

AMERICAN BAR ASSOCIATION

**TASK FORCE ON INTERNATIONAL RULE OF LAW SYMPOSIA
RULE OF LAW INITIATIVE**

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

- 1 RESOLVED, That the American Bar Association adopts the *Principles on Judicial*
- 2 *Independence and Fair and Impartial Courts*, dated August 2007.

**PRINCIPLES ON JUDICIAL INDEPENDENCE AND
FAIR AND IMPARTIAL COURTS**

(DATED AUGUST 2007)

There are five major principles of judicial independence and fair and impartial courts:

Decisional independence

Decisional independence allows fair and impartial judges to decide cases pursuant to the rule of law and the governing constitutions unaffected by personal interest or threats or pressure from any source.

Institutional independence

Institutional independence recognizes the judiciary as a separate and co-equal branch of government charged with administering justice pursuant to the rule of law, and as a constitutional partner with the executive and legislative branches authorized to manage its own internal operations without undue interference from the other branches. The other branches must also support the court by recognizing its authority and ensuring the enforcement of its orders.

Competent Judges

Fair and impartial courts require competent judges who have been selected for their merit, who represent the diversity of their community, and who are provided with access to the law and continuing legal education.

Adequate resources

An independent judiciary must have adequate resources including a budget that provides for adequate facilities and equipment, security and just compensation for judges.

Accountability

There must also be a system of accountability for judges including a judicial code of ethics as well as a process for citizens to file complaints against judges for illegal or unethical conduct and an impartial disciplinary system that allows for a range of sanctions and removal of errant judges. In establishing such a system, it should be clear that this process is to address ethical violations and not a system for reconsideration of decisions or a means to remove a judge whose decision someone did not like. Judicial accountability also requires a transparent system that provides for public and media access to court proceedings and legal decisions.

REPORT

Much has been written about the importance of an independent judiciary to the rule of law both here in the United States and internationally. A review of the literature reveals little disagreement about the basic principles that are vital to a system that guarantees an independent judiciary and fair and impartial courts. It is the manner in which these principles are in fact implemented and supported that demonstrates whether the judges in any system are truly able to operate free of “fear or favor”.

There are five major principles of judicial independence and fair and impartial courts.

Decisional independence allows fair and impartial judges to decide cases pursuant to the rule of law and the governing constitutions unaffected by personal interest or threats or pressure from any source.

Institutional independence recognizes the judiciary as a separate and co-equal branch of government charged with administering justice pursuant to the rule of law, and as a constitutional partner with the executive and legislative branches authorized to manage its own internal operations without undue interference from the other branches.

Fair and impartial courts require competent judges who have been selected for their merit, who represent the diversity of their community, and who are provided with access to the law and continuing legal education provided by non-political sources.

An independent judiciary must have adequate resources including a budget that provides for adequate facilities and equipment, security and just compensation for judges.

There must also be a system of accountability for judges including a judicial code of ethics as well as a process for citizens to file complaints against judges for illegal or unethical conduct and an impartial disciplinary system that allows for a range of sanctions and removal of errant judges. Judicial accountability also requires a transparent system that provides for public and media access to court proceedings and legal decisions.

The ABA Central European and Eurasian Law Initiative (CEELI) has developed an innovative tool to assess these principles in emerging democracies and transitioning states. The index uses not only comparative legal traditions but also international standards, thereby making it particularly useful as a global tool.

The standards used in the development of the JRI were:

- United Nations Basic Principles on the Independence of the Judiciary
- Council of Europe Recommendation on Independence of Judges
- European Charter on the Status for Judges
- International Bar Association Minimum Standards for Judicial Independence

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CEELI defined thirty different factors which provide the architecture for an independent, accountable and efficient judicial system. These factors can be grouped under the five major principles of judicial independence. Periodic assessment as to how both individual and institutional performance measure up to each of these factors provides an on-going gauge of institutional progress as well as identification of influences affecting that progress and are useful in designing programs of assistance.

