

1 AMERICAN BAR ASSOCIATION

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2
3 MODEL CODE OF JUDICIAL CONDUCT

4
5 PROPOSED AMENDMENTS
6 AUGUST 2003

7
8
9 *Additions underlined; deletions struck through*

10
11
12 **Terminology**

13 ...
14 “Impartiality” denotes absence of bias or prejudice in favor of, or against, particular parties or
15 classes of parties, as well as maintaining an open mind in considering issues that may come
16 before the judge.

17 ...
18
19 **CANON 1**

20
21 A JUDGE SHALL UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE
22 JUDICIARY

- 23
24 **A. An independent and honorable judiciary is indispensable to justice in our**
25 **society. A judge should participate in establishing, maintaining and enforcing**
26 **high standards of conduct, and shall personally observe those standards so that**
27 **the integrity and independence of the judiciary will be preserved. The**
28 **provisions of this Code are to be construed and applied to further that objective.**
29

30 **Commentary:**

31 Deference to the judgments and ruling of courts depends upon public confidence in the
32 integrity and independence of judges. The integrity and independence of judges depends in
33 turn upon their acting without fear or favor. A judiciary of integrity is one in which judges
34 are known for their probity, fairness, honesty, uprightness, and soundness of character. An
35 independent judiciary is one free of inappropriate outside influences. Although judges
36 should be independent, they must comply with the law, including the provisions of this Code.
37 Public confidence in the impartiality of the judiciary is maintained by the adherence of each
38 judge to this responsibility. Conversely, violation of this Code diminishes public confidence
39 in the judiciary and thereby does injury to the system of government under law.
40

41 **CANON 2**

42
43 A JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY
44 IN ALL OF THE JUDGE’S ACTIVITIES
45

46 A. A judge shall respect and comply with the law* and shall act at all times in a
47 manner that promotes public confidence in the integrity and impartiality* of the
48 judiciary.
49

50 **Commentary:**

51 Public confidence in the judiciary is eroded by irresponsible or improper conduct by
52 judges. A judge must avoid all impropriety and appearance of impropriety. A judge must
53 expect to be the subject of constant public scrutiny. A judge must therefore accept
54 restrictions on the judge’s conduct that might be viewed as burdensome by the ordinary
55 citizen and should do so freely and willingly. Examples are the restrictions on judicial
56 speech imposed by Sections 3(B)(9) and (10) that are indispensable to the maintenance of the
57 integrity, impartiality, and independence of the judiciary.

58 The prohibition against behaving with impropriety or the appearance of impropriety
59 applies to both the professional and personal conduct of a judge. Because it is not practicable
60 to list all prohibited acts, the proscription is necessarily cast in general terms that extend to
61 conduct by judges that is harmful although not specifically mentioned in the Code. Actual
62 improprieties under this standard include violations of law, court rules or other specific
63 provisions of this Code. The test for appearance of impropriety is whether the conduct would
64 create in reasonable minds a perception that the judge’s ability to carry out judicial
65 responsibilities with integrity, impartiality and competence is impaired. See also
66 Commentary under Section 2C.

67 ...

68 **CANON 3**

69
70 A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND
71 DILIGENTLY

72 ...

73 **B. Adjudicative Responsibilities.**

74 ...

75 (9) A judge shall not, while a proceeding is pending or impending in any court,
76 make any public comment that might reasonably be expected to affect its
77 outcome or impair its fairness or make any nonpublic comment that might
78 substantially interfere with a fair trial or hearing. The judge shall require*
79 similar abstention on the part of court personnel* subject to the judge’s
80 discretion and control. This Section does not prohibit judges from making
81 public statements in the course of their official duties or from explaining for
82 public information the procedures of the court. This Section does not apply
83 to proceedings in which the judge is a litigant in a personal capacity.
84

85 (10) A judge shall not, with respect to cases, controversies or issues that are likely
86 to come before the court, make pledges, promises or commitments that are
87 inconsistent with the impartial* performance of the adjudicative duties of the
88 office.

