JUDICIAL ETHICS

Edited by
Keith Swisher

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Judicial Ethics

EDITED BY
KEITH SWISHER
Arizona Summit Law School, USA

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Introduction

THE CANONS OF MODERN JUDICAL ETHICS

Keith Swisher

For far too long, judicial ethics remained a curiously under-explored, and in many ways unexplored, field. It could not be more important, however. It can mean the metaethics of decision, a prescription for judges to promote justice or otherwise to flourish in their roles, or a branch of applied ethics. At its most basic level, furthermore, judicial ethics includes the ethical evaluation of the substance and procedure of a decision to impose powerful state action (or to refrain from imposing such action). Additionally, the predominant ingredients of judicial ethics in the modern, professionalized sense and in common parlance and practice have grown to include codes of judicial conduct, which are enforced by judicial conduct commissions, councils, and courts, using discipline, such as reprimand and removal, and occasionally disqualification. Addressing each of these meanings and more, this expansive collection brings together for the first time many of the "canons" (or soon-to-be canons) of judicial ethics scholarship. These works have created new interdisciplinary, historical, cultural, and doctrinal understandings of judicial character, conduct, regulation, and development. Their joinder in this book provides readers the opportunity to review the field more readily and comprehensively and to spot gaps more clearly.

> Four things belong to a judge: to hear courteously, to answer wisely, to consider soberly, and to decide impartially.
>
> Socrates, 399 BC[1]

Judicial ethics can and should mean many different things. It can mean a metaethics of decision (judgment of judgments), a prescription for judges to promote justice or otherwise to flourish in their roles, or a branch of applied ethics.[2] This book—containing many of the "canons" of judicial ethics—addresses each of these meanings and more. This book's focus, however, is on judicial ethics in the modern, professionalized sense: (1) codes of judicial conduct; (2) enforced by judicial conduct commissions, councils, and courts; (3) using discipline, such as reprimand and removal, and occasionally disqualification. As I have mentioned elsewhere,[3] these are now, at least arguably, the predominant ingredients of judicial ethics in common parlance and practice.[4]

Before introducing the individual works, I should briefly describe their selection and organization. The methodology for inclusion in this canonical collection is admittedly more art than science. To be sure, "objective" measures, such as citation counts, were consulted, but much of the selection is owed to my own understanding of the authors'

timeless or timely contributions to the judicial ethics literature. In my emphasis on "modern" canons, moreover, I took the liberty of placing a rough, 30-year expiration date on eligible works; older works were thus, somewhat arbitrarily, excluded. Although I could well be wrong or overly Western in the selection of this rough and recent "top-20 list," each of the selected works below deserves to be highlighted and has made or will likely make a significant contribution to judicial ethics scholarship.

The book's parts, and the canonical judicial ethics works within its parts, generally move from jurisprudence and theory to application and practice. The four parts are: (1) judicial ethics theory; (2) judicial ethics regulation; (3) judicial recusal and disqualification; and (4) problems in judicial ethics—old and new.

I. Judicial Ethics Theory

Part I leads with several foundational and conceptual works on judicial ethics. This Part is also a microcosm of the entire book, beginning in abstract and theoretical works and moving toward applied and practical works. In many if not most countries, judicial ethics rests on three "I's"—integrity, impartiality, and independence.[5] Each selection below addresses one (and often more) of these values in order.

On judicial integrity in a broad sense, the first work takes our most jurisprudential and philosophical turn. In addition to the foundational way in which this work asks what type of judge and what type of judicial virtues will protect and promote justice, Professor Larry Solum's contribution on virtue-centered judging also happens to be the most downloaded judicial ethics work on the popular Social Science Research Network (SSRN).[6] Solum contends that judges when adjudicating "should decide cases in accord with the virtues, or judges should render the decisions that would be made by a virtuous judge."[7] Too many theories of judging, according to this Aristotelian argument, are decision-focused; in other words, they focus on a "good" or "right" decision and then attempt to reverse engineer the "good" judge based on what types of characteristics the judge needed to render the good decision. Virtue theory instead proceeds with "an account of the virtuous judge as primary and then . . . derive[s] the notion of a virtuous decision."[8] Solum then traces several important, but non-exhaustive, judicial vices (namely, corruption, civic cowardice, bad temper, incompetence, and foolishness) and the roughly corresponding judicial virtues (namely, temperance, courage, temperament, intelligence, and wisdom). Solum wisely reserves additional space for the virtue of justice, because, if judges should be anything, they should be just.[9]

Of judicial virtues generally, judicial impartiality is, perhaps, the most universally accepted. Indeed, as Socrates's lead-in quotation above highlights, this virtue has been in demand in judges for millennia. We all want impartiality in our judges, at least behind the veil of ignorance.[10] In the well-known case of *Republican Party of Minnesota v. White*,[11] moreover, the Supreme Court of the United States provoked the codification of judicial impartiality as open-mindedness, i.e. the "absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge."[12]

The problem, though, is that we have treated the virtue monolithically and therefore simplistically, and we have collectively ignored the various constituencies and beneficiaries of judicial impartiality. Our first inclusion on this virtue, by prolific judicial ethics and judicial selection scholar Charles Gardner Geyh, highlights our previous ignorance and preliminarily proposes three beneficiaries of judicial impartiality:

> (1) parties to litigation, who seek a fair hearing from an impartial judge, in a "procedural dimension" of impartiality; (2) the public, for whom the institutional legitimacy of the judiciary depends on the impartiality of its judges, in a "political dimension" of impartiality; and (3) judges themselves, who take an oath to be impartial and for whom impartiality is a standard of conduct that is core to their self-definition, in an "ethical dimension" of impartiality.[13]

These beneficiaries might view the other dimensions as insufficient, and thus the oft-heated debates over whether a judge is "impartial enough" to preside over a particularly noteworthy case can be fueled in part by differing definitions and needs. This pluralist perspective is insightful and, although the work is relatively new to the literature, is likely to spark nuance in a previously un-nuanced approach to this critical virtue. To be sure, we would not want to segregate completely each of Professor Geyh's charted dimensions because each is weighty, and each does (or should) inform the other more or less. To Geyh's credit, his observations also hold value beyond the value of impartiality; these dimensions and their beneficiaries should be kept in mind as we explore the overhanging topic of judicial ethics and the problems that arise underneath it.

