



**International Project of Judicial Independence of the  
International Association of Judicial Independence and World Peace**

**JIWP**

***Bologna Milano Global Code of Judicial Ethics 2015***

*Approved at the International Conference of Judicial independence held  
at the University of Bologna and at Bocconi University of Milano*

*June 2015*

## Explanatory Notes

During the conferences of the International Association of Judicial Independence and World Peace at the University of Ghent October 2012 and at the University of San Diego in September 2013 it was resolved at the proposal of Prof. Marcel Storme to embark upon a project to develop a global code of judicial ethics . It should deal with two major parts. One part will deal with conduct on the bench and the other on the conduct off the bench, i.e. the rules governing the conduct outside the official judicial duties.

In most common law jurisdictions there has been a shift from a practice of non-written judicial traditions on judicial conduct to a practice of written codes. In the United States, the American Bar Association (“ABA”) drafted a code of judicial conduct in 1924.<sup>1</sup> The ABA's updated code of judicial conduct is currently embodied in the 2011 Model Code of Judicial Conduct.<sup>2</sup> A written judicial code for Federal Judges was adopted in 1973<sup>3</sup> and there are additional codes for judicial conduct in various American states such as California and Texas.<sup>4</sup>

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<sup>1</sup> American Bar Association 1924 Canons of Ethics – accessed at [www.americanbar.org/content/dam/aba/migrated/cpr/pic/1924\\_canons.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/cpr/pic/1924_canons.authcheckdam.pdf).

<sup>2</sup> See the Model Code of Judicial Conduct 2011 – accessed at [www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/2011\\_mcjc\\_table\\_of\\_contents.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/2011_mcjc_table_of_contents.authcheckdam.pdf).

<sup>3</sup> See the Code of Conduct for US Judges 1973, as amended – accessed at [www.uscourts.gov/Viewer.aspx?doc=/uscourts/RulesAndPolicies/conduct/Vol02A-Ch02.pdf](http://www.uscourts.gov/Viewer.aspx?doc=/uscourts/RulesAndPolicies/conduct/Vol02A-Ch02.pdf)  
The Code of Conduct for United States Judges was initially adopted by the Judicial Conference on April 5, 1973, and was known as the "Code of Judicial Conduct for United States Judges." **See: JCUS-APR 73**, pp. 9-11. Since then, the Judicial Conference has made the following changes to the Code: March 1987: deleted the word "Judicial" from the name of the Code; September 1992: adopted substantial revisions to the Code; March 1996: revised part C of the Compliance section, immediately following the Code; September 1996: revised Canons 3C(3)(a) and 5C(4); September 1999: revised Canon 3C(1)(c); September 2000: clarified the Compliance section; March 2009: adopted substantial revisions to the Code. This Code applies to United States circuit judges, district judges, Court of International Trade judges, Court of Federal Claims judges, bankruptcy judges, and magistrate judges. Certain provisions of this Code apply to special masters and commissioners as indicated in the “Compliance” section. The Tax Court, Court of Appeals for Veterans Claims, and Court of Appeals for the Armed Forces have adopted this Code.

The Judicial Conference has authorized its Committee on Codes of Conduct to render advisory opinions about this Code only when requested by a judge to whom this Code applies.

<sup>4</sup> See the California Canons of Ethics 2003 – accessed at [www.courts.ca.gov/documents/ca\\_code\\_judicial\\_ethics.pdf](http://www.courts.ca.gov/documents/ca_code_judicial_ethics.pdf), as well as the Texas Code of Conduct – Accessed at [www.legalethicstexas.com/Ethics-Resources/Rules/Texas-Code-of-Judicial-Conduct.aspx](http://www.legalethicstexas.com/Ethics-Resources/Rules/Texas-Code-of-Judicial-Conduct.aspx)

In Canada, judges adopted the Principles of Judicial Ethics in 1998.<sup>5</sup> While in Australia, the judiciary adopted a Code of Judicial Conduct in 2002.<sup>6</sup> England has adopted two codes of judicial conduct, and the Guide to Judicial Conduct adopted in 2008 by the Judges' Council of England and Wales, also applies to the English judiciary.<sup>7</sup> Barely a year later, in 2009, the United Kingdom (“UK”) Supreme Court adopted a new Guide to Judicial Conduct.<sup>8</sup>

