

The Special Committee investigates the allegations and submits findings to the circuit judicial council, a body responsible for creating and implementing circuit policies, comprising the chief judge and an equal number of circuit and district judges. The council may dismiss the complaint, institute corrective measures, or refer it to the Judicial Conference. If necessary, the council may conduct additional investigation before acting on the complaint.

Corrective measures by the council may include temporarily suspending case assignments, providing informal counseling, or issuing censure or reprimand. Action by the Judicial Conference may include additional corrective measures and, if deemed appropriate, recommendation to the House of Representatives that the offending judge be impeached.

In the latter case, the House Judiciary Committee conducts an inquiry (“open to the public unless otherwise noted”) in which committee members question the offending judge. If a majority of the committee agrees impeachment is necessary, the matter goes before the entire House for debate and vote. A majority of the House must vote in favor for a judge to be impeached, at which point the matter goes before the U.S. Senate for trial. A two-thirds majority of the Senate must vote for conviction for a judge to be removed. Pursuant to the Constitution, a judge may be removed only for “high crimes and misdemeanors.”

There have been only 15 judicial impeachments in U.S. history, and only eight U.S. judges have been convicted and removed.

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*All investigations into misconduct and implementation of measures designed to reprimand and correct misconduct, short of impeachment and removal, are conducted 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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## JUDICIAL CONDUCT AND DISCIPLINE IN THE FEDERAL COURTS

### A thorough selection process ensures qualified, ethical judges

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*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].”* —U.S. Constitution, Article II, Section 2

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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 may be asked about judicial philosophy, substantive law, and personal and professional conduct. The American Bar Association provides the Judiciary Committee with a nonbinding 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.

### Lifetime appointment and sufficient compensation promote judicial independence

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*Judges “shall hold their offices during good behaviour, and shall ... receive for their services, a compensation, which shall not be diminished during their continuance in office.”*

—U.S. Constitution, Article III, Section 1

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Lifetime appointment enables judges to act without influence from political pressure or public opinion. Sufficient compensation deters judges from seeking additional income from outside sources that may undermine judicial independence, or from 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, helping protect judges from political considerations when issuing decisions. Generous retirement provisions dissuade judges from continuing to serve after a loss of physical or mental capacity.

### **Limitations on outside income prevent judges from entering into employment or income-generating contracts that would inhibit independence**

By statute, outside income is limited to 15% of the judge's base salary. Judges are forbidden from receiving a fee for giving a speech or writing an article. They 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.

Judges are required to file financial reports, reviewed annually by the Judicial Conference's Committee on Financial Disclosure, to ensure compliance with limitations on outside income. (Judges are also subject to ethics and conduct rules applicable to other federal employees.)

### **Laws requiring judges to remove themselves from hearing certain cases eliminate opportunity for bias**

Judges must remove themselves when their impartiality may reasonably be questioned. Parties may waive disqualification except in the following circumstances, which may never be waived:

- having personal knowledge of disputed facts
- belonging to a law firm that handled the same matter during the judge's employment
- being related to an attorney in a case
- having any financial interest in a party to the litigation, or a spouse or minor child with such an interest
- serving as counsel in the case before becoming a judge

A party may petition to remove a judge on any of these grounds, and the judge must decide whether any of these grounds exist. The judge's decision not to recuse is subject to appellate review. If the reviewing court finds the judge's refusal to recuse in error, the reviewing court may order the judge's removal, and a misconduct complaint may be initiated against the judge.

### **The judiciary's code of conduct provides nonbinding ethical guidelines for federal judges**

In 1973, the Judicial Conference adopted the Judicial Code of Conduct. The Conference's Code of Conduct Committee continues

to monitor the code, recommend amendments, and issue advisory opinions regarding the code.

The code's five canons are

- 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 extrajudicial activities that are consistent with the obligations of a judicial office.
- A judge should refrain from political activity.

Though nonbinding, the Code of Conduct is widely followed and regularly consulted by members of circuit judicial councils and the Judicial Conference when assessing alleged misconduct and deciding whether corrective measures are warranted. Any judge may contact a member of the Code of Conduct Committee for confidential advice on how to comply with the provisions of the code.\*

### **The Judicial Conduct and Disability Act of 1980 provides procedures for the judiciary to investigate and discipline misconduct of federal judges**

Any litigant, attorney, or other member of the public may file with the clerk of the court of appeals for the circuit a written complaint alleging a judge's misconduct. A chief circuit judge may also independently institute an investigation into possible misconduct.

Complaints must be about judicial misconduct (e.g., conflict of interest, bias, or other ethical violations) and not about the substance of a judge's decision. The chief circuit judge reviews the complaint. If the complaint is not about judicial misconduct, is not factually supported, or corrective action has already been taken, the chief judge dismisses the complaint. If allegations are "reasonably in dispute," the complaint is referred to a special committee, created to investigate the complaint, comprising an equal number of circuit and district judges.

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\* 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.