

**Proposed Amendment by the
American Judicature Society
to the Final Report of the ABA Joint Commission to
Evaluate the Model Code of Judicial Conduct**

Scope

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[2] The Canons state overarching principles of judicial ethics that all judges must observe. ~~For a judge to be disciplined for violating a Canon, violation of a Rule must be established.~~ Where a Rule contains the term “shall” or “shall not,” it establishes a mandatory standard to which the judge or candidate for judicial office will be held. Where a Rule contains a permissive term, such as “may” or “should,” the conduct being addressed is committed to the personal and professional discretion of the judge or candidate in question, and no disciplinary action should be taken for action or inaction within the bounds of such discretion.

RULE 1.2

Promoting Confidence in the Judiciary

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary and avoid impropriety and the appearance of impropriety.

Comment

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[5] Actual improprieties include violations of law, court rules or other specific provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this code or engaged in other conduct that reflects adversely on the judge’s honesty, impartiality, temperament, or fitness to serve as a judge.

AJS explanatory note: Weakening the appearance of impropriety standard sends an inappropriate signal about the willingness of the judiciary to be held accountable and to be held to higher standards than other public officials and than the legal profession in general. Moreover, there is no basis for an argument that the standard is unconstitutional; judges apply general standards on the bench every day and to avoid the appearance of impropriety have the benefit of guidance provided by case law, court rules, advisory committees, and the traditions and established practices of the profession. Protecting the appearance of impartiality is one of the principles of the code of judicial conduct and undermining the appearance of impropriety will inevitably weaken that standard as well. The language proposed by AJS is based on case law.