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APPLICATION

This Section identifies the persons to whom this Code applies and prescribes generally when and how it applies. In summary, the Code provisions apply to full-time judges and to four additional categories of judges, each of which may be described as less-than-full-time. Each of these four categories is necessarily defined in general terms because each type of judicial service may be structured somewhat differently in various jurisdictions. The determination of which specific Code provisions apply to a particular judicial officer depend upon the facts of the particular judicial service.

I. APPLICABILITY OF THIS CODE

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 justice of the peace, magistrate, court commissioner, special master, hearing officer, administrative law judge,¹ or referee, is a judge within the meaning of this Code.

The provisions of the Code apply to all judges except as provided in Sections A - D.

COMMENT

[1] The Rules in this Code have been formulated to address the ethical obligations of any individual who serves a judicial function, and are premised upon the supposition that a uniform system of ethical principles is applicable to the judicial process generally.

[2] In recent years, however, many jurisdictions have created what are sometimes called ‘problem solving’ courts, in which judges are authorized by local rules to act in non-traditional ways. For example, judges may be authorized or even encouraged to communicate directly with social workers, probation officers and others outside the context of their usual judicial role as an independent decision maker of issues of fact and law. Where local rules have been developed that specifically authorize conduct not otherwise permitted under these Rules, a judge’s activity in compliance with such local rules does not constitute a disciplinary violation. Nevertheless, judges serving on ‘problem

¹ Administrative law judges are commonly officers of the executive, rather than the judicial branch of government. Accordingly, each adopting jurisdiction should consider the characteristics of particular administrative law judge positions in adopting, adapting, applying and enforcing the Code for administrative law judges. See, e.g., Model Code of Judicial Conduct for Federal Administrative Law Judges, endorsed by the National Conference of Administrative Law Judges in February 1989.

1 solving' courts shall comply with this Code except to the extent local rules
2 provide and permit otherwise.

3
4 **A. RETIRED JUDGES SUBJECT TO RECALL**

5
6 **A retired judge subject to recall who by law is not permitted to practice law**
7 **is not required to comply**

8
9 (1) **except while serving as a judge, with Rule 4.06 (Service as**
10 **Arbitrator or Mediator); and**

11
12 (2) **at any time with Rule 4.05 (Appointments to Fiduciary**
13 **Positions).**

14
15 **COMMENT**

16
17 [1] For the purposes of this Rule, as long as a retired judge is subject to recall
18 the judge is considered to “perform judicial functions.”

19
20 **B. CONTINUING PART-TIME JUDGE**

21
22 **A judge who serves repeatedly on a part-time basis by election or under a**
23 **continuing appointment, including a retired judge subject to recall who is**
24 **permitted to practice law (“continuing part-time judge”)**

25
26 (1) **is not required to comply**

27
28 (a) **except while serving as a judge, with Rule 2.11A and B**
29 **(Judicial Statements on Pending and Future Cases); and**

30
31 (b) **at any time with Rules 4.03 (Appointments to**
32 **Governmental Bodies), 4.05 (Appointments to Fiduciary**
33 **Positions), 4.06 (Service as Arbitrator or Mediator), 4.08**
34 **(Practice of Law), 4.12 (Business Activities), 4.14**
35 **(Reimbursement or Waiver of Charges for Travel-related**
36 **Expenses of the Judge, the Judge’s Spouse, Domestic Partner**
37 **or Guest), 4.16 (Reporting of Compensation, Reimbursement,**
38 **and Waiver of Charges), 5.02 (Permitted Political Activities of**
39 **Candidates), 5.03 (Permitted Political Activities of Candidates**
40 **for Judicial Office in Non-partisan Public Elections), 5.04**
41 **(Permitted Political Activities of Candidates for Judicial**
42 **Office in Retention Elections), 5.05 (Permitted Activities of**
43 **Candidates for Appointive Judicial Office), 5.06 (Campaign**
44 **Committees), 5.07 (Activity of Candidates for Judicial Office**
45 **Subject to Retention Elections); and**

1 (2) shall not practice law in the court on which the judge serves or
2 in any court subject to the appellate jurisdiction of the court on
3 which the judge serves, and shall not act as a lawyer in a proceeding
4 in which the judge has served as a judge or in any other proceeding
5 related thereto.
6

7 **COMMENT**
8

9 [1] When a person who has been a continuing part-time judge is no longer a
10 continuing part-time judge, including a retired judge no longer subject to recall,
11 that person may act as a lawyer in a proceeding in which he or she has served as
12 a judge or in any other proceeding related thereto only with the express consent
13 of all parties pursuant to [Rule 1.12(a) of the ABA Model Rules of Professional
14 Conduct. An adopting jurisdiction should substitute a reference to its applicable
15 rule].
16

