

SCOPE

The ABA Model Code of Judicial Conduct consists of five Canons, numbered Rules under each Canon, and Comments that accompany and explicate each Rule. This Scope Section and a Terminology Section provide additional guidance in interpreting and applying the Code. At the end of the Code, an Application Section identifies those persons who must comply with the Rules, including full-time judges and others who hold judicial office on other than a full-time basis.

As noted in the Preamble, the Canons state overarching principles of judicial ethics. Compliance with the Rules inevitably results in adherence to these principles, ensuring the respect for our judiciary that sustains our system of democratic government under the rule of law. Although the Canons are cast in mandatory terms, it is the Rules that establish independently enforceable standards of conduct.

Where the Rules use the terms “shall” or “shall not,” they establish mandatory obligations and constitute minimum standards to which judges and candidates for judicial office will be held. Where a Rule uses permissive terms, such as “may,” the matter being addressed is committed to the personal and professional discretion of the judge or candidate in question; judges and candidates whose action or inaction falls within the boundaries of such discretion are not subject to disciplinary action. Enforcement of these standards through appropriate disciplinary processes is effected by the development and application of rules and procedures external to the ethical standards themselves.

The Comments accompanying the Rules provide guidance with respect to the purpose, meaning, and proper application of the Rule. They contain explanatory material and, in some places, provide examples of permitted or prohibited conduct; they neither add to nor subtract from the binding obligations set forth in the Rules. In no instance does a Comment supersede a Rule. When a Comment uses the term “must,” it does not mean that the Comment itself is binding or enforceable; it signifies instead that the Rule in question, properly applied, is obligatory as to the point in issue.

The Comments also identify aspirational goals for judges. To implement fully the principles of this Code as articulated in the Canons, judges should strive to exceed the minimum standards of conduct established by the Rules, holding themselves to the highest ethical standards, seeking to achieve those aspirational goals, and thereby enhancing the dignity of the judicial office.

The Rules set forth under each Canon are rules of reason. They should be interpreted in light of the overarching purposes of the Model Code, with due regard for all relevant circumstances. They are to be applied consistently with constitutional requirements, statutes, rules of court, and decisional law. They must also be construed so as not to impinge on the essential independence of judges in making judicial decisions, or on their

1 right to freedom of speech and association.

2 Although the text of each Rule is binding and enforceable, it is not contemplated that
3 every transgression will result in disciplinary action. Whether disciplinary action is
4 appropriate, and the degree of discipline to be imposed, should be determined through a
5 reasonable and reasoned application of the text and should depend on such factors as the
6 gravity of the transgression, whether there is a pattern of improper activity, and the effect
7 of the misconduct on the judiciary and the public.

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9 The Code is not designed or intended as a basis for establishing civil liability or
10 instituting criminal prosecution. Neither is it intended to serve as the basis for litigants to
11 seek collateral remedies against each other or to obtain tactical advantages in proceedings
12 before a court. Each of these uses subverts the true purposes of this Code.
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