In Israel, a code of judicial ethics was adopted by Chief Justice Shamgar in 1993. Israel is the only country in the common law world to have declared its code of judicial ethics to be *not* legally binding as they were not issued by virtue of an express authority and judges have discretion to decide how to conduct themselves regarding disqualification, such as, on account of a very close friendship with a lawyer or party in a matter.<sup>9</sup> In just such a case, the lawyer joined the legal team only at the appeal stage. It took another 14 years, until 2007,<sup>10</sup> before a code of judicial ethics was issued under an express authority. The Israeli Parliament reversed the ruling on the specific issue providing that a judge must not sit in a case where there is a special relation with a lawyer representing a party. Later it provided for an express authority to issue judicial ethical rules and such were issued under the newly enacted statutory power in 2007. About the same time, legal controversy arose in India concerning the duty to disclose to the public certain types of information under the freedom of information rules of the declarations of assets submitted by judges of the Supreme Court on a fiduciary and voluntary basis by virtue of a resolution of the judges.<sup>11</sup>

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<sup>5</sup> Canadian Judicial Council, *Ethical Principles for Judges* (1998) – accessed at [www.cjc-ccm.gc.ca/cmslib/general/news\\_pub\\_judicialconduct\\_Principles\\_en.pdf](http://www.cjc-ccm.gc.ca/cmslib/general/news_pub_judicialconduct_Principles_en.pdf)

<sup>6</sup> Council of Chief Justices of Australia, *Guide to Judicial Conduct* (2002) – accessed at [www.ajja.org.au/online/GuidetoJudicialConduct.pdf](http://www.ajja.org.au/online/GuidetoJudicialConduct.pdf). For the practice in Australia see Mr Justice Thomas' study, *Judicial Ethics in Australia* (2nd ed., 1997).

<sup>7</sup> See the Guide to Judicial Conduct (for General Courts) – accessed at [www.judiciary.gov.uk/Resources/JCO/Documents/Guidance/guide-judicial-conduct-aug2011.pdf](http://www.judiciary.gov.uk/Resources/JCO/Documents/Guidance/guide-judicial-conduct-aug2011.pdf)

<sup>8</sup> See the Guide to Judicial Conduct 2009 (UK Supreme Court) – accessed at [www.supremecourt.gov.uk/docs/guide\\_to\\_judicial\\_conduct.pdf](http://www.supremecourt.gov.uk/docs/guide_to_judicial_conduct.pdf)

<sup>9</sup> HCJ 1622/00 Yoav Yitzhak v. Aharon Barak President of the Supreme Court 54(2) P D 54 .

<sup>10</sup> The Judicial Ethical Rules are drafted by the President of the Supreme Court in consultation with the Minister of justice and are approved by the Law and Justice Committee of the Knesset ,The Israeli parliament .

<sup>11</sup> CPIO (Central Public Information Officer) Supreme Court v. Subhash Chandra Agrawal CLXII Delhi Law Times 135 (2009 ) Per Judge S.Ravindra Baht .

The shift from unwritten ethical rules to a written code prevails also in the regulation of conduct of the officers of other branches of government, such as ministers and members of the legislature.<sup>12</sup>

Regarding teaching by judges, after a long debate the international association of judicial independence at the conferences held in Italy in June, 2015, it was resolved that judges are permitted to hold lectures, and teach in higher learning institution. While it is possible to allow a judge to engage in legal lectures, the remuneration for the teaching is subject to two standards. Firstly, that the level of remuneration shall not exceed the level practised in that institution for similar work and secondly, that the payment received by the judge shall not exceed the equivalent of maximum 25% of his official salary . Both conditions must be met. In addition, the acceptance by the judge of delivering a single lecture or teaching position in a higher educational institution or giving a lecture is subject to the grant of permission by a proper judicial authority.

Since ancient times, judges have enjoyed a unique status in the community. The fundamental assumption is that the judiciary as a collective, and each and every judge, individually are independent in adjudicative proceedings and in their decisions, and that the judicial branch in general is an autonomous branch, decent and fair in its conduct, and has the ability and skills to interpret and apply the law properly.

Naturally, the judges holds their appointment in trust, for the benefit of society at large They act as trustees, who have nothing at all of their own, and all they do , they do as the public's agents.

