

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 supports the following
2 international standards on judicial independence:
3
4 The United Nations Basic Principles on the Independence of the
5 Judiciary;
6 The International Bar Association Minimum Standards for Judicial
7 Independence; and
8 The Bangalore Principles of Judicial Conduct.
9
10 FURTHER RESOLVED, That the American Bar Association should urge the
11 United States government to support these standards.

REPORT

A review of the ABA's existing policies on rule of law issues reveals that there is no current policy supporting these prominent international standards on judicial independence. If we are going to go forward on international projects involving the rule of law and judicial independence, it becomes extremely important to demonstrate that the ABA is in support of these recognized international standards and stands with other nations on these issues. The full text of each of these standards is attached as an appendix

The U.N. Basic Principles on the Independence of the Judiciary were adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from August 26 to September 6, 1985 and endorsed by the General Assembly resolutions 40/32 of November 29, 1985 and 40/126 of December 13, 1985. These were developed to provide guidelines for the independence of judges and the selection, professional training and status of judges and prosecutors. These guidelines address independence of the judiciary, freedom of expression and association, qualifications, selection and training, conditions of service and tenure, discipline, suspension and removal.

The Bangalore Principles of Judicial Conduct began with a meeting of chief justices of the common law tradition in 2000 at the Centre for International Crime Prevention of the United Nations Office on Drugs and Crime Secretariat, followed by a meeting in Bangalore, India, where the principles were drafted. Judiciaries in more than eighty countries of all legal traditions were consulted and the result was endorsement of the principles by various judicial forums including a Round Table Meeting of Chief Justices held in The Hague on November 25 and 26, 2002. The principles were subsequently noted and brought to the attention of national governments, international and non-governmental organizations by the United Nations Commission on Human Rights resolution 2003/43 of April 23, 2003, and endorsed by the United Nations Economic and Social Council resolution 2006/23 of July 27, 2006. The principles represent a further development and are complementary to the U.N. Basic Principles on the Independence of the Judiciary. They are intended to establish standards for ethical conduct of judges and the principles are listed under six values: Independence, Impartiality, Integrity, Propriety, Equality and Competence and Diligence.

The International Bar Association Minimum Standards of Judicial Independence were adopted in 1982 and address eight areas: Judges and the Executive; Judges and the Legislature; Terms and Nature of Judicial Appointments; The Press, The Judiciary and The Courts; Standards of Conduct; Securing Impartiality and Independence and The internal Independence of the Judiciary.

These standards are endorsed and used throughout the world and have been in place for many years. It is important to the ABA's international Rule of Law efforts for the ABA to also express its support of these standards.

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Respectfully submitted,
Dianna Kempe and Robert Stein
Co-chairs, Rule of Law Initiative
August 2007

U.N. Basic Principles on the Independence of the Judiciary

Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985

Whereas in the Charter of the United Nations the peoples of the world affirm, inter alia, their determination to establish conditions under which justice can be maintained to achieve international co-operation in promoting and encouraging respect for human rights and fundamental freedoms without any discrimination,

Whereas the Universal Declaration of Human Rights enshrines in particular the principles of equality before the law, of the presumption of innocence and of the right to a fair and public hearing by a competent, independent and impartial tribunal established by law,

Whereas the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights both guarantee the exercise of those rights, and in addition, the Covenant on Civil and Political Rights further guarantees the right to be tried without undue delay,

Whereas frequently there still exists a gap between the vision underlying those principles and the actual situation,

Whereas the organization and administration of justice in every country should be inspired by those principles, and efforts should be undertaken to translate them fully into reality,

Whereas rules concerning the exercise of judicial office should aim at enabling judges to act in accordance with those principles,

Whereas judges are charged with the ultimate decision over life, freedoms, rights, duties and property of citizens,

Whereas the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, by its resolution 16, called upon the Committee on Crime Prevention and Control to include among its priorities the elaboration of guidelines relating to the independence of judges and the selection, professional training and status of judges and prosecutors,

Whereas it is, therefore, appropriate that consideration be first given to the role of judges in relation to the system of justice and to the importance of their selection, training and conduct,

The following basic principles, formulated to assist Member States in their task of securing and promoting the independence of the judiciary should be taken into account

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and respected by Governments within the framework of their national legislation and practice and be brought to the attention of judges, lawyers, members of the executive and the legislature and the public in general. The principles have been formulated principally with professional judges in mind, but they apply equally, as appropriate, to lay judges, where they exist.

