

THE FEDERAL JUDICIARY AND THE ABA MODEL CODE: THE PARTING OF THE WAYS

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This article addresses the origin and development of the ABA Canons of Judicial Ethics, the subsequent reformulation of the Canons into the ABA Model Code of Judicial Conduct, and how the federal judiciary initially applied and adopted the ABA's efforts for most of the twentieth century. This article traces how, following the ABA's subsequent efforts to improve its Model Code and to remain consistent with the growth of congressional action on judicial ethics, the federal ethics rules and the ABA Model Code began to diverge in the 1990s. In light of recent developments prompting the ABA once again to reform its Model Code, and because significantly different pressures to reform are being placed on the federal judiciary from within and without, we predict that the federal judiciary's own rules of conduct and the ABA Model Code will continue to diverge.

The federal judiciary, after years of being governed officially by statute alone, adopted its own code of conduct in 1973. In doing so, it essentially adopted the existing ABA model. The current Code of Conduct for United States Judges, adopted in 1992, still is based largely on the ABA model, and it, along with federal statutes and regulations, guides the conduct of federal judges. The ABA's adoption of a new model code traditionally sparks a similar movement in the federal judiciary.

Late in 2006, however, even with the adoption by the ABA of an updated model code imminent, the federal judiciary did not wait; indeed, it could not. Congress, the media, public-interest groups, and the public in general questioned the propriety of federal judges taking expenses-paid trips to privately funded seminars. Conflict-of-interest questions about federal judges' actual or appearance of impropriety also grew. This mounting pressure prompted the Judicial Conference of the United States (Judicial Conference) to strengthen ethics rules governing federal judges by adopting new conflict-of-interest and seminar-attendance regulations. With that action taken and with some of the 2007 ABA Model Code's reforms unlikely to be adopted by the Judicial Conference, the historical precedent of parallel action by the ABA and Judicial Conference clearly has been broken.

This article will examine the historical development of the ABA canons of judicial conduct and their application to the federal judiciary; the federal judiciary's formal adoption of the ABA Model Code; the subsequent expansion of congressional involvement in judicial ethics; and the reforms of the early 1990s in which the ABA and the Judicial Conference began to diverge.

A HISTORICAL PERSPECTIVE

The Early Years. Congress initially sought to prescribe rules and limitations on federal judicial conduct beyond the constitutional limits of “good Behavior,” thus recognizing that federal judges were constrained by more than the threat of impeachment. Congress imposed some statutory limitations to guide federal judges, although there were few of these limits. For example, district court judges commonly sat as both trial and circuit court judges, but in the Judiciary Act of 1789 the first Congress barred judges from participating at both levels in the same case. No similar prohibition existed for Supreme Court justices, even though, riding circuit, they served on circuit courts and later might consider the appeal in such a case on the Supreme Court (Surrency, 1987:19). Common practice dictated, however, that “Justices who had heard a case on circuit would participate only where their presence was necessary for a clear majority on the appeal” (Frank, 1947:627, n. 87).

In the Act of 1790, Congress made it a crime to attempt to bribe a judge, although it imposed no penalty for accepting the bribe. Two years later, in the Judiciary Act of 1792, Congress permitted the disqualification of a federal judge, if requested by a party, on four grounds: interest; prior representation of a party; potential participation in the case as a material witness; and relationship with a party. As Congress did not require disqualification, none were absolute grounds for disqualifying the judge. If the judge considered it improper to consider the case, it would be transferred to another judge. In the Act of December 18, 1812, Congress barred federal judges from practicing law in any court, and in 1821, “kinship” was added as a discretionary basis for disqualification.

At the beginning of the twentieth century, Congress supplemented the existing disqualification statute. Although still largely discretionary, the Judiciary Act of 1911 added bias and prejudice as bases for possible disqualification and refined the process to consider disqualification requests. The general disqualification of judges to hear appeals of their own decisions remained intact. Besides these statutes, which tended to leave much to judicial discretion, each judge’s personal ethics guided that judge’s activity. As one commentator observed, “The members of the judiciary during the early period felt governed by Christian ethics as expressed in the Bible” (Surrency, 1987:292). Indeed, another observer noted that the Bible contains verses directed at the moral conduct of judges, such as Deuteronomy 1:16-17 and 16:19 (Sobeloff, 1964:287). Ultimately, such guidance and the statutory restrictions proved insufficient.

