AMERICAN BAR ASSOCIATION

KING COUNTY BAR ASSOCIATION

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

RESOLVED, That the American Bar Association urges the Supreme Court of the United States to adopt a code of judicial ethics binding on justices of the Supreme Court of the United States that is comparable to the Code of Conduct for United States Judges adopted by the Judicial Conference of the United States; and

FURTHER RESOLVED, That the American Bar Association urges federal, state, local, and territorial bar associations to adopt their own resolutions urging the Supreme Court of the United States to adopt a code of judicial ethics binding on justices of the Supreme Court.

REPORT

"No man is above the law."
– Chesterfield Smith, President, American Bar Association, October 22, 1973

An independent judiciary is the cornerstone of the rule of law and our constitutional republic. It protects the liberty of the people. Yet public support for an independent judiciary can only be sustained if there is public confidence in the legitimacy of the judiciary. Public confidence requires that the public believe judges act ethically according to standards firmly grounded in judicial independence, integrity, and impartiality.

Essentially every judge in every jurisdiction in the United States – city, county, state, tribal, territorial, and federal – is subject to a binding code of ethics that embodies basic judicial ethical precepts with enforcement mechanisms. Justices of the United States Supreme Court (the "Court") are not.

There are judicial conduct requirements in our law that do address justices of the Court. It is reported that justices consult the Code of Judicial Conduct for Unites States Judges to resolve ethical issues. Some statutes do impose some ethical requirements on the justices. For example, 28 U.S.C. § 455 requires federal judges, including justices of the Court, to disqualify themselves from particular cases under specified circumstances, such as when a judge "has a personal bias or prejudice concerning a party" or "a financial interest in the subject matter in controversy." Congress has also directed justices to comply with certain financial disclosure requirements that apply to federal officials generally. The Court has voluntarily resolved to comply with certain Judicial Conference regulations pertaining to receipt of gifts by judicial officers. Yet a set of rules including the full sweep of basic ethical principles applicable to other judges in this country has not been adopted by the Court.

The importance of the Court is clear. In addition to its lawmaking power, it exercises supervisory power over all federal courts. In addition to these core responsibilities grounded in the U.S. Constitution, the actions of the Court and its justices shape the public's perception of all courts, all judges, and their legitimacy.

The absence of a clearly articulated, binding code of ethics for the justices of the Court imperils the legitimacy of the Court. More than that, this absence potentially imperils the legitimacy of all American courts and the American judicial system, given the Court's central role enshrined in our federal republic. If the legitimacy of the Court is diminished, the legitimacy of all our courts and our entire judicial system is imperiled.

Robust models for codes of judicial ethics exist. These include the Code of Conduct for United States Judges, adopted by the Judicial Conference of the United States. The ABA Model Code of Judicial Conduct, adopted by the ABA House of Delegates in 1990, has formed the basis for binding judicial ethics standards in many jurisdictions.

Moreover, while the Court's role in our federal system is unique, and the issues posed in framing a binding code of conduct for judges of a court of last resort can be challenging, they are not insurmountable. Every state, territorial, and tribal high court has the same challenges. This Resolution rests upon the premise that the Court has the capacity to successfully address these and other challenges in adopting a binding code of ethics.

Further, this Resolution takes no position on the nature or extent of any enforcement mechanism or sanctions that might attach to violations of such a code of ethics, as these questions are best left to the Court's own judgment and discretion. This Resolution, however, does call for a code of ethics that is more than merely aspirational.

To be clear, this Resolution is not grounded upon, nor does it ask the ABA House of Delegates to make any findings, or comment upon, any particular conduct by any one or more current or former members of the Court.

Still, events of recent years, especially including the January 6, 2021, insurrection, vividly remind us that the legitimacy of our nation's key institutions lies at the foundation of our democratic and republican way of life. These events have made clear to most American citizens, and to a larger majority of American lawyers, that reforms to our institutions aimed at buttressing public confidence must be undertaken not in the midst of crisis, but before crises occur.

Respectfully submitted,

Tahmina Watson, President
King County Bar Association
February 2023

GENERAL INFORMATION FORM

Submitting Entity: King County Bar Association

Submitted By: Tahmina Watson

1. Summary of the Resolution(s).

   The ABA urges the Supreme Court of the United States to adopt a code of judicial ethics binding on the justices of the Supreme Court of the United States that is comparable to the Code of Conduct for United States Judges.

2. Indicate which of the ABA's Four goals the resolution seeks to advance.

   Goals II and IV; Improve our Profession and Advancing the Rule of Law.

3. Approval by Submitting Entity.

   January 18, 2023

4. Has this or a similar resolution been submitted to the House or Board previously?

   No

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

   None

6. If this is a late report, what urgency exists which requires action at this meeting of the House?

   Not applicable

7. Status of Legislation. (If applicable)

   None

8. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

   Seek assistance from GAO

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

   None

10. Disclosure of Interest. (If applicable)

    None

11. Referrals.

    Standing Committee on Regulation
    Center for Professional Responsibility
    Judicial Division
    Criminal Justice Section
    Civil Rights & Social Justice Section
    Section of Litigation
    Business Law and
    others to be determined

12. Name and Contact Information (Prior to the Meeting. Please include name, telephone number and e-mail address). *Be aware that this information will be available to anyone who views the House of Delegates agenda online*.)

    Thomas Fitzpatrick
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    (206) 574-6661

13. Name and Contact Information. (Who will present the Resolution with Report to the House?) Please include best contact information to use when on-site at the meeting. *Be aware that this information will be available to anyone who views the House of Delegates agenda online*.

    Mark Schickman
    mark@schickmanlaw.com
    Mobile: (510) 467-2909

EXECUTIVE SUMMARY

1. Summary of the Resolution.

   The ABA urges the Supreme Court of the United States to adopt a code of judicial ethics binding on the justices of the Supreme Court of the United States that is comparable to the Code of Conduct for United States Judges.

2. Summary of the issue that the resolution addresses.

   Lack of a binding code of ethics adopted by the justices of the Supreme Court of the United States. See the report accompanying the resolution.

3. Please explain how the proposed policy position will address the issue.

   The policy urges the justices of the Supreme Court of the United States to adopt a code of judicial ethics that is comparable to the Code of Conduct for United States Judges. See the report accompanying the resolution.

4. Summary of any minority views or opposition internal and/or external to the ABA which have been identified.

   Judicial Division
   Committee on Professional Regulation

   In summary, the CPR and the JD have stated that more time is needed to develop and present a resolution on this subject, that the term “binding” should be removed, and that there is no urgency that requires the resolution to proceed at the Mid-Year Meeting. The KCBA has met and conferred at length with representatives of CPR and JD. See the report accompanying the resolution for the KCBA’s arguments in support of adopting a resolution of this type at the Mid-Year Meeting.