Decisional Independence

- Guaranteed Tenure
- Objective Judicial Advancement Criteria
- Judicial Immunity for Official Actions
- Case Assignment
- Judicial Decisions and Improper Influence

Institutional Independence

- Judicial Review of Legislation
- Judicial Oversight of Administrative Practice
- Judicial Jurisdiction over Civil Liberties
- System of Appellate Review
- Contempt/Subpoena/Enforcement
- Judicial Associations

Competent Judges

- Judicial Qualification and Preparation
- Selection/Appointment Process
- Continuing Legal Education
- Minority and Gender Representation
- Distribution and Indexing of Current Law

Adequate Resources

- Budgetary Input
- Adequacy of Judicial Salaries
- Judicial Buildings
- Judicial Security
- Court Support Staff
- Judicial Positions
- Computers and Office Equipment

Accountability

- Code of Ethics
- Judicial Conduct Complaint Process
- Removal and Discipline of Judges
- Public and Media Access to Proceedings
- Publication of Judicial Decisions
- Maintenance of Trial Records

The American Bar Association should assume a leading organizational role in promoting these Principles on Judicial Independence and Fair and Impartial Courts. To do so, the ABA first needs to adopt them as policy. Association Goal XI is “To preserve the independence of the legal profession and the judiciary as fundamental to a free society.” These Principles provide the ABA with a platform to continue its work in providing specific roadmaps to address factors which influence adherence to these principles.

Respectfully submitted,

Mark S. Ellis, Co-Chair

Dianna P. Kempe, Co-Chair

Robert A. Stein, Co-Chair

Task Force on International Rule of Law Symposia

August 2007

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GENERAL INFORMATION FORM

To Be Appended to Reports with Recommendations
(Please refer to instructions for completing this form.)

Submitting Entity: Task Force on International Rule of Law Symposia

Submitted By: Robert Stein, Co-chair, Task Force on International Rule of Law Symposia
Dianna Kempe, Co-chair, Task Force on International Rule of Law Symposia

1. Summary of Recommendation(s).

This resolution urges the ABA to adopt the Principles on Judicial Independence and Fair and Impartial Courts dated August, 2007.

2. Approval by Submitting Entity.

In May 2007 the Task Force on International Rule of Law Symposia voted by email to approve this recommendation and report.

3. Has this or a similar recommendation been submitted to the ABA House of Delegates or Board of Governors previously?

There has been no similar recommendation previously submitted to the House or Board.

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

Existing ABA policies are consistent with this recommendation on issues such as suppression of corruption and advancement of the rule of law, but no existing policy is directly relevant to this recommendation.

5. What urgency exists which requires action at this meeting of the House?

The ongoing Rule of Law efforts of the ABA and the planned ABA World Justice Forum Project in 2008 will be enhanced by adoption of this recommendation.

6. Status of Legislation. (If applicable.)

N/A

7. Cost to the Association. (Both direct and indirect costs.)

Adoption of the recommendation would not result in any additional direct or indirect cost to the association.

8. Disclosure of Interest. (If applicable.)

No known conflict of interest exists.

9. Referrals. (List entities to which the recommendation has been referred, the date of referral and the response of each entity if known.)

Rule of Law Initiative (May 4, 2007), The Justice Division, The Standing Committee on Judicial Independence and The Section of International Law are in the process of being contacted

10. Contact Person. (Prior to the meeting. Please include name, address, telephone number and email address.)

The Honorable Louraine C. Arkfeld, Chair
Tempe Municipal Court
Ste 200
140 E 5th Street
Tempe, AZ 85281-3736
Business Phone: (480) 350-8614
Fax: (480) 350-8581
E-Mail: louraine_arkfeld@tempe.gov

11. Contact Person. (Who will present the report to the House. Please include email address and cell phone number.)

The Honorable Louraine C. Arkfeld, Chair
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EXECUTIVE SUMMARY

SUMMARY OF THE RECOMMENDATION

This resolution urges the ABA to adopt the Principles on Judicial Independence and Fair and Impartial Courts dated August, 2007.

SUMMARY OF THE ISSUE WHICH THE RECOMMENDATION ADDRESSES

In September 2006, a Rule of Law Symposium was held under the joint sponsorship of the International Bar Association and the American Bar Association. Included within the breakout sessions was the topic of the Rule of Law and an Independent Judiciary. That symposium generated a strong desire on the part of the symposium attendees to continue the work of the symposium on the vital relationship between judicial independence and the Rule of Law. A working group was created by President Karen Mathis to review current resolutions and ongoing work of the ABA in this area particularly as it related to the ABA's international efforts. The group was tasked with identifying gaps in these policies or activities in which organizational positions needed to be taken and/or projects or activities undertaken addressing those gaps so that the ABA could make further contributions in support of an independent judiciary and the rule of law worldwide. The resulting paper and recommendations were presented to the follow-up Rule of Law Symposium in April 2007.

HOW WILL PROPOSED POLICY POSITION ADDRESS THE ISSUE

These Principles provide the ABA with a platform to continue its work in providing specific roadmaps to address factors which influence adherence to these principles.

SUMMARY OF MINORITY VIEWS

N/A