A precondition of the judge's ability to act as a judge is the community's confidence in the judicial branch, its recognition of the judicial branch's exclusive authority to adjudicate, and its acceptance of judicial rulings. This status of the judicial branch and of its members, the judges – a status of autonomy, independence,

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<sup>12</sup> See the Ministerial Code approved in 2010 by Prime Minister Cameron following previous Ministerial Codes – accessed at [www.cabinetoffice.gov.uk/sites/default/files/resources/ministerial-code-may-2010.pdf](http://www.cabinetoffice.gov.uk/sites/default/files/resources/ministerial-code-may-2010.pdf).

In the US written rules were enacted by the Ethics in Government Act of 1978 (Public Law 95-251), or by a subsequent amendment to that Act.

and benefit from the public confidence – requires, almost inherently, that judges uphold especially high ethical standards.

It follows that it is necessary to create unique rules of conduct obliging the individual judges in their conduct and their ways – on the bench and off the bench – in order to preserve the special status of the judge and the judicial branch as a whole.

Thus it always has been. As Jethro advised Moses in the Bible regarding the way to choose judges: "You should ... look for able men among all the people, men who fear God, men of truth, who are not avaricious . . ." (Exodus 19:21). The Emphasis on the personal good character of the judge remains to this day a central requirement for judicial appointment. Indeed, a judge is a person – first and foremost a person – however, by agreeing to hoist the burden of a judge upon his shoulders, he has obliged himself with the duties and burdens of a member of the judicial branch.

In the past, rules for judicial conduct were as the oral traditions, and the law, morality, logic, common sense, tradition and life experience were what guided judges' conduct. As the days and years passed, individual and community life became increasingly complex, and even the judicial system grew, expanding and absorbing many members. A need thus arose to put the oral traditions into writing and create a written code of conduct for judges.

Indeed, in many countries codes for judges' conduct have been compiled. Thus was also the case in Israel, when in 1993 President of the Supreme Court Meir Shamgar published The Judicial Code of Ethics, 1993, prepared on the basis of the report by a committee chaired by former President ( of the Supreme Court Moshe Landau. (

The purpose of the Code of Ethics for Judges is to guide the conduct of the judges of Israel along their path, and to serve them as an aid, by which they can be assisted and from which they can learn. The code includes rules of various types: fundamental rules which stem from the judge's status, and express fundamental values, which are the basis for judicature; rules regarding the act of adjudication itself; rules regarding the personal conduct of judges; and specific norms dealing with practical issues that arise in daily life. Together, these norms constitute a wide codification in which judges – both young judges in need of guidance at the start of their path, and senior

judges in need of solutions to specific issues – can, and should seek assistance. A judge who runs into a dilemma whether to do or refrain from doing can refer to the code and find solutions in it to many of the questions which judges confront and with which they struggle on a routine basis. Thus, for example, in extrajudicial activity, in public activity, in contact with the media, and more.

Last, the Code of Ethics for Judges does not take on a life of its own, and is not detached from its surroundings. The law, morality, logic, common sense, tradition and life experience, which have guided judges in the past, will continue to guide us in the future as well. Thus, for example, a judge should take the decisions of the Ombudsman of the Israeli Judiciary, pursuant to the Ombudsman of the Israeli Judiciary Law, 5762-2002<sup>13</sup>, into account in fulfilling his role. Furthermore, the rules in the code will be interpreted not solely by their language, but by the spirit moving within them. Further yet, operating beside the written rules, and in their framework, is the Judicial Ethics Committee; and without derogating from the authority of the President of the Supreme Court on ethical and other issues, the Committee's role is to discuss, recommend and decide on issues of judicial ethics. A judge who runs into an ethical problem which is not clearly answered in the code should turn to the committee, or the President of the Supreme Court, and request an answer and guidance.

## II. The Binding Force of National Codes of Judicial Ethics

The English Guide to Judicial Conduct is generally considered persuasive. However, there are a number of lines of thought that support the view that the Guide to Judicial Conduct is not merely persuasive, but actually rather binding. These lines of thought are detailed over the course of several interviews conducted with distinguished jurists and judges for the preparation of the 2<sup>nd</sup> edition of Shetreet *Judges on Trial* (1976)<sup>14</sup> published by Cambridge University Press. One such line of thought is that most of the rules contained in the guide to judicial conduct are declaratory of the existing law and of existing standards of judicial conduct.<sup>15</sup>

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<sup>13</sup> *Sefer HaChukim*, 590.

