

Judging by Appearances: Revisions to the Code of Conduct for U.S. Judges

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In March 2009, the Judicial Conference of the United States adopted a revised Code of Conduct for United States Judges. In announcing adoption of the revised Code, the Judicial Conference stated that the Code "for the first time" defines the "appearance of impropriety" as used in Canon 2, which, as before, requires that a "judge should avoid impropriety and the appearance of impropriety in all activities."

The revised Code, in Canon 2A, states: "An appearance of impropriety occurs when reasonable minds, with knowledge of all the relevant circumstances disclosed by a reasonable inquiry, would conclude that the judge's honesty, integrity, impartiality, temperament, or fitness to serve as a judge is impaired." The old Canon 2A included a narrower "test for appearance of impropriety," which, on its face, appeared to be limited in application to situations involving a "judge's ability to carry out judicial responsibilities." The language of the new definition of "appearance of impropriety" clarifies and underscores that a judge's obligation to avoid any such appearance applies to "all activities," whether professional or personal.

In Canon 2B, the revised Code states that a "judge should not allow family, social, political, financial, or other relationships to influence judicial conduct or judgment." Only "family" and "social" relationships were specifically cited in the old Code as potential sources of impermissible influence. The Code provides no elaboration on this change.

Canon 3(b)(5) of the revised Code sets forth the new requirement that a "judge should take appropriate action upon learning of reliable

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evidence indicating the likelihood that a judge's conduct contravened [the Code of Conduct] or a lawyer violated applicable rules of professional conduct." The Code states that "[a]ppropriate action may include direct communication with the judge or lawyer, other direct action if available" or "reporting the conduct to the appropriate authorities"

The revised Code of Conduct for United States Judges, which takes effect July 1, 2009, may be found at: www.uscourts.gov/library/codeOfConduct/Revised_Code_Effective_July-01-09.pdf.