17 **C. PERIODIC PART-TIME JUDGE**
18

19 **A periodic part-time judge who serves or expects to serve repeatedly on a**
20 **part-time basis, but under a separate appointment for each limited period of**
21 **service or for each matter**
22

23 (1) is not required to comply
24

25 (a) except while serving as a judge, with Rule 2.11
26 (Judicial Statements on Pending and Future Cases);
27

28 (b) at any time, with Rules 4.03 (Appointments to
29 Governmental Bodies), 4.04 (Civic or Charitable Activities),
30 4.05 (Appointments to Fiduciary Positions), 4.06 (Service as
31 Arbitrator or Mediator), 4.08 (Practice of Law), 4.09
32 (Financial Activities), 4.11 (Management and Divestiture of
33 Investments), 4.12 (Business Activities), 4.13 (Solicitation and
34 Acceptance of Gifts), 4.16 (Reporting of Compensation,
35 Reimbursement, and Waiver of Charges), 5.01 (Restrictions
36 on Political Activities of Judges and Candidates for Judicial
37 Office), and 5.05 (Activity of Candidates for Appointive
38 Judicial Office), and
39

40 (2) shall not practice law in the court on which the judge serves or
41 any court subject to the appellate jurisdiction of the court on which
42 the judge serves, and shall not act as a lawyer in a proceeding in
43 which the judge has served as a judge or in any other proceeding
44 related thereto.
45

1 **COMMENT**
2

3 [1] When a person who has been a periodic part-time judge is no longer a
4 periodic part-time judge (no longer accepts appointments), that person may act as
5 a lawyer in a proceeding in which he or she has served as a judge or in any other
6 proceeding related thereto only with the express consent of all parties pursuant to
7 [Rule 1.12(a) of the ABA Model Rules of Professional Conduct].
8

9 **D. PRO TEMPORE PART-TIME JUDGE**
10

11 **A pro tempore part-time judge who serves or expects to serve once or only**
12 **sporadically on a part-time basis under a separate appointment for each**
13 **period of service or for each case heard**
14

15 (1) **is not required to comply**
16

17 (a) **except while serving as a judge, with Rules 1.01 (A**
18 **Judge Shall Avoid Impropriety and the Appearance of**
19 **Impropriety in All the Judge’s Activities, so as to Uphold the**
20 **Integrity, Impartiality, and Independence of the Judiciary),**
21 **2.10 (External Influences on Judicial Conduct), 2.11 (Judicial**
22 **Statements on Pending and Future Cases), and 4.02**
23 **(Appearances Before Governmental Bodies), or**
24

25 (b) **at any time with Rules 3.03 (Affiliation with**
26 **Discriminator Organizations), 4.03 (Appointments to**
27 **Governmental Bodies), 4.04 (Civic or Charitable Activities),**
28 **4.05 (Appointments to Fiduciary Positions), 4.06 (Service as**
29 **Arbitrator or Mediator), 4.08 (Practice of Law), 4.09**
30 **(Financial Activities), 4.11 (Management and Divestiture of**
31 **Investments), 4.13 (Solicitation and Acceptance of Gifts), 4.12**
32 **(Business Activities), 4.16 (Reporting of Compensation,**
33 **Reimbursement, and Waiver of Charges), 5.01 (Restrictions**
34 **on Political Activities of Judges and Candidates for Judicial**
35 **Office), and 5.05 (Activity of Candidates for Appointive**
36 **Judicial Office).**
37

38 (2) **A person who has been a pro tempore part-time judge shall**
39 **not act as a lawyer in a proceeding in which the judge has served as a**
40 **judge or in any other proceeding related thereto except as otherwise**
41 **permitted by [Rule 1.12(a) of the ABA Model Rules of Professional**
42 **Conduct].**
43

44 **II. TIME FOR COMPLIANCE**
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A person to whom this Code becomes applicable shall comply immediately with all provisions of this Code except Rules 4.05 (Appointments to Fiduciary Positions), 4.10 (Remunerative Activities), 4.12 (Business Activities). He or she shall comply with those Rules as soon as reasonably possible, but in no event later than one year after the Code became applicable to him or her.

COMMENT

[1] If serving as a fiduciary when selected as judge, a new judge may, notwithstanding the prohibitions in Rule 4.05, continue to serve as fiduciary but only for that period of time necessary to avoid serious adverse consequences to the beneficiary 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 4.12, continue in that activity for a reasonable period but in no event longer than one year.