

Application

The Application section establishes how and when the various rules apply to a judge or judicial candidate.

I. Applicability of this Code

(A) ~~The provisions of the code apply~~ This code applies to all fulltime judges. ~~Parts II through V of this~~ The Application section ~~identify those~~ identifies provisions that do not apply to ~~four~~ 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.

(B) A judge, within the meaning of this code, is ~~anyone~~ a lawyer who is authorized to perform judicial functions within a court, including an officer such as a ~~justice of the peace, magistrate, court commissioner, or special master, referee, 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.

[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 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. [RESERVED]~~

II. Retired Judge Subject to Recall

A This code applies to a retired judge subject to recall for service, who by law is not permitted to practice law, except that a retired judge is not required to comply with either of the following:

(A) ~~With~~ Rule 3.9, except while serving as a judge;

47 (B) ~~At any time with~~ Rule 3.8, at any time.

48
49 **Comment**

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51 [1] For the purposes of this section, as long as a retired judge is subject to being
52 recalled for service, the judge is considered to ~~“perform~~ be performing judicial functions.”

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54 **III. Continuing Parttime Judge**

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56 (A) ~~A This code applies to a judge who serves repeatedly on a parttime basis by~~
57 ~~election or under a continuing appointment, including a retired judge subject to recall who is~~
58 ~~permitted to practice law (“continuing parttime judge”), except that a parttime judge is not~~
59 ~~required to comply~~

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61 (A) ~~Is not required to comply with any of the following:~~

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63 (1) ~~Rules 2.10(A) and 2.10(B), except while serving as a judge;~~

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65 (2) ~~at any time with Rules 3.4, 3.8, 3.9, 3.10, and 3.11, 3.14, 3.15, 4.1, 4.2, 4.3, 4.4,~~
66 ~~and 4.5 (A) and (B), at any time.~~

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68 (B) ~~Shall~~ A parttime judge shall not practice law in the court on which the judge
69 serves or in any court subject to the appellate jurisdiction of the court on which the judge serves,
70 and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any
71 other proceeding related thereto.

72 **Comment**

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74 [1] When a person who has been a ~~continuing~~ parttime judge is no longer a
75 ~~continuing~~ parttime judge, including a retired judge no longer subject to recall, that person may
76 act as a lawyer in a proceeding in which he or she has served as a judge or in any other
77 proceeding related thereto only with the informed consent of all parties; and pursuant to Rule
78 1.12 of the Ohio Rules of Professional Conduct.

79
80 [2] Division (B) prohibits a parttime judge from appearing in his or her own court and
81 from appearing in another court from which matters may be appealed to the parttime judge’s
82 court. For example, a parttime judge could not practice in a mayor’s court within the territorial
83 jurisdiction of the court on which the parttime judge serves.

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85 **IV. Periodic Parttime Judge**

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87 ~~A periodic parttime judge who serves or expects to serve repeatedly on a parttime basis,~~
88 ~~but under a separate appointment for each limited period of service or for each matter,~~

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90 (A) ~~Is not required to comply with any of the following:~~

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92 (1) ~~Rule 2.10, except while serving as a judge;~~

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94 (2) ~~At any time with Rules 3.4, 3.7, 3.8, 3.9, 3.10, 3.11, 3.13, 3.15, 4.1, and~~
95 ~~4.5;~~

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97 (B) ~~Shall not practice law in the court on which the judge serves or in any court~~
98 ~~subject to the appellate jurisdiction of the court on which the judge serves, and shall not~~
99 ~~act as a lawyer in a proceeding in which the judge has served as a judge or in any other~~
100 ~~proceeding related thereto. [RESERVED]~~

101
102 **V. ~~Pro Tempore Parttime~~ Acting Judge**

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104 ~~A pro tempore parttime~~ This code applies to an acting judge who serves or expects to
105 serve once or only sporadically on a parttime basis under a separate by appointment for each
106 period of service or for each case heard made pursuant to R.C. 1901.10, 1901.12, or 1907.14,
107 except that an acting judge is not required to comply with any of the following:

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109 (A) ~~Except while serving as a judge, with~~ Rules 1.2, 2.4, 2.10, ~~or~~ 3.2, 3.12, or 3.13,
110 except while serving as an acting judge;

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112 (B) ~~At any time with~~ Rules 3.4, ~~3.6,~~ 3.7, 3.8, 3.9, 3.10, 3.11, ~~3.13,~~ 3.15, 4.1 ~~and,~~ 4.2,
113 4.3, 4.4, 4.5, and 4.6, at any time.