In the early 1900s, the progressive movement spurred a discussion of ethics reforms in the judiciary, particularly following the adoption by the ABA of canons for lawyers in 1908 (MacKenzie, 1974:182). The first proposal for some “Canons of Judicial Ethics” was made in 1909, but nothing formal occurred (Surrency, 1987:293). By the early 1920s, conflict-of-interest questions concerning federal district judge Kennesaw Mountain Landis solidified the movement toward the adoption of guidelines for judges. In 1921, Judge Landis supplemented his \$7,500 yearly judicial salary with a \$42,000 yearly salary for serving as Major League Baseball’s first commissioner

following the 1919 World Series “Black Sox” scandal. Judge Landis resigned his judicial post in early 1922 after enduring criticism for his joint roles. The reason for the perceived conflict of interest is unexplained. No law or ethical precept barred Judge Landis’s activity; thus, the ABA did the only thing it could—it censured Judge Landis in 1921 (MacKenzie, 1974:181). These events, however, effectively silenced opposition to the ABA’s development of canons of judicial conduct.

The 1924 Canons. To address the vacuum in ethics guidelines for judges, in 1922 the ABA appointed recently confirmed Chief Justice William Howard Taft to chair the ABA Commission on Judicial Ethics (ABA Reports, 1922:160). The committee worked quickly and released its first draft of the canons in early 1923 (ABA Reports, 1923:452). The ABA adopted the Canons of Judicial Ethics in August 1924 (1924 Canons) (ABA Reports, 1924:65-71).

The 1924 Canons contained 34 canons. The Preamble stated that the ABA, mindful that the character and conduct of a judge should never be objects of indifference, and that declared ethical standards tend to become habits of life, deems it desirable to set forth its views respecting those principles which should govern the personal practice of members of the judiciary in the administration of their offices. . . . the spirit of which it suggests as a proper guide and reminder for judges, and as indicating what the people have a right to expect from them (ABA Reports, 1924:762).

An “Ancient Precedents” section preceded the Preamble and included quotations from two Bible verses, the Magna Carta, and an essay by Sir Francis Bacon. No one seems to know why the ABA included these quotations (MacKenzie, 1974:179), but they seemed to reflect the ABA’s belief that the 1924 Canons were grounded in historical legal principles and were not simply a modern creation.

The only contested issue involved how to address ethical considerations when a judge’s relative served as counsel in a case before the judge. Ultimately, a strict preclusion of relatives appearing before a judge was removed, and judges were banned only from hearing cases in which a relative was a party (“Forty-Seventh Annual Meeting,” 1924:555). One later commentator considered this an example of “the inability [of the judiciary] to accept judicial reform that might somehow imply incorrect behavior in the past” (MacKenzie, 1974:188).

The 1924 Canons did not have any independent legal effect over state or federal judges. Thus, while Judge Landis’s actions helped spur the movement toward the 1924 Canons, the canons would not have governed his conduct and only would have provided a basic standard upon which to consider his actions. Several states formally adopted the 1924 Canons over the next forty years (Surrency, 1987:203), but in general, the “1924 canons were rarely heard from again until the ABA was ready to revise them” (MacKenzie, 1974:191).

Application of the 1924 Canons to Federal Judges. The lack of any statutory connection between the 1924 Canons and federal judges, or any formal adoption of them

by the federal judiciary, did not prevent the 1924 Canons from guiding federal judges. Both judicial opinions and Judicial Conference resolutions recognized the 1924 Canons (Edwards, 1969). Thirty-nine federal cases between 1924 and 1972 cited them. Most courts cited the 1924 Canons as guidelines to determine whether a judge had engaged in unethical conduct, thus suggesting that they considered the canons to be the standard (e.g., Kinnear, 1969), and one federal court called them an “admonition” of how judges should act (*Brooks Bros*, 1945, at 17). Later, the United States Supreme Court recognized that a particular canon “has of itself no binding effect on the courts but merely expresses the view of the [ABA]” (*Estes*, 1965, at 535).

The Judicial Conference of Senior Circuit Judges, renamed the Judicial Conference of the United States in 1948, also played a role. Established by Congress in 1922, the Judicial Conference was created “to monitor the business of the federal courts” (Act of September 14, 1922). Chief Justice Taft, as the head of the Judicial Conference, increased the Judicial Conference’s role in court governance and legislative affairs. Chief Justice Taft’s status as chairperson of both the Judicial Conference and the ABA committee that developed the 1924 Canons appeared to give the canons certain informal legal effect over the federal judiciary.

