

**AJS Comments on Preliminary Draft
of Revisions to ABA Model Code of Judicial Conduct**

Submitted to the ABA Joint Commission to
Evaluate the Model Code of Judicial Conduct
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Canon 1

A JUDGE SHALL UPHOLD THE INTEGRITY, IMPARTIALITY AND INDEPENDENCE OF THE JUDICIARY AND SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL THE JUDGE'S ACTIVITIES

RULE 1.01: COMPLIANCE WITH THIS CODE

A judge shall observe the standards of conduct embodied in these Rules.

COMMENT

[1] An independent judiciary is indispensable to justice in our society. Judicial compliance with high standards of judicial conduct promotes the integrity, impartiality and independence of the judiciary and fosters public confidence in the administration of justice.

[2] Judges should ~~also~~ participate in activities that promote ethical conduct generally among judges and lawyers. Judges are encouraged to study, develop, maintain, implement and enforce codes of conduct, support professionalism within the judiciary and the legal profession, and promote access to justice for all.

RULE 1.02: PROMOTING CONFIDENCE IN THE JUDICIARY

A judge shall act at all times in a manner that promotes public confidence in the integrity, impartiality and independence of the judiciary. A judge shall not at any time engage in conduct involving dishonesty, fraud, deceit, or misrepresentation or reflecting adversely on the judge's impartiality or fitness to serve as a judge.

[AJS's proposed language on the characteristics of a good judge, defining with more clarity and specificity the type of conduct that would not promote confidence in the judiciary. The proposed language is similar to that in Rule 8.4(b) of the Rules of Professional Responsibility. Rule 1.02 would be the basis for discipline for conduct, for example, that falls short of criminal conduct but is dishonest or misleading, which has been subject to discipline under the general provisions of Canon 1 and Canon 2. See, e.g., Inquiry Concerning Couwenberg, Decision and Order (California Commission on Judicial Performance August 15, 2001) (<http://cjp.ca.gov/>) (misrepresenting educational background on personal data questionnaires when he sought judicial appointment; falsely representing that he

was a Vietnam veteran to judges who could help him gain his appointment in 1996; misrepresenting his educational background, legal experience, and affiliations on his 1997 judicial data questionnaire; falsely representing to the judge who was to introduce him at the public enrobing ceremony that he was a Vietnam veteran who had received a Purple Heart; falsely representing to attorneys that he went to Vietnam, had a master's degree in psychology, and had shrapnel in his groin received in military combat; falsely telling a newspaper reporter that he was in Vietnam in 1968 and 1969); In the Matter Concerning Tisher, Decision and Order Imposing Public Admonishment (California Commission on Judicial Performance April 8, 2004) (cjp.ca.gov) (repeatedly made misleading statements to parties in a case); Inquiry Concerning O'Flaherty, Decision and Order Imposing Public Admonishment (California Commission on Judicial Performance September 29, 2004) (cjp.ca.gov/); Inquiry Concerning Hapner, 718 So. 2d 785 (Florida 1998) (inaccurate testimony in domestic violence proceeding); Inquiry Concerning Holloway, 832 So. 2d 716 (Florida 2002) (materially incomplete and misleading statements in answering deposition questions and executing errata sheet); In the Matter of Robertson, 596 S.E.2d 2 (Georgia 2004) (false statement on declaration of candidacy and affidavit); In re O'Brien, Order (Illinois Courts Commission July 24, 1995) (false claims to have received medal of honor); In re Golniewicz, Order (Illinois Courts Commission November 14, 2004) (used parents' address to run for office; sent out deceptive advertising to the voters); In the Matter of Kouros, 816 N.E.2d 21 (Indiana 2004) (made inaccurate representations about measures taken to conduct court's business); Public Admonition of Johnson (Indiana Commission on Judicial Qualifications July 11, 1996) (signing inaccurate affidavit); Inquiry Concerning McGuire, Stipulation (Kansas Commission on Judicial Qualifications February 19, 2004) (falsified expense vouchers); In the Matter of Dawson, Public Reprimand (Maryland Commission on Judicial Disabilities November 2003) (loud behavior in restaurant, refusal to leave, behavior towards other patrons, manager, and police); In re Ferrara, 582 N.W.2d 817 (Michigan 1998) (public misrepresentations at a press conference); In re Thompson, 682 N.W.2d 477 (Michigan 2004) (misrepresentations in charitable solicitations); Commission on Judicial Performance v. Teel, 863 So. 2d 973 (Mississippi 2004) (reimbursement for bills never paid and depositing funds into personal bank account); In the Matter of Parsons, 789 A.2d 654 (New Jersey 2002) (failure to report to administrative director of courts or supreme court charge of driving while intoxicated; answering "no" to questions about being arrested or charged with crime or petty offense other than minor traffic ticket on re-appointment questionnaires); In the Matter of Williams, 777 A.2d 323 (New Jersey 2001) (publicly confronted man with whom judge previously had romantic relationship; gave false and misleading information to police and in telephone call to saloon); In the Matter of Bloom, Determination (New York Commission on Judicial Conduct January 20, 1995) (www.scjc.ny.us) (giving inaccurate testimony in an attorney discipline proceeding); In the Matter of Dusen, Determination (New York State Commission on Judicial Conduct November 16, 2004) (www.scjc.ny.us) (issued release order that falsely stated defendant had been

