived from the Scope section of the 2007 ABA Code.</i></p> <p><i>A-104 - The Comments that accompany the Rules contain explanatory material and, in some instances, provide examples of permitted or prohibited conduct. Comments neither add to nor subtract from the binding obligations set forth in the Rules. Therefore, when a Comment contains the term “must,” it does not mean that the Comment itself is binding or enforceable but merely signifies that the Rule in question, properly understood, is obligatory as to the conduct at issue. The Comments also may identify aspirational goals for judges. To implement fully the principles of this Code, judges should hold themselves to the highest ethical standards and seek to achieve those aspirational goals, thereby enhancing the dignity of the judicial office.</i></p> <p><i>Source: These provisions are derived from the Scope section of the 2007 ABA Code.</i></p> <p><i>A-105 - The Rules in this Code are rules of reason that should be applied in a manner consistent with Constitutional requirements, statutes, other Court Rules, and decisional law and with due regard for all relevant circumstances. The Rules should not be interpreted to impinge upon the essential <b>independence</b> of judges in making judicial decisions.</i></p> <p><i>Source: This provision is derived from the Scope section of the 2007 ABA Code.</i></p> <p><i>A-106 – Although the text of the Rules is binding and enforceable, it is not contemplated that every transgression will result in the imposition of discipline. Whether discipline should be imposed should be determined through a reasonable and reasoned application of the Rules and should depend upon factors such as the seriousness of the transgression, the facts and circumstances that existed at the time of the transgression, the extent of any pattern of improper activity, whether there have been previous violations, and the effect of the improper activity upon the judicial system or others.</i></p> <p><i>Source: This provision is derived from the Scope section of the 2007 ABA Code.</i></p> <p><i>A-107 - This Code is not designed or intended as a basis for civil or criminal liability. It is also not intended to be the basis for litigants to seek collateral remedies against each other or to obtain tactical advantages in proceedings before a court.</i></p> <p><i>Source: This provision is derived from the Scope section of the 2007 ABA Code.</i></p> <p>Adds:</p> <p><i>A-108 - In interpreting this Code, attention should be given to the opinions of the Judicial Ethics Committee and, if appropriate, that Committee should be asked for a written letter</i></p>

	<p><i>of advice or a binding opinion. See Rule <a href="#">16-812.1</a> (j)(5), protecting a judge from a charge of violating an ethics provision in this Code if the judge has requested and received an opinion or advice letter from the Committee and is in compliance with that opinion or advice letter.</i></p> <p><b>Source:</b> <i>This provision is derived from the Preamble to the former Maryland Code of Judicial Conduct.</i></p> <p><b>A-109</b> - <i>This Code applies to:</i></p> <p>(1) <i>Incumbent judges of the Court of Appeals, the Court of Special Appeals, the Circuit Courts, and the District Court;</i></p> <p>(2) <i>Except as otherwise expressly provided in specific Rules, incumbent judges of the Orphans' Courts;</i></p> <p>(3) <i>Except as otherwise expressly provided in specific Rules, retired judges who are approved for recall for temporary service pursuant to Maryland Constitution, <a href="#">Art. IV, § 3A.</a>; and</i></p> <p>(4) <i>Candidates and applicants for judicial office as defined in Rule 4.1, to the extent that a Rule expressly applies to such candidates or applicants. See Section 4 and Rule 2.11.</i></p> <p><b>Source:</b> <i>This provision is new.</i></p>
<b>MA</b>	
<b>MI</b>	
<b>MN</b> <b>Effective</b> <b>7/1/09</b>	Identical
<b>MS</b> <b>(as pro-</b> <b>posed)</b>	<p>[6] Adds to end of paragraph: “The Mississippi Constitution sets out the only grounds for disciplining a sitting judge in this state. See Miss. Const. § 177A. Nothing in this Code is intended to depart from the constitutional grounds for discipline or to provide a basis for discipline of a judge for conduct not in violation of this constitutional provision.”</p> <p>Adds [8]:</p> <p><i>Acts of a judge in the discharge of disciplinary responsibilities, whether required or permitted, are part of a judge’s judicial duties and shall be absolutely privileged, and no civil action predicated on the judge’s discharge of these responsibilities may be instituted against the judge. See Rule 2.14 and 2.15.</i></p>
<b>MO</b> <b>Effective</b> <b>1/1/2011</b>	<p>[1] Deletes “Model” before “Code of Judicial Conduct”</p> <p>[5] Deletes “Model” before “Code of Judicial Conduct”</p>
<b>MT</b> <b>Effective</b> <b>1/1/09</b>	[1]: combines Model Code [1] and [5]. In last sentence of Model Code [5], adds “to seek to change a judge’s decision” after “litigants”
<b>NE</b> <b>Effective</b> <b>1/1/2011</b>	[1] and [5] Replaces “Model Code” with “Nebraska Revised Code”
<b>NV</b> <b>Effective</b> <b>1/19/10</b>	[6]: adds “Ordinarily, judicial discipline will not be premised upon appearance of impropriety alone but must also involve the violation of another portion of the Code as well” to end
<b>NH</b> <b>Effective</b>	[1] and [5] Replaces “Model Code of Judicial Conduct” with “Code of Judicial Conduct”