114
115 **Comment**

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117 [1] An acting judge violates Rule 1.3 by engaging in the solicitation or receipt of
118 campaign contributions on behalf of the judge who appointed the acting judge while serving as
119 an acting judge.

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121 [2] Although division (B) exempts an acting judge from compliance with Rules 4.1 to
122 4.6, this exemption does not apply to an acting judge who is a judicial candidate as defined in
123 Rule 4.6. See Rule 8.2(b) of the Ohio Rules of Professional Conduct.

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125 **VI. Time for Compliance**

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127 A person to whom this code becomes applicable shall comply immediately with its
128 provisions, ~~except that those judges to whom as otherwise provided in~~ Rules 3.8 and 3.11 ~~(apply~~
129 ~~shall comply with those Rules as soon as reasonably possible, but in no event later than one year~~
130 ~~after the code becomes applicable to the judge.~~

131
132 **Comment**

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134 [1] If serving as a fiduciary when selected as judge, a new judge may,
135 notwithstanding the prohibitions in Rule 3.8, continue to serve as fiduciary, but only for that
136 period of time necessary to avoid serious adverse consequences to the beneficiaries of the
137 fiduciary relationship and in no event longer than one year. Similarly, if engaged at the time of
138 judicial selection in a business activity, a new judge may, notwithstanding the prohibitions in

139 ~~Rule 3.11, continue in that activity for a reasonable period but in no event longer than one year.~~
140 [RESERVED]

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Comparison to Ohio Code of Judicial Conduct

The Application section is analogous to the Compliance section of the Ohio Code.

Part I corresponds to division (A) of the Compliance section.

Part II (retired judges) corresponds to division (D) of the Compliance section. Part II is more restrictive than the Compliance section of the Ohio Code in that it does not include exemptions from compliance by a retired judge with prohibitions related to outside business activities [*c.f.*, Ohio Canon 2(C)(3) and Rule 3.11(B)] and accepting appointments to governmental committees and commissions [*c.f.*, Ohio Canon 4(C)(2) and Rule 3.4].

The exemptions contained in Part III (parttime judges) are analogous to those contained in division (B) of the Compliance section, except that Part III exempts a parttime judge from compliance with Rule 3.9 (Service as an Arbitrator or Mediator).

Part V (acting judges) corresponds to, but is structured differently from, division (C) of the Compliance section. The Ohio Code lists certain provisions from which an acting judge is exempt while serving in that capacity. The new Compliance section adds several exemptions in division (A), but specifies that the acting judge must adhere to the exempted provisions while serving in that capacity. The exemptions listed in division (B) apply at anytime and, except for the addition of Rule 3.7, are substantively identical to those contained in the Ohio Code.

Part V, Comment [1] is intended to clarify that an acting judge, consistent with Rule 1.3, may not engage in political activity, including fundraising on behalf of the appointing judge, while serving as an acting judge. This comment has no antecedent in the Ohio Code. Comment [2] is a restatement of current Ohio law as reflected in Ohio Canon 7(A)(1) [new Rule 4.6(E)] and Rule 8.2(b) of the Ohio Rules of Professional Conduct.

Part VI corresponds to the Effective Date of Compliance section of the Ohio Code.

Comparison to ABA Model Code of Judicial Conduct

Part I of the Application section is modified from the Model Code to conform to Ohio law. As executive branch employees, administrative hearing officers are excluded from application of the Code as is the case in the existing Ohio Code. Comment [3] is stricken because it suggests that a court, through the adoption of local rules, can nullify provisions of the Code of Judicial Conduct. Such a suggestion is contrary to the plenary authority of the Supreme Court to regulate the conduct of the judiciary and the concept of prescribing a uniform set of standards applicable to all judicial officers.

185 Part II contains minor, stylistic changes.

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187 Part III is modified to reflect the nature of parttime judges in Ohio as elected public
188 officials. Comment [2] is added to clarify the limitations on the practice of law by parttime
189 judges.

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191 Part IV is stricken as inapplicable in Ohio.

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193 Part V is modified to reflect the designation of “acting judge” used in Ohio law and other
194 provisions relative to the appointment of acting judges. Two comments are added to Part V to
195 expand on limits on political activity by acting judges and application of Canon 4 to an acting
196 judge who is a candidate for judicial office.

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198 Part VI is modified to reflect Ohio law and the provisions of Rules 3.8 and 3.11.