The Judicial Conference, by resolution, looked to the ABA and the 1924 Canons as the standard of judicial ethics. For example, in 1942 the Judicial Conference adopted a policy regarding the practice of law before federal judges by their near relatives, resolving “that federal judges should avoid sitting in cases in which their near relatives are of counsel, as contrary to the spirit of Canon XIII of the Canons of Ethics of the American Bar Association, and the Conference urges the circuit councils to inquire whether such a practice exists in their respective circuits, and if so to take appropriate action” (“Judicial Conference of Senior Circuit Judges,” 1942:820). Clearly the Judicial Conference, which continued to issue formal and informal opinions on judicial conduct to judges, considered the 1924 Canons as persuasive, if not binding, authority over federal judges. The lack of an alternative standard may have prompted some of the federal courts’ reliance on the 1924 Canons.

FORMALIZING A FEDERAL JUDICIAL ETHICS CODE

Background to Reform. Commentators examining changes to formal judicial ethics codes invariably cite specific incidents prompting reform. More likely, however, no one incident alone causes change, and instead many incidents create a cumulative effect for change. This was true both in the 1920s and the 1960s, when ethics controversies in the judicial branch flourished (MacKenzie, 1974:156-59). In the 1960s, Supreme Court justice Abe Fortas’s nomination to be chief justice of the United States failed, and he later resigned following the revelation that he had accepted extrajudicial compensation (Ainsworth, 1970), and two other nominees to the Supreme Court were rejected by the Senate, one after questions were raised about his rulings as a circuit judge in cases in which he had a financial interest. These events involving federal judges were among the controversies grabbing the public’s attention, in part because

of increasing focus in society on the conduct of public officials (Kaufman, 1989:853). Congress soon became involved. Senator Joseph Tydings, chairman of the Senate Subcommittee on Improvements in Judicial Machinery, offered comprehensive legislation regulating judicial conduct (Holloman, 1970). This legislation applied increased pressure on the federal judiciary to address the failure of some judges to comply with generally accepted, if not legally prescribed, ethical norms. For example, Senator Tydings's legislation responded directly to the failed Fortas nomination and the 10th Circuit's suspension of District Judge Stephen Chandler from all judicial duties after he refused to recuse himself in two cases and was a defendant in civil and criminal litigation (Holloman, 1970:134-36; *Chandler*, 1970, at 77).

In June 1969, Chief Justice Earl Warren called a special session of the Judicial Conference to address judicial ethics. Senator Tydings's presentation of a review of pending legislation on the issue served as a reminder that Congress was prepared to act (Judicial Conference of the U.S., 1969:42). Under Chief Justice Warren's leadership, the Judicial Conference adopted four resolutions (June Resolutions) imposing new requirements on judges to address the judicial ethics issue (Judicial Conference of the U.S., 1969:42; Ainsworth, 1971:246). The June Resolutions 1) prescribed rules for accepting extrajudicial compensation; 2) required certain financial disclosures; 3) mandated that a committee submit a "progress report on the formulation of standards of judicial conduct for federal judges"; and 4) ordered the drafting of legislation to ensure that the Judicial Conference had the proper statutory authority to enforce the resolutions (Judicial Conference of the U.S., 1969:42-43).

The reforms were well received. Two months later, the ABA announced the creation of a new committee, to be chaired by former California chief justice Roger Traynor, to revise the 1924 Canons (ABA Report, 1970:1048). In a letter to newly confirmed Chief Justice Warren Burger, Justice Traynor urged the Judicial Conference to wait until the ABA committee completed its work before taking action (Judicial Conference of the United States, 1969:51). At its fall 1969 meeting, the Judicial Conference complied with the request and suspended the substantive measures of the June Resolutions (Judicial Conference of the U.S., 1969:51). The Judicial Conference resolved to work with the ABA's committee reviewing the 1924 Canons, and it created the Review Committee and Interim Advisory Committee on Judicial Activities (Advisory Committee) to implement the administrative components of the June Resolutions while awaiting the results of the ABA efforts (Judicial Conference of the U.S., 1969:52).

Suspension of the substantive components of the June Resolutions produced considerable public and congressional criticism (MacKenzie, 1974:168), but the Judicial Conference continued to wait for the ABA's review. Later, Chief Justice Burger announced that the ABA was expected to take more time to complete its work (MacKenzie, 1974:169), thus further extending the time period before federal standards of judicial conduct would be in place. In the interim, the Judicial Conference continued to rely on its informal adoption of the 1924 Canons and the ABA's draft

revisions as they were released (Judicial Conference of the U.S., 1971:25). The Judicial Conference also began publishing Advisory Opinions interpreting statutory and Judicial Conference resolutions. By October 1971, the Advisory Committee had issued twenty-three Advisory Opinions and responded to numerous other requests for guidance from federal judges (Judicial Conference of the U.S., 1971:69).