convicted of trespass and sentenced to time served after request from immigration officials); In the Matter of Collazo, 691 N.E.2d 1021 (New York 1998) (false statements to gubernatorial and legislative committees); In the Matter of Dusen, Determination (New York State Commission on Judicial Conduct November 16, 2004) (www.scjc.state.ny.us) (issued release order that falsely stated defendant had been convicted of trespass and sentenced to time served after request from immigration officials); In re Harrison, 611 S.E.2d 834 (North Carolina 2005) (filing baseless complaints with the North Carolina State Bar and the United States Department of Justice); In re Kroger, 702 A.2d 64 (Vermont 1997) (false, misleading, and deceptive statements at hearing before judges association); In re Charge of Judicial Misconduct (Ware), No. 97-80629, Order and Memorandum (U.S. 9th Circuit Judicial Council August 7, 1998) (public misrepresentations about relationship to victim of racial violence).]

COMMENT

[1] Deference to the judgments and rulings of courts depends upon public confidence in the integrity, impartiality, and independence of judges. The integrity, impartiality and independence of judges depends in turn upon their acting without fear, ~~or favor in a manner free from~~ favoritism, self-interest, or bias. Violations of this Code diminish public confidence in the judiciary and thereby ~~do injury to~~ injure the system of government under law.

[2] Because it is not practicable to list all prohibited acts, this proscription is necessarily cast in general terms that extend to all conduct by judges that undermines public confidence even if it is not specifically mentioned in the Code.

[This language, similar to that in the 1990 model code, is an important explanation of the necessity for having general, catch-all provisions in the code.]

RULE 1.03: IMPROPRIETY AND ITS APPEARANCE

A judge shall avoid impropriety and the appearance of impropriety.

COMMENT

[1] Public confidence in the judiciary is eroded by improper conduct by judges. The prohibition against acting with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. A judge must expect to be the subject of public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

[2] The test for impropriety is whether the conduct compromises the ability of the judge to carry out judicial responsibilities with integrity, impartiality, independence and competence. Examples of actual improprieties under this Rule include violations of law,

court rules, or other specific provisions of this Code. The test for an appearance of impropriety is whether the conduct would create, in reasonable minds, a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality, independence and competence is impaired.

RULE 1.04: COMPLYING WITH THE LAW.
A judge shall respect and comply with the law.

COMMENT

~~[1] The provisions of this Code focus primarily on judicial compliance with an established set of ethical norms, which, when officially adopted by an entity having regulatory power over the judiciary, are only one of the many types of laws that judges must obey. Judges are no less obligated to observe all valid forms of law than are those who come before them. Thus, a judge's obligation to respect and comply with all law extends as well to require compliance with statutes and court rules.~~

[The rule is straightforward and requires no comment.]