Independence of the judiciary

1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.
2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.
3. The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.
4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.
5. Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.
6. The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.
7. It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.

Freedom of expression and association

8. In accordance with the Universal Declaration of Human Rights, members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly; provided, however, that in exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.

9. Judges shall be free to form and join associations of judges or other organizations to represent their interests, to promote their professional training and to protect their judicial independence.

Qualifications, selection and training

10. Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives. In the selection of judges, there shall be no discrimination against a person on the grounds of race, color, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement, that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory.

Conditions of service and tenure

11. The term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law.

12. Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.

13. Promotion of judges, wherever such a system exists, should be based on objective factors, in particular ability, integrity and experience.

14. The assignment of cases to judges within the court to which they belong is an internal matter of judicial administration. Professional secrecy and immunity

15. The judiciary shall be bound by professional secrecy with regard to their deliberations and to confidential information acquired in the course of their duties other than in public proceedings, and shall not be compelled to testify on such matters.

16. Without prejudice to any disciplinary procedure or to any right of appeal or to compensation from the State, in accordance with national law, judges should enjoy personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions.

Discipline, suspension and removal

17. A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge.

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18. Judges shall be subject to suspension or removal only for reasons of incapacity or behavior that renders them unfit to discharge their duties.

19. All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct.

20. Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review. This principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings.

Bangalore Principles of Judicial Conduct

WHEREAS the Universal Declaration of Human Rights recognizes as fundamental the principle that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of rights and obligations and of any criminal charge,

WHEREAS the International Covenant on Civil and Political Rights⁸ guarantees that all persons shall be equal before the courts and that in the determination of any criminal charge or of rights and obligations in a suit at law, everyone shall be entitled, without undue delay, to a fair and public hearing by a competent, independent and impartial tribunal established by law,

WHEREAS the foregoing fundamental principles and rights are also recognized or reflected in regional human rights instruments, in domestic constitutional, statutory and common law, and in judicial conventions and traditions,

WHEREAS the importance of a competent, independent and impartial judiciary to the protection of human rights is given emphasis by the fact that the implementation of all the other rights ultimately depends upon the proper administration of justice,

WHEREAS a competent, independent and impartial judiciary is likewise essential if the courts are to fulfil their role in upholding constitutionalism and the rule of law,

WHEREAS public confidence in the judicial system and in the moral authority and integrity of the judiciary is of the utmost importance in a modern democratic society,

WHEREAS it is essential that judges, individually and collectively, respect and honour judicial office as a public trust and strive to enhance and maintain confidence in the judicial system,

WHEREAS the primary responsibility for the promotion and maintenance of high standards of judicial conduct lies with the judiciary in each country,

AND WHEREAS the Basic Principles on the Independence of the Judiciary⁹ are designed to secure and promote the independence of the judiciary and are addressed primarily to States,

THE FOLLOWING PRINCIPLES are intended to establish standards for ethical conduct of judges. They are designed to provide guidance to judges and to afford the judiciary a framework for regulating judicial conduct. They are also intended to assist members of the executive and the legislature, and lawyers and the public in general, to better understand and support the judiciary. These principles presuppose that judges are accountable for their conduct to appropriate institutions established to maintain judicial standards, which are themselves independent and impartial, and are intended to supplement and not to derogate from existing rules of law and conduct that bind the judge.

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Value 1 Independence

Principle

Judicial independence is a prerequisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore

8 General Assembly resolution 2200 A (XXI), annex.

9 See Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. D.2, annex.

uphold and exemplify judicial independence in both its individual and institutional aspects.

Application

1.1. A judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.

1.2. A judge shall be independent in relation to society in general and in relation to the particular parties to a dispute that the judge has to adjudicate.

1.3. A judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free therefrom.

1.4. In performing judicial duties, a judge shall be independent of judicial colleagues in respect of decisions that the judge is obliged to make independently.

1.5. A judge shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary.

1.6. A judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary, which is fundamental to the maintenance of judicial independence.

Value 2 Impartiality

Principle

Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.

Application

2.1. A judge shall perform his or her judicial duties without favour, bias or prejudice.

2.2. A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.

2.3. A judge shall, as far as is reasonable, so conduct himself or herself as to minimize the occasions on which it will be necessary for the judge to be disqualified from hearing

or deciding cases.

2.4. A judge shall not knowingly, while a proceeding is before, or could come before, the judge, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process, nor shall the judge make any comment in public or otherwise that might affect the fair trial of any person or issue.