The ABA's Updated Canons. At its April 1972 meeting, with the adoption of new ABA canons in sight, the Judicial Conference created the Joint Committee on Code of Conduct (Joint Committee), combining the Review Committee and the Advisory Committee, to review the new ABA code (Judicial Conference of the U.S., 1972:23-24). The Joint Committee was "charged with reporting back to the Judicial Conference on the feasibility of adopting this report as applying to all federal judges and to determine whether any additional standards may be needed in the federal system" (Judicial Conference of the U.S., 1972:24). Later that year, the ABA Model Code of Conduct (1972 Model Code) was adopted (ABA Reports, 1972:858), making structural changes and replacing the 1924 Canons' hortatory tone with more mandatory language (Thode, 1973:43). The ABA urged the Judicial Conference to adopt the code.

The following year, in April 1973, the Judicial Conference did follow the ABA's lead and adopted the Code of Conduct for United States Judges (1973 Federal Code) (Judicial Conference of the U.S., 1973:10). This made some sense, as the ABA, in formulating its 1972 Model Code, had considered proposed legislation in Congress and the recent activities of the Judicial Conference (Thode, 1973:42-43). The Judicial Conference basically approved text identical to that adopted by the ABA, with slight modifications, such as clarifying the role of existing federal statutes, deleting the commentary relating to supplemental judicial income, and addressing unique bankruptcy issues (Judicial Conference of the U.S., 1973:10). Later that year, the Judicial Conference approved an amended version of Canon 7 regarding political activity (Judicial Conference of the U.S., 1973:52). Still, with only these slight differences, the 1972 ABA Model Code and 1973 Federal Code were essentially the same, and federal judges effectively were formally bound by the ABA's code of conduct.

CONGRESSIONAL ACTION AND ADDITIONAL REFORMS TO THE MODEL CODE

Post-1973 Reforms. Since 1973, the Judicial Conference has performed three essential functions to regulate judicial conduct of federal judges through the Joint Committee (now the Committee on Codes of Conduct). These are to edit a code of conduct, prepare written Advisory Opinions interpreting statutes and the code of conduct, and answer inquiries about specific ethical questions. The Committee on Codes of Conduct has performed these tasks through both its inherent power as part of a separate branch of government and power delegated by Congress. As noted above, federal statutes governing judicial conduct have existed since 1789. Following the adoption of the 1973 Federal Code, other statutes were added. While a federal

judge was still barred from hearing the appeal in a case the judge had tried, in 1966, in the Government Organization and Employees Act, Congress had included the federal judiciary in its gift-ban statutes. Thereafter, Congress gradually began enacting more expansive prescriptions on judicial conduct.

In the Judicial Machinery Improvement Act in 1974, Congress outlined specific, comprehensive, and mandatory disqualification standards for judges. Unlike the discretionary disqualification language in the Judiciary Act of 1792, the 1974 Act established specific instances in which a judge “shall disqualify” him- or herself. This statute more or less codified Canon 3(c) of the 1972 Model Code and the 1973 Federal Code as the statutory standard for disqualification, as all required disqualification of a judge if his or her impartiality might “reasonably” be questioned (Markey, 1984:381). Then the Ethics in Government Act of 1978 imposed on federal judges extensive financial reporting requirements, thus codifying the Judicial Conference’s financial disclosure requirements (Ethics in Government Act of 1978).

Congress established procedures for the assertion and consideration of complaints of judicial misconduct against federal judges and empowered each circuit’s Judicial Council to order discipline of a judge (Judicial Councils Reform and Judicial Conduct and Disability Act of 1980) (Disability Act) (see Hellman, in this volume). The relationship between this new act and the existing 1973 Federal Code was unclear, as they created an overlapping standard for determining whether a federal judge violated ethics guidelines. The multiple standards were not necessarily coextensive, but the adoption of each permitted a broader basis for finding judicial misconduct. Finally, in 1989 Congress imposed on federal judges new statutory restrictions on gifts, outside income, honoraria, and outside employment and expanded financial disclosure requirements (Ethics in Government Act of 1989).

