

2007 ABA MODEL CODE vs. MINN. CODE OF JUDICIAL CONDUCT

TERMINOLOGY

The first time any term listed below is used in a Rule in its defined sense, it is followed by an asterisk (*).

[The Minnesota Code does not have a Terminology section. Where terms are expressly defined in the current Minnesota Code, they are set out below opposite comparable Model Code definition.]

“Aggregate,” in relation to contributions for a candidate, means not only contributions in cash or in kind made directly to a candidate’s campaign committee, but also all contributions made indirectly with the understanding that they will be used to support the election of a candidate or to oppose the election of the candidate’s opponent. See ~~Rules 2.11 and~~ 4.4.

“Appropriate authority” means the authority having responsibility for initiation of disciplinary process in connection with the violation to be reported. See Rules 2.14 and 2.15.

“Contribution” means ~~both financial and in kind contributions, such as goods, professional or volunteer services, advertising, and other types of assistance, which, if obtained by the recipient otherwise, would require a financial expenditure~~money, a negotiable instrument, or a donation in kind that is given to a political committee, political fund, principle campaign committee, or party unit as defined in Minn. Stat. Chapter 10A.01. “Contribution” includes a loan or advance of credit to a political committee, political fund, principal campaign committee, or party unit, if the loan or advance credit is: (1) forgiven; or (2) repaid by an individual or an association other than the political committee, political fund, principal campaign committee, or party unit to which the loan or advance of credit was made. If an advance of credit or a loan is forgiven or repaid as provided in this paragraph, it is a contribution in the year in which the loan or advance of credit was made. “Contribution” does not include services provided without compensation by an individual volunteering personal time on behalf of a candidate, ballot question, political committee, political fund, principal campaign committee, or party unit, or the publishing or broadcasting of news items or editorial comments by the news media. See Rules 2.11, 2.13, 3.7, 4.1, and 4.4.

“De minimis,” in the context of interests pertaining to disqualification of a judge, means an insignificant interest that could not raise a reasonable question regarding the judge’s impartiality. See Rule 2.11.

“Domestic partner” means a person with whom another person maintains a

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household ~~and or~~ an intimate relationship, other than a person to whom he or she is legally married. See Rules 2.11, ~~and 2.13~~, 3.13, ~~and 3.14~~.

“Economic interest” means ownership of more than a de minimis legal or equitable interest. Except for situations in which the judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:

- (1) an interest in the individual holdings within a mutual or common investment fund;
- (2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge’s spouse, domestic partner, parent, or child serves as a director, an officer, an advisor, or other participant;
- (3) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or
- (4) an interest in the issuer of government securities held by the judge.

See Rules 1.3 and 2.11.

“Fiduciary” includes relationships such as executor, administrator, trustee, or guardian. See Rules 2.11, 3.2, and 3.8.

“Impartial,” “impartiality,” and **“impartially”** mean absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge. See Canons 1, 2, and 4, and Rules 1.2, 2.2, 2.10, 2.11, 2.13, 3.1, 3.12, 3.13, 4.1, and 4.2.

“Impending matter” is a matter that is imminent or expected to occur in the near future. See Rules 2.9, 2.10, 3.13, and 4.1.

“Impropriety” includes conduct that violates the law, court rules, or provisions of this Code, and conduct that undermines a judge’s independence, integrity, or impartiality. See Canon 1 and Rule 1.2.

“Independence” means a judge’s freedom from influence or controls other than those

CANON 3 F. Impartiality.

"Impartiality" or "impartial" denotes absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintaining an open mind in considering issues that may come before the judge.

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established by law. See Canons 1 and 4, and Rules 1.2, 3.1, 3.12, 3.13, and 4.2.

“Integrity” means probity, fairness, honesty, uprightness, and soundness of character. See Canon 1 and Rule 1.2.

“Judicial candidate” means any person, including a sitting judge, who is seeking selection for or retention in judicial office by election or appointment. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, authorizes or, where permitted, engages in solicitation or acceptance of contributions or support, or is nominated for election or appointment to office. See Rules 2.11, 4.1, 4.2, and 4.4.

“Knowingly,” “knowledge,” “known,” and “knows” mean actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances. See Rules 2.11, ~~2.13~~, 2.15, 2.16, 3.6, and 4.1.

“Law” encompasses court rules as well as statutes, constitutional provisions, and decisional law. See Rules 1.1, 2.1, 2.2, 2.6, 2.7, 2.9, 3.1, 3.4, 3.9, 3.12, 3.13, 3.14, ~~3.15~~, 4.1, 4.2, 4.4, and 4.5.

“Leader in a political organization” is one who holds an elective, representative, or appointed position in a political organization not amounting to a formal political office. See Rule 4.1.

“Member of the candidate’s family” means a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the candidate maintains a close familial relationship.