89
90 **Commentary:**

91 Sections 3B(9) and (10) restrictions on judicial speech are essential to the maintenance of
92 the integrity, impartiality, and independence of the judiciary. A pending proceeding is one
93 that has begun but not yet reached final disposition. An impending proceeding is one that is
94 anticipated but not yet begun. The requirement that judges abstain from public comment
95 regarding a pending or impending proceeding continues during any appellate process and
96 until final disposition. ~~This Section does~~ Sections 3B(9) and (10) do not prohibit a judge
97 from commenting on proceedings in which the judge is a litigant in a personal capacity, but
98 in cases such as a writ of mandamus where the judge is a litigant in an official capacity, the
99 judge must not comment publicly. The conduct of lawyers relating to trial publicity is
100 governed by [Rule 3.6 of the ABA Model Rules of Professional Conduct.] (Each jurisdiction
101 should substitute an appropriate reference to its rule.)
102

103 ~~(10)~~

104 **(11) A judge shall not commend or criticize jurors for their verdict other than in**
105 **a court order or opinion in a proceeding, but may express appreciation to**
106 **jurors for their service to the judicial system and the community.**

107 ...

108 ~~(11)~~

109 **(12) A judge shall not disclose or use, for any purpose unrelated to judicial duties,**
110 **nonpublic information* acquired in a judicial capacity.**

111 ...

112 **E. Disqualification.**

113
114
115 **(1) A judge shall disqualify himself or herself in a proceeding in which the**
116 **judge's impartiality might reasonably be questioned, including but not**
117 **limited to instances where:**

118 ...

119 **(f) the judge, while a judge or a candidate for judicial office, has made a**
120 **public statement that commits, or appears to commit, the judge with**
121 **respect to**

122 **(i) an issue in the proceeding; or**

123 **(ii) the controversy in the proceeding.**

124 ...

125 **CANON 5**

126
127
128 **A JUDGE OR JUDICIAL CANDIDATE SHALL REFRAIN FROM INAPPROPRIATE**
129 **POLITICAL ACTIVITY**

130 **A. All Judges and Candidates**

131 ...

132
133 **(3) A candidate* for a judicial office:**

134 **(a) shall maintain the dignity appropriate to judicial office and act in a**
135 **manner consistent with the impartiality,* integrity and independence**
136 **of the judiciary, and shall encourage members of the candidate's**

- 137 family* to adhere to the same standards of political conduct in
 138 support of the candidate as apply to candidate;
 139 ...
- 140 (d) shall not:
- 141 (i) with respect to cases, controversies, or issues that are likely to
 142 come before the court, make pledges, or promises or
 143 commitments of conduct in office other than that are
 144 inconsistent with the faithful and impartial* performance of
 145 the adjudicative duties of the office; or
- 146 ~~(ii) — make statements that commit or appear to commit the~~
 147 ~~candidate with respect to cases, controversies or issues that are~~
 148 ~~likely to come before the court; or~~
- 149 ~~(iii) —~~
- 150 (ii) knowingly* misrepresent the identity, qualifications, present
 151 position or other fact concerning the candidate or an
 152 opponent;

153

154 **Commentary:**

155 Section 5A(3)(d) prohibits a candidate for judicial office from making statements that
 156 ~~appear to~~ commit the candidate regarding cases, controversies or issues likely to come before
 157 the court. As a corollary, a candidate should emphasize in any public statement the
 158 candidate's duty to uphold the law regardless of his or her personal views. See also Sections
 159 3B(9) and (10), the general rules on public comment by judges. Section 5A(3)(d) does not
 160 prohibit a candidate from making pledges or promises respecting improvements in court
 161 administration. Nor does this Section prohibit an incumbent judge from making private
 162 statements to other judges or court personnel in the performance of judicial duties. This
 163 Section applies to any statement made in the process of securing judicial office, such as
 164 statements to commissions charged with judicial selection and tenure and legislative bodies
 165 confirming appointment. See also Rule 8.2 of the ABA Model Rules of Professional
 166 Conduct.

167 ...