These post-1973 statutes represented the persistent expansion of congressional involvement in judicial conduct and created a comprehensive statutory system to supplement the 1973 Federal Code. When Congress legislated in the judicial conduct arena in this way, it gave rise to significant separation-of-powers concerns, but the discussion changed and the debate no longer was whether congressional oversight of the federal judiciary was proper but rather how much oversight was proper. At the same time, the Judicial Conference maintained its oversight and enforcement role, adopted Advisory Opinions, informally advised federal judges, and refused to concede the primary responsibility over the federal judiciary to Congress.

Additional Code Reforms. In the late 1980s, the ABA again took steps to update its model code. After waiting almost fifty years to update the 1924 Canons, the ABA updated the 1972 Model Code after less than two decades. A 1985 ABA survey concluded that a review of the 1972 Model Code was in order (ABA Reports No. 1, 1990:758), and following extensive public comment, the ABA adopted a new Model Code of Judicial Conduct (1990 Model Code) (ABA Reports No. 3, 1990:9-15). The 1990 Model Code was gender neutral; distinguished between mandatory and aspirational standards; barred judges from being members in discriminatory organizations;

and, among other things, attempted to eliminate overly broad language containing insufficient guidance (ABA Reports No. 1, 1990:759-62). The 1990 Model Code observed that disqualification of a judge is unnecessary if a judge's interest is de minimis, as it would not affect a judge's impartiality (ABA Reports No. 1, 1990:761). While federal law may have been important to the ABA's analysis when developing its 1972 Model Code, the ABA had to consider the 1990 Model Code's potential application in fifty states. Commentary discussing the 1990 Model Code and explaining its differences with the 1972 Model Code did not reference federal law or any of the intervening congressional action (ABA Reports No. 1, 1990:757-66).

Developments in federal law, as well as the 1990 ABA Model Code, motivated the Judicial Conference to review and update its 1973 Code for federal judges. In March 1990, the Judicial Conference authorized updates to that Code and to related regulations and Advisory Opinions to reflect statutory changes (Judicial Conference of the U.S., 1990:14). Later that year, the Judicial Conference announced that "it would undertake a study of the new revisions to the American Bar Association (ABA) Model Code of Judicial Conduct to determine whether the Judicial Conference should adopt the substantive changes and, if so, how to do so appropriately for the federal judicial system" (Judicial Conference of the U.S., 1990:68).

Unlike 1973, in 1990 the Judicial Conference took more time considering the ABA's revisions than it did in adopting its first code and did not adopt a new Code of Conduct until September 1992, more than two years after beginning the process (1992 Federal Code) (Judicial Conference of the U.S., 1992:62). The Judicial Conference used the 1990 Model Code as the basis for reform, yet diverged from it. Existing federal law informed the Judicial Conference's changes, which served to realign the Judicial Conference with federal statute and case law following almost thirty years of significant congressional action. This emphasis on federal statutes was reflected in the 1992 Federal Code's extensive commentary sections. Also, where the 1990 ABA Model Code emphasized mandatory guidance, the 1992 Federal Code retained much hortatory language. For example, the commentary to Canon 2 of the 1992 Federal Code listed items federal judges "should" avoid, whereas the 1990 ABA Model Code required that judges "must" or "shall" avoid certain activities. The should/shall distinction exists in the remaining canons as well. Many other additions, deletions, and amendments to both the rules and the commentary were made in the 1992 Federal Code. The 1992 Federal Code's reliance on federal statutes as a guide and its failure to adopt mandatory language are the most significant departures from the 1990 ABA Model Code, as the Judicial Conference and the ABA began to separate.

MODERN DEVELOPMENTS

Another Call to Reform. Recurrent efforts by the ABA, the Judicial Conference, and Congress over the past one hundred years to establish and enforce comprehensive standards of judicial conduct have not shielded the federal judiciary from criticism. The ABA was called upon to reform its model code in 2002, this time in response to

a decision by the United States Supreme Court in which it struck down portions of the Minnesota Code of Judicial Conduct relating to judicial speech, ruling that existing speech restrictions on candidates for the bench violated the First Amendment (*Minnesota Republican Party v. White*, 2002). Although only directly affecting the 1990 Model Code and judicial elections, the ruling had implications for all judges asked to express their views on political issues, as federal judicial nominees are asked to do. The ABA reacted by developing new provisions on judicial speech meant to comply with *White* (ABA Summary Reports, 2003:19, 23). Soon thereafter, the ABA announced the creation of a new committee to conduct a thorough evaluation of the 1990 Model Code (ABA Summary Reports, 2004:76-77), and the committee began meeting, holding hearings, and soliciting public comment.