2.5. A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where:

- (a) The judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;
- (b) The judge previously served as a lawyer or was a material witness in the matter in controversy; or
- (c) The judge, or a member of the judge's family, has an economic interest in the outcome of the matter in controversy;

provided that disqualification of a judge shall not be required if no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice.

Value 3 Integrity

Principle

Integrity is essential to the proper discharge of the judicial office.

Application

- 3.1. A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.
- 3.2. The behaviour and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

Value 4 Propriety

Principle

Propriety, and the appearance of propriety, are essential to the performance of all of the activities of a judge.

Application

- 4.1. A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.
- 4.2. As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, a judge shall conduct himself or herself in a way that is consistent with the dignity of the judicial office.

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4.3. A judge shall, in his or her personal relations with individual members of the legal profession who practise regularly in the judge's court, avoid situations that might reasonably give rise to the suspicion or appearance of favouritism or partiality.

4.4. A judge shall not participate in the determination of a case in which any member of the judge's family represents a litigant or is associated in any manner with the case.

4.5. A judge shall not allow the use of the judge's residence by a member of the legal profession to receive clients or other members of the legal profession.

4.6. A judge, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but, in exercising such rights, a judge shall always conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.

4.7. A judge shall inform himself or herself about the judge's personal and fiduciary financial interests and shall make reasonable efforts to be informed about the financial interests of members of the judge's family.

4.8. A judge shall not allow the judge's family, social or other relationships improperly to influence the judge's judicial conduct and judgement as a judge.

4.9. A judge shall not use or lend the prestige of the judicial office to advance the private interests of the judge, a member of the judge's family or of anyone else, nor shall a judge convey or permit others to convey the impression that anyone is in a special position improperly to influence the judge in the performance of judicial duties.

4.10. Confidential information acquired by a judge in the judge's judicial capacity shall not be used or disclosed by the judge for any other purpose not related to the judge's judicial duties.

4.11. Subject to the proper performance of judicial duties, a judge may:

(a) Write, lecture, teach and participate in activities concerning the law, the legal system, the administration of justice or related matters;

(b) Appear at a public hearing before an official body concerned with matters relating to the law, the legal system, the administration of justice or related matters;

(c) Serve as a member of an official body, or other government commission, committee or advisory body, if such membership is not inconsistent with the perceived impartiality and political neutrality of a judge; or

(d) Engage in other activities if such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties.

4.12. A judge shall not practise law while the holder of judicial office.

4.13. A judge may form or join associations of judges or participate in other organizations representing the interests of judges.

4.14. A judge and members of the judge's family shall neither ask for, nor accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done by the judge in connection with the performance of judicial duties.

4.15. A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or authority to ask for, or accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done in connection with his or her duties or functions.

4.16. Subject to law and to any legal requirements of public disclosure, a judge may receive a token gift, award or benefit as appropriate to the occasion on which it is made provided that such gift, award or benefit might not reasonably be perceived as intended to influence the judge in the performance of judicial duties or otherwise give rise to an appearance of partiality.

Value 5 Equality

Principle

Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.

Application

5.1. A judge shall be aware of, and understand, diversity in society and differences arising from various sources, including but not limited to race, colour, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other like causes ("irrelevant grounds").

5.2. A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds.

5.3. A judge shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties.

5.4. A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or control to differentiate between persons concerned, in a matter before the judge, on any irrelevant ground.

5.5. A judge shall require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on irrelevant grounds, except such as are legally relevant to an issue in proceedings and may be the subject of legitimate advocacy.

Value 6 Competence and diligence

Principle

Competence and diligence are prerequisites to the due performance of judicial office.

Application

6.1. The judicial duties of a judge take precedence over all other activities.

6.2. A judge shall devote the judge's professional activity to judicial duties, which

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include not only the performance of judicial functions and responsibilities in court and the making of decisions, but also other tasks relevant to the judicial office or the court's operations.

6.3. A judge shall take reasonable steps to maintain and enhance the judge's knowledge, skills and personal qualities necessary for the proper performance of judicial duties, taking advantage for that purpose of the training and other facilities that should be made available, under judicial control, to judges.

6.4. A judge shall keep himself or herself informed about relevant developments of international law, including international conventions and other instruments establishing human rights norms.

6.5. A judge shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.

6.6. A judge shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity. The judge shall require similar conduct of legal representatives, court staff and others subject to the judge's influence, direction or control.

