

— JUDICIAL CONDUCT AND DISCIPLINE —  
*Rules and Regulations for the U.S. Judiciary*

**The Judiciary’s Code of Conduct Provides Non-Binding Ethical Guidelines for Federal Judges**

- In 1973, the Judicial Conference adopted the Judicial Code of Conduct and continues to monitor the Code, recommend amendments to the code, and issue advisory opinions regarding the code.
- Though non-binding, the Code of Conduct is widely followed and regularly consulted by members of Circuit Judicial Councils and the Judicial Conference when deciding whether to institute corrective measures for a judge’s misconduct.
- Any judge may contact a member of the Code of Conduct Committee, a sub-committee of the Judicial Conference, for confidential advice on how to comply with the provisions of the code.
- The five canons of the Code of Conduct as of July 1, 2009:
  - A judge should uphold the integrity and independence of the judiciary;
  - A judge should avoid impropriety and the appearance of impropriety in all activities;
  - A judge should perform the duties of the office fairly, impartially and diligently;
  - A judge may engage in extra-judicial activities that are consistent with the obligations of a judicial office; and
  - A judge should refrain from political activity.

The U.S. Code of Conduct is similar to the United Nations’ Bangalore Principles of Judicial Conduct, adopted in 2002. The Bangalore Principles serve as a model for nations adopting their own judicial codes of conduct.

**The Judicial Conduct and Disability Act of 1980\* Provides Procedures for the Judiciary to Investigate and Discipline Misconduct Committed by Federal Judges**

- Any litigant, attorney, or other member of the public may file a written complaint about a judge’s misconduct with the Clerk of the Court of Appeals for the Circuit. A Chief Circuit Judge may also independently institute an investigation into misconduct.
  - Complaints must be about judicial misconduct ( e.g., conflict of interest/bias, undue decisional delay, medical disability, or other ethical violations) and not about the substance of a judge’s decision.
- The Chief Circuit Judge reviews the complaint. If allegations are “reasonably in dispute,” the complaint is referred to a Special Committee created for the purpose of investigating the complaint and comprised of an equal number of circuit and district judges. If the complaint is not factually supported, the Chief Judge dismisses the complaint.
- The Special Committee investigates the allegations and submits findings to the Circuit Judicial Council, a body responsible for creating and implementing circuit policies and comprised of the Chief Judge and an equal number of circuit and district judges.
- The Circuit Judicial Council may institute corrective measures, dismiss the complaint, or refer it to the Judicial Conference if it finds the judge’s conduct is not amenable to resolution by the Judicial Council and merits greater reprimand, possibly impeachment and removal. If necessary, the Circuit Judicial Council may conduct additional investigation before acting on the complaint.
  - Corrective measures by the Judicial Council may include temporarily suspending case assignments, providing informal counseling, suggesting retirement, or issuing censure or reprimand.
- If a complaint is referred to the Judicial Conference, the Conference may institute additional corrective measures and, if necessary, recommend to the House of Representatives that the offending judge be impeached.
- The Judiciary Committee of the U.S. House of Representatives conducts an inquiry, possibly through a public hearing where members of the committee question the offending judge. If a majority of committee members then agree that impeachment is necessary, the matter goes before the entire House. Members of the House debate the matter and if a majority of the entire House vote in favor of impeachment, the offending judge is impeached. (*Only 14 judicial impeachments in U.S. History.*)
- The matter goes before the U.S. Senate for trial with the Chief Justice of the Supreme Court presiding and the Senate acting as a jury. With approval from two-thirds of the Senate, the judge is convicted and removed. (*Only 7 U.S. judges convicted and removed.*)

All investigations into misconduct and implementation of measures designed to reprimand and correct misconduct, short of impeachment and removal, are instituted from within the judiciary, which strengthens the judicial branch’s institutional independence and protects it from the political pressures applicable to the legislative and executive branches.

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\* The Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§ 351-364 (2006).

# JUDICIAL CONDUCT AND DISCIPLINE

## — Preventing Misconduct—

### A Stringent Selection Process Ensures Qualified, Ethical Judges

- Pursuant to the Constitution, judges for the Supreme Court, Circuit Courts, and District Courts are nominated by the President and confirmed by the Senate.
- Before making a nomination, the President and his staff research, investigate, and interview potential nominees.
- After the President makes a nomination, the Senate Judiciary Committee holds a confirmation hearing (open to the public) where the nominee is asked about judicial philosophy, substantive law, and personal and professional conduct.
- The American Bar Association provides the Judiciary Committee with a non-binding evaluation of the nominee's qualifications.
- If approved by the Judiciary Committee, the nominee goes before the entire Senate for approval.
- If approved by a majority of the Senate, the nominee is confirmed.
- Once confirmed, life appointments enable judges to act without influence from political pressures or public opinion.

U.S. Constitution, Article II, Section 2: The President "shall nominate, and by and with the advice and consent of the Senate, shall appoint...judges of the Supreme Court, and all other officers of the United States [including all other federal judges]."

### Sufficient Compensation Promotes Judicial Independence

- Sufficient compensation deters judges from (1) seeking additional income from outside sources that may undermine judicial independence or (2) using a judicial appointment as a stepping-stone to a more lucrative position in the private sector.
- Pursuant to the Constitution, Congress cannot diminish judges' salaries, protecting judges from political considerations when issuing decisions.
- Generous retirement provisions dissuade judges from continuing to serve after a loss of physical or mental capacity.

Chief Justice John Roberts: "Inadequate compensation directly threatens the viability of life tenure, and if tenure in office is made uncertain, the strength and independence judges need to uphold the rule of law—even when it is unpopular to do so—will be seriously eroded."

### Limitations on Outside Income Prevent Judges From Entering Into Employment or Income-Generating Contracts That Would Inhibit the Judge's Ability To Function Independently

- Pursuant to statute, outside income is limited to 15% of base salary and judges are forbidden from receiving a fee for giving a speech or writing an article. Judges may, however, receive book royalties or a teaching salary subject to the 15% limitation. They may also receive income not subject to the 15% limitation from pensions, annuities, deferred compensation, investments, solely owned or family-owned businesses, and the sale of intellectual property.

Requiring judges to file income reports, which are annually reviewed by the Judicial Conference's Committee on Financial Disclosure, ensures compliance with limitations on outside income.

### Laws Requiring Judges To Remove Themselves From Hearing Certain Cases Eliminate Opportunity for Bias

- Judges must remove themselves from hearing a case in certain situations set by statute, e.g., judge has personal knowledge of disputed facts; judge's law firm handled the same matter while she was there; judge's close relative is a party or attorney; the judge, her spouse, or her minor child has a financial interest in a party to the litigation; the judge served as counsel in the case prior to becoming a judge.
- Judges have discretionary authority to remove themselves in other situations if they believe that their impartiality might be reasonably questioned. Or, the judge may seek affirmation from both parties that her removal is not necessary.
- Parties may request that a judge remove herself. However, the judge, in her discretion, may deny this request and hear the case.

If a judge fails to remove herself from hearing a case when necessary, she may be subject to judicial complaint, investigation, and corrective measures. (See reverse side for details.)