

**First Study Commission  
Questionnaire  
(2004)**

**Rules for Ethical Conduct for Judges, Their Application and Observance**

**A. General Aspects**

- 1. Are there any ethical rules/rules of conduct for judges/magistrates explicitly expressed in the law?**

Yes.

If your answer is positive, are these rules made in the shape of a catalogue, a general wording, or both?

Both.

Quote some examples:

“Any justice or judge appointed under the authority of the United States who engages in the practice of law is guilty of a high misdemeanor.” 28 U.S.C. § 454.

“No judge shall hear or determine an appeal from the decision of a case or issue tried by him.” 28 U.S.C. § 47.

“Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.” 28 U.S.C. § 455(a).

- 2. Are there ethical rules for judges/magistrates outside the law (e.g. in a code of ethics, code of conduct etc.)?**

Yes.

How is this “code” called?

The Code of Conduct for United States Judges:

Cannon 1: A Judge Should Uphold the Integrity and Independence of the Judiciary

Cannon 2: A Judge Should Avoid Impropriety and the Appearance of Impropriety in All Activities

Cannon 3: A Judge Should Perform the Duties of the Office Impartially and Diligently

Cannon 4: A Judge May Engage in Extra-Judicial Activities to Improve the Law, the Legal System, and the Administration of Justice

Cannon 5: A Judge Should Regulate Extra-Judicial Activities to Minimize the Risk of Conflict with Judicial Duties

Cannon 6: A Judge Should Regularly File Reports of Compensation Received for Law-Related and Extra-Judicial Activities

Cannon 7: A Judge Should Refrain from Political Activity

**3. Who did elaborate and enact/make the “code”?**

The Judicial Conference Committee on Codes of Conduct, an office of the Administrative Office of the United States Courts that publishes the Code of Conduct for United States Judges.

**4. If you have both a code of ethics and legally fixed ethical rules for judges/magistrates in what way do they complement one another?**

The statutory rules delineate specific actions which are prohibited by law and may apply both in general to federal employees as well as to judges. The Code of Conduct for United States Judges sets forth a general guideline by which judges, and persons to whom the Code applies to, should abide by, without listing the specific statutory violations involved.

**5. If you don’t have any code of ethics, are there plans in your country to introduce one?**

N/A

**B. Contents**

**6. Does your code of ethics include the following principles/aspects?**

a) Independence: Yes.

Cannon 1: “A judge should uphold the integrity and independence of the judiciary”

b) Impartiality in general: Yes.

Cannon 5: “A judge should regulate extra-judicial activities to minimize the risk of conflict with judicial duties”

c) Impartiality and conduct of judges in the exercise of their judicial functions: Yes.

Cannon 3: “A judge should perform the duties of the office impartially and diligently”

d) Impartiality and extra-judicial conduct of judges: Yes.

Cannon 4: “A judge may engage in extra-judicial activities to improve the law, legal system, and administration of justice”

Cannon 5: “A judge should regulate extra-judicial activities to minimize the risk of conflict with judicial duties”

e) Impartiality and other professional activities of judges: Yes.

Cannons 3, 4, and 5 also apply

f) Impartiality and the media: Yes.

Cannon 3, Section A(6):“ A judge should avoid public comments on the merits of a pending or impending action, requiring similar restraint by court personnel subject to the judge’s direction and control.”

g) Party politics and judges: Yes.

Cannon 7: “A judge should refrain from political activity”

h) Propriety: Yes.

Cannon 2: “A judge should avoid impropriety and the appearance of impropriety in all

activities”

i) Equality: No.

There is no specific section on “equality”, though this topic can be associated with Canon 3 and the idea of impartiality.

k) Competence: No.

l) Diligence: Yes.

Canon 3: “A judge should perform the duties of the office impartially and diligently”

m) Others: Yes.

Canon 6: “A judge should regularly file reports of compensation received for law-related and extra-judicial activities”

### **C. Violation of the Code of Ethics**

**7. What happens if a judge/magistrate violates a duty explicitly stated in a provision of law?**

See Number 8.