<b>4/1/2011</b>	
<b>NJ</b>	
<b>NM (as proposed)</b>	[1] and [5] Refer to “The Code of Judicial Conduct” instead of “The Model Code of Judicial Conduct” [3] Replaces “explanatory material” in the beginning of the third sentence with “exemplary material” [6] Deletes “the facts and circumstances that existed at the time of the transgression” after “the seriousness of transgression;” Adds at the end: “See Judicial Standards Commission Rule 30 for factors considered in recommending the imposition of discipline.”
<b>NY (as proposed)</b>	[1] There are five Canons, instead of four; Adds: <i>[4A] The text of the Canons and Rules, including the Terminology and Application Sections, is authoritative. The Comments, by explanation and example, provide guidance with respect to the purpose and meaning of the Canons and Sections. The Comments are not intended as a statement of additional rules.</i>
<b>NC</b>	
<b>ND (as proposed)</b>	[1] and [5] Refer to “The Code of Judicial Conduct” instead of “The Model Code of Judicial Conduct” [3] Replaces “the highest” with the “high” standards in the last sentence [7] Replaces “for civil or criminal liability” in the first sentence with “civil liability or criminal culpability”
<b>OH Effective 3/1/09</b>	Identical
<b>OK Effective 4/15/2011</b>	[1] and [5] Replaces “Model Code” with “Oklahoma Code” [2] Adds “and Comments” after “the Canons;” adds after the second sentence: “Where the Rules use the term “shall” or “shall not” they establish mandatory standards to which judges and candidates for judicial office will be held. The enforcement of these standards is affected through appropriate disciplinary procedures.” [6] Changes first sentence to: “The Rules are binding and enforceable, however, it is not contemplated that every violation of a Rule will result in imposition of discipline.” Replaces “transgression” with “violation.”
<b>OR</b>	
<b>PA</b>	
<b>SD</b>	
<b>TX</b>	
<b>TN (as proposed)</b>	Identical
<b>UT Effective 4/1/10</b>	[2]: in last sentence, deletes “no” and replaces “should” with “shall not” [5]: deletes language beginning with “constitutional” and ending with “decisional”
<b>VT</b>	
<b>VA</b>	
<b>WA Effective</b>	[2] First sentence inserts “Washington State” before “Code of Judicial Conduct”; State code deletes everything after first sentence and replaces with: “They provide important guidance in

<p><b>1/1/11</b></p>	<p>interpreting the Rules. A judge may be disciplined only for violating a Rule.”                      [5] First sentence inserts “Washington State” before “Code of Judicial Conduct”;                      [6] Adds after first sentence: “It is recognized, for example, that it would be unrealistic to sanction judges for minor traffic and civil infractions;”                      State Code divides sentence beginning with “Whether discipline” into two sentences, the first ending with “application of the Rules” and the second beginning with “The relevant factors for consideration should include.”                      State Code also adds clause after “time of the transgressions:” “including the willfulness or knowledge of the impropriety of the action.”</p>
<p><b>WV</b></p>	
<p><b>WI</b></p>	
<p><b>WY</b>  <b>Effective</b>  <b>7/1/09</b></p>	<p>Identical</p>

**Copyright © 2011 American Bar Association. All rights reserved. Nothing contained in this chart is to be considered the rendering of legal advice. The charts are intended for educational and informational purposes only. We make every attempt to keep these charts as accurate as possible. If you are aware of any inaccuracies in the charts, please send your corrections or additions and the source of that information to John Holtaway, (312) 988-5298, [John.Holtaway@americanbar.org](mailto:John.Holtaway@americanbar.org)**