“Member of the judge’s family” means a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. See Rules 3.7, 3.8, 3.10, and 3.11.

“Member of a judge’s family residing in the judge’s household” means any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge’s family, who resides in the judge’s household. See Rules 2.11 and 3.13.

CANON 5 F. Candidate.

"Candidate" is a person seeking selection for or retention in judicial office by election. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election authority, or authorizes solicitation or acceptance of contributions or support. The term "candidate" has the same meaning when applied to a judge seeking election to nonjudicial office.

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“Nonpublic information” means information that is not available to the public. Nonpublic information may include, but is not limited to, information that is sealed by statute or court order or impounded or communicated in camera, and information offered in grand jury proceedings, presentencing reports, dependency cases, or psychiatric reports. See Rule 3.5.

“Pending matter” is a matter that has commenced. A matter continues to be pending through any appellate process until final disposition. See Rules 2.9, 2.10, 3.13, and 4.1.

“Personally solicit” means a direct request made by a judge or a judicial candidate for financial support or in-kind services, whether made by letter, telephone, or any other means of communication. See Rule 4.1.

“Political organization” means a political party or other group sponsored by or affiliated with a political party or candidate, the principal purpose of which is to further the election or appointment of candidates for political office. For purposes of this Code, the term does not include a judicial candidate’s campaign committee created as authorized by Rule 4.4. See Rules 4.1 and 4.2.

“Public election” includes primary and general elections, partisan elections, nonpartisan elections, and retention elections. See Rules 4.2 and 4.4.

“Third degree of relationship” includes the following persons: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, and niece. See Rule 2.11.

Application

The Application section establishes when the various Rules apply to a judge or judicial candidate.

I. APPLICABILITY OF THIS CODE

(A) The provisions of the Code apply to all full-time judges. Parts II through V of this section identify those provisions that apply to four

APPLICATION OF THE CODE OF JUDICIAL CONDUCT

A. Full-Time Judges.

distinct categories of part-time judges. The four categories of judicial service in other than a full-time capacity are necessarily defined in general terms because of the widely varying forms of judicial service. Canon 4 applies to judicial candidates.

Anyone, whether or not a lawyer, who is an officer of a judicial system performing judicial functions, including an officer such as a full-time referee, special master or magistrate, is a judge within the meaning of this Code. All judges shall comply with this Code except as provided below.

(B) **A judge, within the meaning of this Code, is anyone who is ~~authorized~~ employed by the judicial or executive branches of state government to perform judicial functions, including an officer such as a justice of the peace, magistrate under Minn. Stat. 484.702, court commissioner under Minn. Stat. 489.01, special master, referee, judicial officer under Minn. Stat. 487.08, or member of the administrative law judiciary.**

Comment

[1] The Rules in this Code have been formulated to address the ethical obligations of any person who serves a judicial function, and are premised upon the supposition that a uniform system of ethical principles should apply to all those authorized to perform judicial functions. By statute the Legislature has applied the Code of Judicial Conduct to Tax Court Judges (Minn. Stat. 271.01, subdivision 1), the Worker's Compensation Court of Appeals (Minn. Stat. 175A.01, subdivision 4), and the judges in the Office of Administrative Hearings (Minn. Stat. 14.48, subdivisions 2 and 3(d)).

[2] The determination of which category and, accordingly, which specific Rules apply to an individual judicial officer, depends upon the facts of the particular judicial service.

[3] In recent years many jurisdictions have created what are often called "problem solving" courts, in which judges are authorized by court rules to act in nontraditional ways. For example, judges presiding in drug courts and monitoring the progress of participants in those courts' programs may be authorized and even encouraged to communicate directly with social workers, probation officers, and others outside the context of their usual judicial role as independent decision makers on issues of fact and law. When local rules specifically authorize conduct not

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otherwise permitted under these Rules, they take precedence over the provisions set forth in the Code. Nevertheless, judges serving on “problem solving” courts shall comply with this Code except to the extent local rules provide and permit otherwise.

II. RETIRED JUDGE SUBJECT TO RECALL

A retired judge subject to recall for service, who by law is not permitted to practice law, is not required to comply:

- (A) **with Rule 3.9 (Service as Arbitrator or Mediator), except while serving as a judge; or**
- (B) **at any time with Rule 3.8 (Appointments to Fiduciary Positions).**

COMMENT

[1] For the purposes of this section, as long as a retired judge is subject to being recalled for service, the judge is considered to “perform judicial functions.”

III. CONTINUING PART-TIME JUDGE

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”),

- (A) **is not required to comply:**
 - (1) **with Rules 2.10(A) and 2.10(B) (Judicial Statements on Pending and Impending Cases), except while serving as a judge; or**
 - (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**

B. Retired Judge.

A retired judge who by law is not permitted to practice law is not required to comply:

- (1) except while serving as a judge, with Section 4F; and
- (2) at any time with Section 4E.