<sup>14</sup> Shetreet and Turenne, *Judges on Trial: Independence and Accountability of the English Judiciary* (2nd ed. 2013).

<sup>15</sup> For reliance on the existing law, please see Paragraph 3.7 of the UK Supreme Court Guide to Judicial Conduct. Recent UK cases include *Porter v Magill* [2002] 2 AC 357, *Locobail (UK) Ltd v*

Similarly, one can argue that the proper rules of judicial conduct are implied conditions of the judicial office. An additional argument that supports the view that the Guide to Judicial Conduct is binding and not merely persuasive is that the duty of obeying the rules of the Guide are in fact part of the judicial oath of office that is taken by every judge on appointment to the bench. In fact the Guide to Judicial Conduct emphasises the judicial oath as an important basis for the implementation of the rules of judicial ethics, as part of the judicial oath.<sup>16</sup>

The view that the duty to obey the rules of ethics contained in the Guide of Judicial Conduct derives from a contractual basis is not a valid view, for judges are not considered to be "persons in Her Majesty's Service ", but rather statutory officers. This was the basis of the judges' position in the heated controversy over whether or not the salary cuts of the 1930s would be applied to judges. The judges argued that they were not to be included in the category of "persons in His Majesty's Service" and therefore they were not subject to the salary cuts under the National Economy Act of 1931.<sup>17</sup> In the end, the Judges prevailed and the cuts were not applied to the judiciary branch.

There has been a shift from oral traditions to written codes of judicial ethics .One can make a good argument that the rules embodied in the codes are actually an expression of the pre-existing norms and therefore legally binding rather than persuasive. However, there remains a need to bolster public confidence in the judiciary by applying the codes of ethics in a consistent and equitable fashion.

### III. The Need for a Written Code

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*Bayfield Properties Ltd* [2002] QB 451, *Re Medicaments and Related Classes of Goods (No.2)* [2001] 1 WLR 700 and *Helow v Secretary of State for the Home Department* [2008] 1 WLR 2416., *R. v. Bow "Street Metropolitan Stipendiary Magistrate and others" ex parte Pinochet Ugarte* (No. 2), House of Lords, [1999] 1 All ER 577, [1999] 2 WLR 272. *see also* S. Shetreet, Standards of Conduct of International Judges: Outside Activities, 2 *The Law and Practice of International Courts and Tribunals* 127 (2003).

<sup>16</sup> The reference to the judicial oath is found in Chapter 1 of Australia's Guide to Judicial Conduct, Paragraph 1.1; in Paragraph 2.2 of the UK Supreme Court Guide to Judicial Conduct; in the Guide to Judicial Conduct, England Judges' Council, Forward and Paragraphs 2.2 and 2.3.

<sup>17</sup> See Shimon Shetreet, *Judges on Trial; A Study of the Appointment and Accountability of the English Judiciary*, 34-36 ( North Holland 1976 )

The need for a written code of judicial ethics has become necessary due to the substantial increase in the size of the judiciary. With this increasing size, the judiciary's diversity has also enlarged. The result has been that the rules of conduct which were previously well known to a small, tight knit judiciary have become less intuitive to the now much larger, more diverse judiciary. This effect has been exacerbated by the fact that the tribunal judiciary has now been included in the general judicial system, side by side with the mainstream judiciary.

Beyond the issue of the size of the judiciary there is a need to clarify the rules of judicial conduct.<sup>18</sup> Particularly, there is a need to clarify the correct resolution of the balance between conflicting schools of thought on the proper judicial conduct in certain situations. The need to strike the correct balance between proper judicial conduct and necessary involvement in community experience can be seen in Australia's guide to judicial conduct. This need was met by drafting written and detailed codes of conduct. The standards reflect changes as suggested by the Preface of CJ Murray Gleeson, Chief Justice of Australia, to the Guide of Judicial Conduct.<sup>19</sup>

The Australian Chief Justices decided that it was time to provide members of the judiciary with some practical guidance about conduct expected of them as holders of judicial office, and that such guidance should reflect the changes that have occurred in the community standards over the years.

