

SCOPE

[1] The 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 ~~the~~ Terminology section provide additional guidance in interpreting and applying the Code. ~~At the end of the Code, an~~The 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.

[2] The Canons state overarching principles of judicial ethics: they are not intended to be enforceable or to form the basis for disciplinary action. Although the Canons are cast in mandatory terms, it is the Rules that establish binding or enforceable standards of conduct. Where the Rules use the terms “must”, “shall” or “shall not,” they establish mandatory standards to which judges and candidates for judicial office will be held. ~~The enforcement of these standards is effected through appropriate disciplinary procedures.~~ Where a Rule uses permissive terms, such as “may;”, “should”, or “should not”, the matter being addressed is committed to the personal and professional discretion of the judge or candidate in question.

[3] The Comments that accompany the Rules serve two functions. First, they provide guidance with respect to the purpose, meaning, and proper application of the Rule. They contain explanatory material and in some instances provide examples of permitted or prohibited conduct. Comments neither add to nor subtract from the binding obligations set forth in the Rules. Therefore, 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 understood, is obligatory as to the point in issue.

[4] The Comments, like the Canons, also identify aspirational goals for judges. To implement fully the broad principles of this Code as articulated in the Canons, judges should strive to exceed the ~~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.

[5] The ~~Canons and~~ Rules set forth in the Code are rules of reason. They should be applied consistent with constitutional requirements, statutes, other court rules, and decisional law and with due regard for all relevant circumstances. The Code is to be interpreted so as not to impinge on the essential independence of judges in making judicial decisions.

[6] ~~Although the text of each Rule is binding and enforceable, it is not contemplated that every transgression will result in disciplinary action.~~ Failure to comply with an obligation or prohibition imposed by a Rule is a basis for invoking the disciplinary process. Whether formal disciplinary action is appropriate, and if so the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text, based upon the facts and circumstances that existed at the time of the conduct in question, and upon relevant mitigating and aggravating factors such as ~~and~~

1 | ~~should depend on such factors as~~ the seriousness of the transgression, whether there is a
2 | pattern of improper activity, whether there have been previous violations, and the effect
3 | of the improper activity on the judicial system or others.

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5 | [7] The Code is not designed or intended as a basis for civil liability or instituting
6 | criminal prosecution. Neither is it intended to serve as the basis for litigants to seek
7 | collateral remedies against each other or to obtain tactical advantages in proceedings
8 | before a court.

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