C. Part-Time Judge.

A part-time judge:

- (1) is not required to comply
 - (a) except while serving as a judge, with Section 3A(10);
 - (b) at any time, with Sections 4C(2), 4C(3)(a), 4D(1)(b), 4D(3), 4D(4), 4D(5), 4E, 4F, 4G, 4H, 5A(1), and 5C.
- (2) shall not practice law in the division of the court on which the judge serves and shall not act as a lawyer in a proceeding in which the judge has

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

served as a judge or in any other proceeding related thereto.

(B) shall not practice law in the division of 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.

COMMENT

[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.

IV. PERIODIC PART-TIME JUDGE

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

(A) is not required to comply:

C. Part-Time Judge.

A part-time judge:

(1) with Rule 2.10 (Judicial Statements on Pending and Impending Cases), except while serving as a judge; or

(2) at any time with Rules 3.4 (Appointments to Governmental Positions), 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); and

(B) shall not practice law in the divison of 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.

V. PRO TEMPORE PART-TIME JUDGE

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:

(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

(B) at any time with Rules 3.4 (Appointments to Governmental Positions), 3.6 (Affiliation with Discriminatory Organizations), 3.7

(1) is not required to comply

(a) except while serving as a judge, with Section 3A(10);

(b) at any time, with Sections 4C(2), 4C(3)(a), 4D(1)(b), 4D(3), 4D(4), 4D(5), 4E, 4F, 4G, 4H, 5A(1), and 5C.

(2) shall not practice law in the division 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.

C. Part-Time Judge.

A part-time judge:

(1) is not required to comply

(a) except while serving as a judge, with Section 3A(10);

(b) at any time, with Sections 4C(2), 4C(3)(a), 4D(1)(b), 4D(3), 4D(4), 4D(5), 4E, 4F, 4G, 4H, 5A(1), and 5C.

(2) shall not practice law in the division of the court on which the judge serves and shall not act as a lawyer in a proceeding in which the judge has

(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).

served as a judge or in any other proceeding related thereto.

VI. TIME FOR COMPLIANCE

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.

D. 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.

COMMENT

[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.

CANON 1

A JUDGE SHALL UPHOLD AND PROMOTE THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE JUDICIARY, AND SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY.

CANON 1

A Judge Shall Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and personally observe those standards in order to preserve the integrity and

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independence of the judiciary. The provisions of this Code should be construed and applied to further that objective.

CANON 2

A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities

A. A judge shall respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

CANON 2 A. . A judge shall respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

CANON 2 A. A judge shall respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

RULE 1.1

Compliance with the Law

A judge shall comply with the law,* including the Code of Judicial Conduct.

RULE 1.2

Promoting Confidence in the Judiciary

A judge shall act at all times in a manner that promotes public confidence in the independence,* integrity,* and impartiality* of the judiciary, and shall avoid impropriety and the appearance of impropriety.

COMMENT

[1] Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both the professional and personal conduct of a judge.

[2] A judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens, and must accept the restrictions imposed by the Code.

[3] Conduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary.

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Because it is not practicable to list all such conduct, the Rule is necessarily cast in general terms.

[4] Judges should participate in activities that promote ethical conduct among judges and lawyers, support professionalism within the judiciary and the legal profession, and promote access to justice for all.

[5] Actual improprieties include violations of law, court rules or provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge.

[6] A judge should initiate and participate in community outreach activities for the purpose of promoting public understanding of and confidence in the administration of justice. In conducting such activities, the judge must act in a manner consistent with this Code.

RULE 1.3

Avoiding Abuse of the Prestige of Judicial Office

A judge shall not abuse the prestige of judicial office to advance the personal or economic interests* of the judge or others, or allow others to do so.

COMMENT

[1] It is improper for a judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind. For example, it would be improper for a judge to allude to his or her judicial status to gain favorable treatment in encounters with traffic officials. Similarly, a judge must not use judicial letterhead to gain an advantage in conducting his or her personal business.

[2] A judge may provide a reference or recommendation for an individual based upon the judge's personal knowledge. The judge may use official letterhead if the

CANON 2 (B). A judge shall not allow family, social, political or other relationships to influence judicial conduct or judgment. A judge shall not lend the prestige of the office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

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judge indicates that the reference is personal and if there is no likelihood that the use of the letterhead would reasonably be perceived as an attempt to exert pressure by reason of the judicial office.

[3] Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees, and by responding to inquiries from such entities concerning the professional qualifications of a person being considered for judicial office.

[4] Special considerations arise when judges write or contribute to publications of for-profit entities, whether related or unrelated to the law. A judge should not permit anyone associated with the publication of such materials to exploit the judge's office in a manner that violates this Rule or other applicable law. In contracts for publication of a judge's writing, the judge should retain sufficient control over the advertising to avoid such exploitation.