

JUDICIAL CONDUCT AND DISCIPLINE

in the United States Federal Courts

— Preventing Misconduct—

A Thorough Selection Process Ensures Qualified, Ethical Judges

- Pursuant to the Constitution, judges for the Supreme Court, Circuit Courts, and District Courts are nominated by the President and confirmed by the Senate.
- Before making a nomination, the President and his staff research, investigate, and interview potential nominees.
- After the President makes a nomination, the Senate Judiciary Committee holds a confirmation hearing (open to the public) where the nominee may be asked about judicial philosophy, substantive law, and personal and professional conduct.
- The American Bar Association provides the Judiciary Committee with a non-binding evaluation of the nominee's qualifications.
- If approved by the Judiciary Committee, the nominee goes before the entire Senate for approval.
- If approved by a majority of the Senate, the nominee is confirmed.

U.S. Constitution, Article II, Section 2: The President "shall nominate, and by and with the advice and consent of the Senate, shall appoint...judges of the Supreme Court, and all other officers of the United States [including all other federal judges]."

Lifetime Appointment and sufficient Compensation Promotes Judicial Independence

- U.S. Constitution, Article III §1
- Judges "hold their offices during good behavior," enabling them to act without influence from political pressure or public opinion.
- Sufficient compensation deters judges from (1) seeking additional income from outside sources that may undermine judicial independence or (2) using a judicial appointment as a stepping-stone to a more lucrative position in the private sector.
- Pursuant to the Constitution, Congress cannot diminish judges' salaries, protecting judges from political considerations when issuing decisions.
- Generous retirement provisions dissuade judges from continuing to serve after a loss of physical or mental capacity.

Limitations on Outside Income Prevent Judges From Entering Into Employment or Income-Generating Contracts That Would Inhibit the Judge's Ability To Function Independently

- Pursuant to statute, outside income is limited to 15% of base salary and judges are forbidden from receiving a fee for giving a speech or writing an article. Judges may, however, receive book royalties or a teaching salary subject to the 15% limitation. They may also receive income not subject to the 15% limitation from pensions, annuities, deferred compensation, investments, solely owned or family-owned businesses, and the sale of intellectual property.
- Judges are also subject to ethics and conduct rules applicable to other federal employees.

Requiring judges to file financial reports, which are annually reviewed by the Judicial Conference's Committee on Financial Disclosure, ensures compliance with limitations on outside income.

Laws Requiring Judges to Remove Themselves from Hearing Certain Cases Eliminate Opportunity for Bias

- Judges must remove themselves from hearing a case in certain situations set by statute, e.g., judge has personal knowledge of disputed facts; judge's law firm handled the same matter while she was there; judge's close relative is a party or attorney; the judge, her spouse, or her minor child has a financial interest in a party to the litigation; the judge served as counsel in the case prior to becoming a judge.
- Judges have discretionary authority to remove themselves in other situations if they believe that their impartiality might be reasonably questioned. Or, the judge may seek affirmation from both parties that her removal is not necessary.
- Parties may request that a judge remove herself. However, the judge, in her discretion, may deny this request and hear the case.
- If a judge fails to remove herself from hearing a case when necessary, she may be subject to judicial complaint, investigation, and corrective measures.

—Rules and Regulations for the U.S. Judiciary—

The Judiciary's Code of Conduct Provides Non-Binding Ethical Guidelines for Federal Judges

- In 1973, the Judicial Conference adopted the Judicial Code of Conduct and continues to monitor the Code, recommend amendments to the code, and issue advisory opinions regarding the code.
- Though non-binding, the Code of Conduct is widely followed and regularly consulted by members of Circuit Judicial Councils and the Judicial Conference when deciding whether a judge has committed misconduct and whether to institute corrective measures.
- Any judge may contact a member of the Code of Conduct Committee, a sub-committee of the Judicial Conference, for confidential advice on how to comply with the provisions of the code.
- The five canons of the Code of Conduct:
 - A judge should uphold the integrity and independence of the judiciary;
 - A judge should avoid impropriety and the appearance of impropriety in all activities;
 - A judge should perform the duties of the office fairly, impartially and diligently;
 - A judge may engage in extra-judicial activities that are consistent with the obligations of a judicial office; and
 - A judge should refrain from political activity.

The U.S. Code of Conduct is similar to the United Nations' Bangalore Principles of Judicial Conduct, adopted in 2002. The Bangalore Principles serve as a model for nations adopting their own judicial codes of conduct.

The Judicial Conduct and Disability Act of 1980 Provides Procedures for the Judiciary to Investigate and Discipline Misconduct Committed by Federal Judges

- Any litigant, attorney, or other member of the public may file with the Clerk of the Court of Appeals for the Circuit a written complaint alleging a judge's misconduct. A Chief Circuit Judge may also independently institute an investigation into possible misconduct.
 - Complaints must be about judicial misconduct (e.g., conflict of interest/bias, undue decisional delay, or other ethical violations) and not about the substance of a judge's decision.
- The Chief Circuit Judge reviews the complaint. If allegations are "reasonably in dispute," the complaint is referred to a Special Committee created for the purpose of investigating the complaint and comprised of an equal number of circuit and district judges. If the complaint is not about judicial misconduct, is not factually supported, or corrective action has already been taken, the Chief Judge dismisses the complaint.
- The Special Committee investigates the allegations and submits findings to the Circuit Judicial Council, a body responsible for creating and implementing circuit policies and comprised of the Chief Judge and an equal number of circuit and district judges.
- The Circuit Judicial Council may dismiss the complaint, institute corrective measures, or refer it to the Judicial Conference. If necessary, the Circuit Judicial Council may conduct additional investigation before acting on the complaint.
 - Corrective measures by the Judicial Council may include temporarily suspending case assignments, providing informal counseling, or issuing censure or reprimand.
- If a complaint is referred to the Judicial Conference, the Conference may institute additional corrective measures and, if necessary, recommend to the House of Representatives that the offending judge be impeached.
- The Judiciary Committee of the U.S. House of Representatives conducts an inquiry, possibly through a public hearing where members of the committee question the offending judge. If a majority of committee members then agree that impeachment is necessary, the matter goes before the entire House. Members of the House debate the matter and if a majority of the entire House votes in favor of impeachment, the offending judge is impeached. (*Only 15 judicial impeachments in U.S. History.*)
- The matter goes before the U.S. Senate for trial. If a two-thirds majority of the Senate votes for conviction, the judge is removed. (*Only 7 U.S. judges convicted and removed.*)
- Pursuant to the Constitution, a judge may be removed only for "high crimes and misdemeanors."

All investigations into misconduct and implementation of measures designed to reprimand and correct misconduct, short of impeachment and removal, are instituted from within the judiciary, which strengthens the judicial branch's institutional independence and protects it from the political pressures applicable to the legislative and executive branches.