6.7. A judge shall not engage in conduct incompatible with the diligent discharge of judicial duties.

Implementation

By reason of the nature of judicial office, effective measures shall be adopted by national judiciaries to provide mechanisms to implement these principles if such mechanisms are not already in existence in their jurisdictions.

Definitions

In this statement of principles, unless the context otherwise permits or requires, the following meanings shall be attributed to the words used:

“Court staff” includes the personal staff of the judge, including law clerks;

“Judge” means any person exercising judicial power, however designated;

“Judge's family” includes a judge's spouse, son, daughter, son-in-law, daughter-in-law and any other close relative or person who is a companion or employee of the judge and who lives in the judge's household;

“Judge's spouse” includes a domestic partner of the judge or any other person of either sex in a close personal relationship with the judge.

**IBA MINIMUM STANDARDS
OF JUDICIAL INDEPENDENCE
(Adopted 1982)**

A JUDGES AND THE EXECUTIVE

1 a) Individual judges should enjoy personal independence and substantive independence.

b) Personal independence means that the terms and conditions of judicial service are adequately secured so as to ensure that individual judges are not subject to executive control.

c) Substantive independence means that in the discharge of his/her judicial function a judge is subject to nothing but the law and the commands of his/her conscience.

2 The Judiciary as a whole should enjoy autonomy and collective independence vis-à-vis the Executive

3 a) Participation in judicial appointments and promotions by the executive or legislature is not inconsistent with judicial independence provided that appointments and promotions of judges are vested in a judicial body in which members of judiciary and the legal profession form a majority.

b) Appointments and promotions by a non-judicial body will not be considered inconsistent with judicial independence in countries where, by long historic and democratic tradition, judicial appointments and promotion operate satisfactorily.

4 a) The Executive may participate in the discipline of judges only in referring complaints against judges, or in the initiation of disciplinary proceedings, but not the adjudication of such matters. The power to discipline or remove a judge must be vested in an institution, which is independent of the Executive.

b) The power of removal of a judge should preferably be vested in a judicial tribunal.

c) The Legislature may be vested with the powers of removal of judges, preferably upon a recommendation of a judicial commission.

5 The Executive shall not have control over judicial functions.

6 Rules of procedure and practice shall be made by legislation or by the Judiciary in co-operation with the legal profession subject to parliamentary approval.

7 The State shall have a duty to provide for the executive of judgements of the Court. The Judiciary shall exercise supervision over the execution process.

8 Judicial matters are exclusively within the responsibility of the Judiciary, both in central judicial administration and in court level judicial administration.

9 The central responsibility for judicial administration shall preferably be vested in the Judiciary or jointly in the Judiciary and the Executive.

10 It is the duty of the State to provide adequate financial resources to allow for the due administration of justice.

11 a) Division of work among judges should ordinarily be done under a predetermined plan, which can be changed in certain clearly defined circumstances.

b) In countries where the power of division of judicial work is vested in the Chief Justice, it is not considered inconsistent with judicial independence to accord to the Chief Justice the power to change the predetermined plan for sound reasons, preferably in consultation with the senior judges when practicable.

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c) Subject to (a), the exclusive responsibility for case assignment should be vested in a responsible judge, preferably the President of the Court.

12 The power to transfer a judge from one court to another shall be vested in a judicial authority and preferably shall be subject to the judge's consent, such consent not to be unreasonably withheld.

13 Court services should be adequately financed by the relevant government.

14 Judicial salaries and pensions shall be adequate and should be regularly adjusted to account for price increases independent of executive control.

15 a) The position of the judges, their independence, their security, and their adequate remuneration shall be secured by law.

b) Judicial salaries cannot be decreased during the judges' services except as a coherent part of an overall public economic measure.

16 The ministers of the government shall not exercise any form of pressure on judges, whether overt or covert, and shall not make statements which adversely affect the independence of individual judges or of the Judiciary as a whole.

17 The power of pardon shall be exercised cautiously so as to avoid its use as interference

18 a) The Executive shall refrain from any act or omission which pre-empts the judicial resolution of a dispute or frustrates the proper execution of a court judgement.

b) The Executive shall not have the power to close down or suspend the operation of the court system at any level.

B JUDGES AND THE LEGISLATURE

19 The Legislature shall not pass legislation which retroactively reverses specific court decisions.

20 a) Legislation introducing changes in the terms and conditions of judicial services shall not be applied to judges holding office at the time of passing the legislation unless the changes improve the terms of service.

b) In case of legislation reorganising courts, judges serving in these courts shall not be affected, except for their transfer to another court of the same status.