**8. What happens if a judge violates a duty stated in the Code of Ethics?**

Sections 351-364 of Title 28 of the United States Code amended former section 372(c) through the Judicial Improvements Act of 2002. This amendment clarified the established processes by which complaints alleging judicial misconduct or disability are resolved. Under this provision, each circuit’s judicial council and Judicial Conference promulgates the rules and proceedings involving complaints of judicial misconduct and disability. There are various actions which, after consideration of a special committee’s report, the judicial council is empowered to take. These actions include requesting that the judge retire voluntarily, or ordering that no further cases be assigned to a judge for a temporary period. If the circuit judicial council determines that a judge has engaged in impeachable conduct, the council must forward the matter to the Judicial Conference of the United States. This statutory process supplements the formal impeachment proceedings provided for by the Constitution of the United States (impeachment by a majority of the House of Representatives and removal by a two-thirds vote of the Senate).

**9. Is there any influence of the Code of Ethics on a disciplinary procedure?**

Violation of the Code of Conduct provides grounds for a complaint against the judge by the appropriate circuit judicial council. The Code of Conduct also applies universally to judges participating in circuit judicial council hearings and, thus, the Code of Conduct applies both to bring a complaint to the circuit judicial council, and in the examination of the complaint.

**10. Are violations of the Code of Ethics made public?**

Under Rule 17 of the Illustrative Rules Governing Complaints of Judicial Misconduct and Disability (promulgated by the Code of Conduct for United States Judges as adopted and revised by the Judicial Conference of the United States), a docket-sheet record of orders of the chief judge and the judicial council as well as the texts of any memoranda supporting orders and any dissenting opinions or separate statements by members of the judicial council will be made public when final action on the complaint has been taken and is no longer subject to review. In some cases, the name of the judge involved will be withheld from the record, while in others, the name of the judge will be disclosed as a public record.

### **D. Judicial Ethics**

**11. Is judicial ethics an issue among the judiciary? Why? Why not?**

The judiciary must certainly be vigilant with respect to the issue of judicial ethics because fundamentally, the judiciary derives its power from the appearance of legitimacy. Maintaining high ethical standards among judges is central to the public's confidence in the judicial system. Moreover, the public's confidence in the system is often inseparable from both the public and private conduct of judges themselves. This intimate connection between the public trust vested in judges and the integrity of the entire judicial system places a special burden on judges to be cognizant of their ethical duties.

**12. Is judicial ethics an issue in the public? Why? Why not?**

Judicial ethics is particularly important to the public because the United States is a country that prides itself on the benefits derived from a nation governed by the rule of law. Moreover, the public's insatiable appetite for celebrity judicial proceedings has ensured that the judiciary remains constantly in the public sphere. But perhaps central to the public's interest in judicial ethics is a combination of the notion of mass media as a "fourth estate" in the effective functioning of a pluralist democracy and the potentially far-reaching societal impact of judicial decisions, either real or perceived. That judges, especially at the United States Supreme Court level, can have a profound impact on the everyday lives of individuals ensures that judicial ethics will always be an important public issue.

**E. Analysis**

**13. Do you consider a code of ethics an useful institution for the judiciary? Why? Why not?**

The legitimacy of the judiciary depends on public confidence in a system. As a result, ethical standards must be maintained both in the interests of justice as well as to keep what is essentially a self-policing body in line with the very standards it applies to the rest of society. Without a sort of ethical standard to abide by, the interpretive nature of the law and the integrity of an independent judiciary can be difficult to reconcile. Standards of moral and ethical conduct allow for a reference point by which otherwise subjective concepts can be systematically interpreted and applied. This protects the most basic function of the judiciary and provides safeguards against any number of possible violations which may not otherwise be considered by those operating within the system.

**14. Should the IAJ elaborate and adopt a code of ethics which could serve the national associations as a model? Why? Why not?**

For the same reasons that the Code contributes to the well-functioning of the United States judiciary, a code of ethics promulgated by the IAJ could serve as a useful model for its members.

**15. If you have a code of ethics, give some practical hints to those who are willing to introduce one?**

As with all rules, a code of ethics is subject to interpretation. It is important to have a standing committee to regularly meet and give uniform interpretations of the rules. It is also important that the committee regularly publish their opinions to give guidance to those to which the rules apply.