

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 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 who is employed by the judicial branch of state government to perform judicial functions, including an officer such as a magistrate under Minnesota Statutes, section 484.702, court commissioner under Minnesota Statutes, section 489.01, referee, or judicial officer under Minnesota Statutes, section 487.08.

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 judges of the Tax Court (Minnesota Statutes, section 271.01, subdivision 1), the Worker's compensation Court of Appeals (Minnesota Statutes, section 175A.01, subdivision 4), and the Office of Administrative Hearings (Minnesota Statutes, section 14.48, subdivisions 2 and 3, paragraph (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 court 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 court 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 under a continuing appointment,

- (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 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

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of Candidates for Appointive Judicial Office), 4.4 (Campaign Committees), and 4.5 (Activities of Judges Who Become Candidates for Nonjudicial Office); and

(B) shall not practice law in the district court of the county in which the judge serves, or, if the court is divided into divisions, 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. This paragraph shall not apply to lawyers who are appointed pursuant to Minnesota Statutes, sections 484.013 and 491A.03, subdivision 1, or such other appointments as ordered by the Supreme Court. However, in no event shall the judge act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.

(Amended effective January 1, 2011.)

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 Rule 1.12 of the Rules of Professional Conduct.

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:

(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 district court of the county in which the judge serves, or, if the court is divided into divisions, 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. This paragraph shall not apply to lawyers who are appointed pursuant to Minnesota Statutes, sections 484.013 and 491A.03, subdivision 1, or such other appointments as ordered by the Supreme Court. However, in no event shall the judge act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.

(Amended effective January 1, 2011.)

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 (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).

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.

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.

TEXT OF CANONS