21 A citizen shall have the right to be tried by the ordinary courts of law, and shall not be tried before ad hoc tribunals.

C TERMS AND NATURE OF JUDICIAL APPOINTMENTS

22 Judicial appointments should generally be for life, subject to removal for cause and compulsory retirement at an age fixed by law at the date of appointment.

23 a) Judges should not be appointed for probationary periods except for legal systems in which appointments of judges do not depend on having practical experience in the profession as a condition of the appointment.

b) The institution of temporary judges should be avoided as far as possible except where there exists a long historic democratic tradition.

24 The number of the members of the highest court should be rigid and should not be subject to change except by legislation.

25 Part-time judges should be appointed only with proper safeguards.

26 Selection of judges shall be based on merit.

27 The proceedings for discipline and removal of judges should ensure fairness to the judge and adequate opportunity for hearing.

28 The procedure for discipline should be held in camera. The judge may however request that the hearing be held in public, subject to final and reasoned disposition of this

request by the disciplinary tribunal. Judgements in disciplinary proceedings, whether held in camera or in public, may be published.

29 a) The grounds for removal of judges shall be fixed by law and shall be clearly defined.

b) All disciplinary actions shall be based upon standards of judicial conduct promulgated by law or in established rules of court.

30 A judge shall not be subject to removal unless by reason of a criminal act or through gross or repeated neglect or physical or mental incapacity he/she has shown himself/herself manifestly unfit to hold the position of judge.

31 In systems where the power to discipline and remove judges is vested in an institution other than the Legislature the tribunal for discipline and removal of judges shall be permanent and be composed predominantly of members of the Judiciary.

32 The head of the court may legitimately have supervisory powers to control judges on administrative matters.

E THE PRESS, THE JUDICIARY AND THE COURTS

33 It should be recognised that judicial independence does not render the judges free from public accountability, however, the press and other institutions should be aware of the potential conflict between judicial independence and excessive pressure on judges.

34 The press should show restraint in publications on pending cases where such publication may influence the outcome of the case.

F STANDARDS OF CONDUCT

35 Judges may not, during their term of office, serve in executive functions, such as ministers of the government, nor may they serve as members of the Legislature or of municipal councils, unless by long historical traditions these functions are combined.

36 Judges may serve as chairmen of committees of inquiry in cases where the process requires skill of fact-finding and evidence-taking.

37 Judges shall not hold positions in political parties.

38 A judge, other than a temporary judge, may not practice law during his term of office.

39 A judge should refrain from business activities, except his personal investments, or ownership of property.

40 A judge should always behave in such a manner as to preserve the dignity of his office and the impartiality and independence of the Judiciary.

41 Judges may be organised in associations designed for judges, for furthering their rights and interests as judges.

42 Judges may take collective action to protect their judicial independence and to uphold their position.

G SECURING IMPARTIALITY AND INDEPENDENCE

43 A judge shall enjoy immunity from legal actions and the obligation to testify concerning matters arising in the exercise of his official functions.

44 A judge shall not sit in a case where there is a reasonable suspicion of bias or potential bias.

45 A judge shall avoid any course of conduct which might give rise to an appearance of partiality.

H THE INTERNAL INDEPENDENCE OF THE JUDICIARY

46 In the decision-making process, a judge must be independent vis-à-vis his judicial colleagues and supporters.

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The above standards are subject to periodic review by the appropriate committee or committees of the International Bar Association and amendment from time to time by the International Bar Association in plenary sessions as circumstances may warrant or require.

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 American Bar Association supports the following international standards on judicial independence:

The United Nations Basic Principles on the Independence of the Judiciary;
The International Bar Association Minimum Standards for Judicial Independence; and
The Bangalore Principles of Judicial Conduct.

And, that the American Bar Association should urge the United States government to support these standards.

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.

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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
140 E 5th Street, Suite 200
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 American Bar Association supports the following international standards on judicial independence:

The United Nations Basic Principles on the Independence of the Judiciary;

The International Bar Association Minimum Standards for Judicial Independence; and

The Bangalore Principles of Judicial Conduct.

And, that the American Bar Association should urge the United States government to support these standards.

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 to identify 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. At the symposium, the direction was given to present the international standards to the House of Delegates for support and approval by the ABA.

HOW WILL PROPOSED POLICY POSITION ADDRESS THE ISSUE

Supporting these international standards will 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