The need for a written code of ethics is also called for due to the changes in the standards that have taken place over a span of decades. For example, formerly it was acceptable for a son to appear as a barrister before his father acting as a judge. Today, this is clearly unacceptable, and even unthinkable.<sup>20</sup>

In shaping standards one should mention the Impact of the ECtHR jurisprudence and it is referred to in the Guide to Judicial Conduct.<sup>21</sup>

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<sup>18</sup> For the need for written standards see paragraph 1.2, Judges' Council Guide to Judicial Conduct.( England )

<sup>19</sup> Chapter 1, page 1. CJ Forward Guide to Judicial Conduct, page 1

<sup>20</sup> For theoretical considerations in connection with ethics of judges it is stated that judges are entitled to exercise rights of citizens, see paragraph 4.1 of the UK Supreme Court Guide to Judicial Conduct. As to the duty of disclosure, see paragraph 3.15 and 3.16 of the UK Supreme Court Guide to Judicial Conduct.

<sup>21</sup> See eg *Procola v. Luxemburg* .for a detailed analysis see *Shimon Shetreet* , The Normative Cycle of Shaping Judicial Independence in Domestic and International Law: The Mutual Impact of National

#### **IV. Enforcement of Judicial Ethics**

In England, the Constitutional Reform Act of 2005 transferred certain disciplinary powers over judges from the Lord Chancellor to the Lord Chief Justice, who is now the head of the judiciary. The Lord Chancellor and the Lord Chief Justice are assisted in the implementation of the Guide to Judicial Conduct by the Office of Judicial Conduct, which was established following the Constitutional Reform Act of 2005.

In Israel, one can observe a very negative effect from the Yoav Yizthak case<sup>22</sup>, which declared the judicial code of ethics issued by Chief Justice Shamgar in 1993 to be legally invalid. This case sent the message that individual judges are able to make their own ethical rules.

#### **Explanatory Notes on Justice and Technology.**

##### **Ethical rules relevant to justice and technology on articles 8.2.8 ,8.2.9, 8.2.10**

The advance of digital technology has had substantial impact on justice and on judicial ethics. Attention must be paid to study online justice, remote justice and recourse to social media by judicial officers, and code of ethics relative to digital realities. Electronic fulling, privacy protection of online court data.

The advance of digital technology has had substantial impact on justice and on judicial ethics. Attention must be paid to study online justice, remote justice and recourse to social media by judicial officers, and code of ethics relative to digital realities.

According to reports received by the JIWP Association a number of issues arose as a result of the digital culture. A number of U.S. judges have their own blogs on which they comment about a wide variety of legal issues. This has generated some discussion. To some extent, the issues here are similar to those that arise when judges write articles or books, but blogs are less formal and much more immediate. Meanwhile, many judges have social media presence, which also raises at least ethical issues. Several U.S.

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and International Jurisprudence and Contemporary Practical and Conceptual Challenges, 10 Chicago J. of International Law, pp.275-332 (2009)

<sup>22</sup> See Yoav Yizthak case HCJ 1622/00 Yitzhak v President Barak 54 (2 ) P D 54 ,See Shetreet, The Status of Judicial Code of Ethics ,in Medina, Fassberg and Weisman ,Eds. Festschrift in Honour of Prof Avigdor Levontin, (Sacher Institute 2013).

jurisdictions (along with the ABA) have suggested ethical guidelines for judges on social media, but many of those guidelines are so general that they afford limited guidance. There could be a useful paper on either or both of these aspects of judicial use of social media. The Bologna and Milan Global Code of Judicial Ethics of the JIWP address these issues.

Many U.S. administrative agencies accept or strongly encourage submission of comments on proposed rules electronically rather than in writing. Judicial review of agency rules often focuses on how the agency has responded to comments. Electronic rulemaking can pose a number of significant questions, such as whether submitted comments are genuine or generated by artificial means (this is a variation on the so-called astroturf phenomenon in which supposedly grass-roots activity has been organized by vested interests) and whether comments have been submitted by the persons whose names are attached to them (there is a current controversy involving submissions to the Federal Communications Commission where many of the people whose names have been used now claim that they did not submit the comments and do not agree with the positions taken in their name).

The U.S federal courts and many state courts in the U.S and other countries now use electronic filing in cases. Not only is it possible to see case dockets online, but it is possible (and often necessary) to submit pleadings and briefs online. There have been some well-publicized incidents in which sensitive personal information has been made available to the public through such systems.