Preface

In 1924, the American Bar Association (ABA) adopted the Canons of Judicial Ethics, which, according to Chief Justice William Howard Taft, who chaired the ABA Committee on Judicial Ethics, were intended to be a “guide and reminder to the judiciary.”¹ The 1924 Canons of Judicial Ethics consisted of 36 provisions that included both generalized, hortatory admonitions and specific rules of proscribed conduct. The 1924 Canons were not intended to be a basis for disciplinary action. Many states, however, adopted this “guide” as a set of substantive rules, giving the Canons in those states the force of law, with the added persuasion of sanctions for violations.²

Answering criticism that the 1924 Canons engaged in “moral posturing,” which was more “hortatory than helpful in providing firm guidance for the solution of difficult questions,”³ the ABA appointed a Special Committee on Standards of Judicial Conduct in 1969 to develop new ethics rules for judges. California Supreme Court Justice Roger J. Traynor chaired the Special Committee. After three years’ work by the Special Committee, the Code of Judicial Conduct was adopted by unanimous vote of the ABA House of Delegates on August 16, 1972.⁴ The 1972 Code was designed to be enforceable, and was intended to preserve the integrity and independence of the judiciary.⁵

In 1986, the ABA Standing Committee on Ethics and Professional Responsibility, with jurisdiction over the Code, conducted a survey that led to the conclusion that the Code, in general, was serving its purposes well, but a comprehensive review of the Code was desirable. That review was conducted from 1987 to 1990 by the Standing Committee on Ethics and Professional Responsibility, and its Judicial Code Subcommittee composed of several

current and former members of the Ethics Committee, and several members
of the judiciary. This national effort was funded by the Josephson Institute for
the Advancement of Ethics, the State Justice Institute, and the ABA.

In the revision process, the ABA sought and considered the views of mem-
bers of the judiciary, the bar, and the general public. The Committee was aware
that the 1972 Canons, apart from their subsections, were used widely as a basis
for discipline. Therefore, the Committee declined to replace the black letter lan-
guage with descriptive headings and determined that the Code, consisting of
statements of norms denominated Canons, specific Sections, and explanatory
Commentary, stated the appropriate ethical obligations of judges.6

On August 7, 1990, the ABA House of Delegates adopted the Model Code of
Judicial Conduct. In the 1990 Code, a Preamble and a Terminology section were
added, and an Application section followed the Canons. The 1990 Code was

In September 2003, with a grant from The Joyce Foundation of Chicago,
Illinois, the ABA announced the appointment of the Joint Commission to Evalu-
ate the Model Code of Judicial Conduct under the auspices of the ABA Standing
Committee on Ethics and Professional Responsibility and the ABA Standing
Committee on Judicial Independence. The mandate of the Commission was to
review the 1990 Code and to recommend revisions for possible adoption. The
11-member Commission was composed of judges, experts in the field of judicial
and legal ethics, and a public member, and was supported by two reporters, ten
advisors, and counsel from the ABA.

Over the course of three and one half years, the Commission conducted a
comprehensive examination of the standards for the ethical conduct of judges
and judicial candidates that promote the independence, integrity, and impartial-
ity of the judiciary. This examination was prompted, in part, by the collective
experience of judges and judicial regulators who had worked with the 1990 Code
for more than a decade, and by the emergence of new types of courts and courts
processes, the increasing frequency of pro se representation, and the utilization
of diverse methods in the judicial selection process. This national effort culmi-
nated in the adoption of the revised Model Code of Judicial Conduct by the ABA

The 2007 Code proposed both format and substantive changes to the 1990
Code. Following a format similar to the ABA Model Rules of Professional Con-
duct, the 2007 Code preserved the Canons, which state overarching principles
of judicial conduct, followed by enforceable black letter Rules, as well as Com-
ments that provide both aspirational statements and guidance in interpreting and