The federal judiciary, meanwhile, was preoccupied with two specific conflict-of-interest concerns, prompted by public and congressional scrutiny: expenses-paid trips by judges to privately funded seminars and circuit judicial councils' identification and management of conflict-of-interest questions. Groups complained of the combined impact of the size of the gift, the source of the funding, and the ideological slant of most privately funded seminars (Kendall and Sorkin, 2001). The Judicial Conference monitored these issues closely (Judicial Conference of the U.S., 2001-04) and was paying attention to the ABA's activities. The Judicial Conference was concerned by "reports implying that judges who have attended private seminars have accepted substantial benefits from companies in litigation before them and/or that such companies have dictated the content of seminars" (Judicial Conference of the U.S., 2003:4). In 2005 the Committee on Codes of Conduct, observing the historical trend of considering revisions to its Code following each ABA revision, announced that "[t]he Committee plans to take a fresh look at whatever proposals are adopted by the ABA. We will then decide whether and to what extent changes should be recommended in the Code of Conduct for U.S. Judges" (Administrative Office of the U.S. Courts, 2005a).

Breaking with custom, the Judicial Conference decided it would no longer wait for the ABA to complete its review. At its fall meeting on September 19, 2006, the Judicial Conference announced the adoption of two new significant policies governing privately funded judicial seminars and conflicts of interest. It did so in direct response to the media, public, and congressional pressure before its committee could consider any of the changes and before the ABA released its final draft of a new Model Code (Judicial Conference of the U.S., 2006:5, 11, 24).

The screening policy imposed increased safeguards against a judge considering a case in which the judge has a potential interest, although it did not require that a judge's potential conflicts of interest be made public (Administrative Office of the U.S. Courts, 2006b). The seminar policy did not bar federal judges from taking privately financed trips to educational seminars, but it did heighten the Judicial Conference's oversight of the matter, and, in expanding the existing advisory opinion on this topic, for the first time accounted for the practice of a private source paying for a judge's participation in a seminar (Administrative Office of the U.S. Courts, 2006a).

The Judicial Conference adopted these new policies but not a new code, so the 1992 Federal Code remains intact although a full review may be coming. In late October 2006, the Judicial Conference announced that its review of ethics procedures was not complete. The Committee on Codes of Conduct was charged with developing clearer standards to help judges apply the 1992 Federal Code's disqualification requirements, particularly those related to private-seminar attendance and personal or financial interests, and other committees will review the overlapping financial disclosure and reporting requirements, to simplify those procedures, and other judicial conduct guidelines (Judicial Conference of the U.S., 2006). All of these announcements came before the ABA adopted the 2007 Model Code.

Whatever the Judicial Conference does, it is unclear what influence the 2007 ABA Model Code will have. The 2007 Model Code made many changes, both structural and substantive. Will it become a model for the Judicial Conference's new code of conduct? Its simple presence will not go unnoticed in the federal judiciary given the Judicial Conference's expressed desire to continue refining its policies and develop clearer standards for federal judges. Certainly the Judicial Conference will not, however, automatically defer to the ABA and its 2007 Model Code. Consistent with the fissures between the ABA and Judicial Conference codes beginning in 1992, their expansion over the past few years, and as dictated by federal statutory requirements not applicable to state judges, the Judicial Conference is unlikely to adopt the 2007 Model Code as it did the 1972 Model Code. Instead, the Judicial Conference is more likely to carefully select ideas carefully when those ideas are consistent with existent regulations.

CONCLUSION

The layered governance system of statutes, the 1992 Federal Code, and Judicial Conference regulations, coupled with the watchful eye of the public and public-interest groups, is important in ensuring the proper administration of justice in the federal judiciary. The 1924 Canons were groundbreaking. The 1972 Model Code became the model for almost all states and the Judicial Conference. The 1990 Model Code prompted a modernization of judicial codes in the federal and state judiciaries. However, after decades of relying heavily on the ABA for guidance, the Judicial Conference has assumed control of its own ethics rules and has taken strong action independent of the ABA to stem the criticism, justified or not, of the federal judiciary's conduct. Separation-of-powers concerns and the general attitude of trust and deference toward federal judges disappeared long ago. A modern and updated code of conduct to guide disciplined and conscientious federal judges is now required, and will be into the future. Will the ABA's 2007 Model Code remain the standard? As it relates to the federal judiciary, this seems unlikely. jsj

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