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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 in a Private Capacity); 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 in a Private
34 Capacity), 4.07 (Practice of Law), Rule 4.08 (Financial,
35 Business, Remunerative, and Investment Activities), 4.11
36 (Reimbursement or Waiver of Charges for Travel-related
37 Expenses of the Judge or the Judge’s Spouse, Domestic
38 Partner, or Guest), 4.13 (Reporting of Compensation,
39 Reimbursement of Expenses, and Waiver of Charges), 5.01
40 (Political and Campaign Activities of Judges and Candidates
41 for Judicial Office), 5.02 (Permitted Political and Campaign
42 Activities of Candidates for Judicial Office in Partisan Public
43 Elections, 5.03 (Permitted Political and Campaign Activities of
44 Candidates for Judicial Office in Non-partisan Public
45 Elections), 5.04 (Permitted Political and Campaign Activities**

1 of Candidates for Judicial Office in Retention Elections), 5.05
2 (Permitted Activities of Candidates for Appointive Judicial
3 Office), 5.06 (Campaign Committees); and
4 (2) shall not practice law in the court on which the judge serves or
5 in any court subject to the appellate jurisdiction of the court on
6 which the judge serves, and shall not act as a lawyer in a proceeding
7 in which the judge has served as a judge or in any other proceeding
8 related thereto.
9

10 **COMMENT**

11
12 [1] When a person who has been a continuing part-time judge is no longer a
13 continuing part-time judge, including a retired judge no longer subject to recall,
14 that person may act as a lawyer in a proceeding in which he or she has served as
15 a judge or in any other proceeding related thereto only with the express consent
16 of all parties pursuant to [Rule 1.12(a) of the ABA Model Rules of Professional
17 Conduct. An adopting jurisdiction should substitute a reference to its applicable
18 rule].
19

20 **C. PERIODIC PART-TIME JUDGE**

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

25
26 (1) is not required to comply

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

30
31 (b) at any time, with Rules 4.03 (Appointments to
32 Governmental Bodies), 4.04 (Participation in Civic or
33 Charitable Activities), 4.05 (Appointments to Fiduciary
34 Positions), 4.06 (Service as Arbitrator or Mediator in a Private
35 Capacity), 4.07 (Practice of Law), Rule 4.08 (Financial,
36 Business, Remunerative, and Investment Activities), 4.09 (For-
37 Profit Activities), 4.10 (Solicitation, Acceptance, and
38 Reporting of Gifts), 4.13 (Reporting of Compensation,
39 Reimbursement of Expenses, and Waiver of Charges), 5.01
40 (Political and Campaign Activities of Judges and Candidates
41 for Judicial Office), and 5.05 (Permitted Activities of
42 Candidates for Appointive Judicial Office), and

43 (2) shall not practice law in the court on which the judge serves or
44 any court subject to the appellate jurisdiction of the court on which
45 the judge serves, and shall not act as a lawyer in a proceeding in

1 **which the judge has served as a judge or in any other proceeding**
2 **related thereto.**

3
4 **COMMENT**

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

11
12 **D. PRO TEMPORE PART-TIME JUDGE**

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

17
18 **(1) is not required to comply**

19
20 **(a) except while serving as a judge, with Canon 1 (A Judge**
21 **Shall Avoid Impropriety and the Appearance of Impropriety**
22 **in All the Judge’s Activities, so as to Uphold the Integrity,**
23 **Impartiality, and Independence of the Judiciary Uphold the**
24 **Independence and Integrity of the Judiciary, Shall Perform**
25 **the Duties of the Office Impartially, and Shall Avoid**
26 **Impropriety and the Appearance of Impropriety in all of the**
27 **Judge’s Activities), and Rules 2.07 (External Influences on**
28 **Judicial Conduct), 2.11 (Judicial Statements on Pending and**
29 **Future Cases), and 4.02 (Appearances Before Governmental**
30 **Bodies), or**

31
32 **(b) at any time with Rules 3.04 (Affiliation with**
33 **Discriminatory Organizations), 4.03 (Appointments to**
34 **Governmental Bodies), 4.04 (Participation in Civic or**
35 **Charitable Activities), 4.05 (Appointments to Fiduciary**
36 **Positions), 4.06 (Service as Arbitrator or Mediator in a Private**
37 **Capacity, 4.07 (Practice of Law), Rule 4.08 (Financial,**
38 **Business, Remunerative, and Investment Activities), 4.09 (For**
39 **Profit Activities), 4.10 (Solicitation, Acceptance, and**
40 **Reporting of Gifts), 4.13 (Reporting of Compensation,**
41 **Reimbursement of Expenses, and Waiver of Charges), 5.01**
42 **(Political and Campaign Activities of Judges and Candidates**
43 **for Judicial Office), and 5.05 (Permitted Activities of**
44 **Candidates for Appointive Judicial Office).**

1 (2) A person who has been a pro tempore part-time judge shall
2 not act as a lawyer in a proceeding in which the judge has served as a
3 judge or in any other proceeding related thereto except as otherwise
4 permitted by [Rule 1.12(a) of the ABA Model Rules of Professional
5 Conduct].
6

7 **II. TIME FOR COMPLIANCE**
8

9 A person to whom this Code becomes applicable shall comply immediately
10 with all provisions of this Code. Those judges to whom Rules 4.05
11 (Appointments to Fiduciary Positions), Rules 4.08 (Financial, Business,
12 Remunerative, and Investment Activities), and 4.09 (For-Profit Activities)
13 apply shall comply with those Rules as soon as reasonably possible, but in no
14 event later than one year after the Code became applicable to him or her.
15

16 **COMMENT**
17

18 [1] If serving as a fiduciary when selected as judge, a new judge may,
19 notwithstanding the prohibitions in Rule 4.05, continue to serve as fiduciary but
20 only for that period of time necessary to avoid serious adverse consequences to
21 the beneficiary of the fiduciary relationship and in no event longer than one year.
22 Similarly, if engaged at the time of judicial selection in a business activity, a new
23 judge may, notwithstanding the prohibitions in Rules 4.08 and 4.09, continue in
24 that activity for a reasonable period but in no event longer than one year.