

INTERNATIONALLY - RECOGNIZED PRINCIPLES FOR THE ENFORCEMENT OF STANDARDS OF JUDICIAL CONDUCT

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Critical to a republican form of government is an independent judiciary that enjoys the trust and confidence of the public. To maintain and enhance that trust and confidence, many nations have adopted codes of judicial conduct setting forth universal standards of ethical behavior to guide their judges. Complementing these codes of judicial conduct are procedures designed to ensure the fair and expeditious enforcement of those standards.

Typically, these enforcement procedures carefully balance several sometimes competing interests:

- The ability of citizens to make formal complaints against judges
- The rights of judges to fair treatment in the resolution of those complaints
- The public's concern that judges abide by the highest ethical standards, and that complaints against judges be given serious consideration
- The interest of the judges and the public in the confidentiality of complaints which are determined, following a confidential independent investigation, to lack merit
- The interest of the judges and the public in a transparent public hearing to resolve complaints which are found to have merit
- The interest of the judges and the public in the fair, expeditious, and proper resolution of complaints
- The ability of the judge to obtain review of an initial decision following a hearing

These universal enforcement principles are recognized, to varying degrees, in model codes and international declarations, as well as in the procedures adopted by individual nations and states:

Basic Principles on the Independence of the Judiciary, Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Milan, 26 August to 6 September 1985):

- 17: A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge.
- 18: Judges shall be subject to suspension or removal only for reasons of incapacity or behavior that renders them unfit to discharge their duties.
- 19: All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct.
- 20: Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review. This principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar

proceedings.”

The Universal Charter of the Judge (Central Council of the International Association of Judges, 17 November 1999)

“Art. 8 Security of office

A judge cannot be transferred, suspended or removed from office unless it is provided for by law and then only by decision in the proper disciplinary procedure”.

“Art. 11 Administration and disciplinary action

The administration of the judiciary and disciplinary action towards judges must be organized in such a way, that it does not compromise the judges’ genuine independence, and that attention is only paid to considerations both objective and relevant.

Where this is not ensured in other ways that are rooted in established and proven tradition, judicial administration and disciplinary action should be carried out by independent bodies, that include substantial judicial representation.

Disciplinary action against a judge can only be taken when provided for by pre-existing law and in compliance with predetermined rules of procedure.”

Judges’ Charter in Europe (Wiesbaden, 20 March 1993)

“9. Disciplinary sanctions for judicial misconduct must be entrusted to a body made up of members of the judiciary in accordance with fixed procedural rules.

Model Rules for Judicial Disciplinary Enforcement (American Bar Association, New Orleans, 09 August 1994) – Preface (Hon. Barbara B. Crabb, Hon. Vivi L. Dilweg, January 1995)

“Rule 6 defines the grounds for discipline as any conduct constituting a violation of the Code of Judicial Conduct, the Rules of Professional Conduct or other applicable professional conduct codes.

Rule 9 provides the judge with the right to counsel at all stages of the proceedings.

Rule 11 addresses confidentiality. Prior to the filing of formal charges, all proceedings are confidential. If the complaint is dismissed without the filing of formal charges, the commission may never disclose it. If the matter proceeds to the filing of formal charges, all proceedings are public except incapacity proceedings as defined in Rule 27.

Rule 16 provides that disciplinary counsel must notify the complainant in writing of the final disposition of a matter under the Model Rules. Notice is to be mailed within 10 days of the disposition. Such notice is important to the integrity of the system and to public understanding of judicial discipline. Rule 16 also provides that the complainant must be notified of the filing of formal charges and the time and place of the hearing if one has been scheduled.

Rule 24 sets forth the rules for the hearing . . . Both parties may produce evidence and produce and cross-examine witnesses . . . After the hearing, the hearing panel may dismiss the case or recommend a sanction to the court. Any recommendation for sanction shall include findings of fact and conclusions of law and any minority opinions.”