Shifting focus from impartiality to independence, I highlight two important theoretical treatments of judicial independence. Interestingly, we never fully leave judicial impartiality: often the very reason we value judicial independence is to protect and promote judicial impartiality. As Professor Burbank notes in his article,

> Those responsible for the formal structures of government, and for the informal norms that fill up their interstices, do not seek whatever degree of independence they favor for the judiciary because they believe that judicial independence is itself normatively desirable. Rather, *judicial independence is a means to an end (or, more probably, to more than one end)*.[14]

That end is often (but not exclusively) impartiality.[15] Thus, when a judge fails to rule impartially (by, e.g., basing the decision on racial animus), holding the judge accountable for that failure does not necessarily offend independence or impartiality. As Burbank insightfully observes,

> This supposed dichotomy between independence and accountability is a favorite target of legal scholars in search of a paradox; when it is found to be present, many political scientists regard it as proof that judicial independence is a myth (or a hypothesis not confirmed). The instrumental view of judicial independence taken here . . . requires no dichotomy and sees no paradox, since it proceeds from the premise that judicial independence and judicial accountability "*are different sides*

> *of the same coin*." An accountable judiciary without any independence is weak and feeble. An independent judiciary without any accountability is dangerous.[16]

Burbank also points out that in this instrumental view of independence, the desired degree of independence might vary. State court judges—the vast majority of whom face elections—already benefit or suffer from a form of decisional accountability built into their selection and retention system. Federal judges, in contrast, neither face election nor face any significant judicial discipline, and they therefore thrive in a high degree of independence, as Professor Steve Lubet notes in the beginning of his contribution below.

Unlike federal judges, state court judges are actually disciplined for ethics violations; in other words, state court judges are often held accountable through significant sanctions, including suspension and removal from the bench.[17] And, because of this fact, state courts generally present a sharper conflict between judicial independence and accountability. Winnowing the independence v. accountability battle to its core, Professor Lubet observes that "decisional" discipline—i.e. disciplining judges for their rulings or opinions—presents the greatest threat to independence (which Lubet broadly defines to include "fairness, impartiality, and good faith").[18] In contrast, Lubet notes that independence is rarely at issue in many instances of judicial discipline:

> Looking only at the events of the past few years, there can be no serious argument that independence is compromised when a judge faces reprimand or suspension for using his office to coerce the payment of a debt to his daughter, fixing traffic tickets (or attempting to), or attempting to recruit litigants as Amway sales representatives to the judge's own financial benefit[; n]or would fairness and impartiality be threatened when a judge faces discipline for vulgar sexual harassment (or worse), public intoxication, or interference with law enforcement.[19]

Lubet then helpfully begins, early in the judicial ethics literature, to chart the desirable level of decisional independence.[20] While noting the theoretical (and occasionally underdrawn) limits of judicial independence through case examples, Lubet's focus on judicial conduct commissions and their sanctions provides a good introduction to Part II.

II. Judicial Ethics Regulation

The book's shift from judicial ethics theory to judicial ethics regulation is perfectly straddled by Chief Judge Markey's contribution.[21] After noting several motivating causes, and the codification, of modern ethical regulation in the United States (including the Watergate Scandal and the federal Ethics in Government and Judicial Councils Reform and Judicial Conduct and Disability Acts),[22] Judge Markey exposes many of the salient practical and theoretical "dichotomies" in judicial ethics: independence v. accountability (on which Burbank and Lubet touched above); isolation v. involvement;[23] presumption of partiality v. presumption of impartiality;[24] and appearance v. reality.[25] Writing in the early 1980s, Markey put these key and enduring dichotomies in sharp relief early in the literature.

Almost equally the forefront, Professor Jeffrey Shaman published a thoughtful overview of modern judicial ethics regulation.[26] Although the piece has some theoretical detours,[27] its inclusion provides us (and many readers before us) a holistic view of the way in which ethical precepts are promulgated, interpreted, and enforced in this area. Shaman outlines the role of the judge, the codes of judicial conduct,[28] state judicial conduct organizations and the scope of their authority, federal judicial councils, bar discipline, and judicial ethics advisory opinions. Through these comprehensively cobbled (then-)innovations, Shaman is able to observe the remarkable evolution of judicial ethics regulation from the early 1970s:

> For many years in this nation there was no systematic approach toward judicial ethics. Regulation of judicial conduct was a desultory affair and, except in the most blatant cases, judicial misbehavior often was disregarded. In modern times this situation has changed dramatically. The widespread adoption of the Code of Judicial Conduct has provided a foundation for ethical precepts and a basis for general uniformity in applying those precepts. The gradual but constant accretion of case law interpreting and applying the Code has provided a body of law that judges and others can turn to as a guide to judicial behavior. In many jurisdictions, advisory opinions are also available to judges as a guide to ethical and professional conduct.
>
> It had now been 27 years since the first permanent judicial conduct commission was created in California, and in that time each and every state has followed suit, creating a mechanism for upgrading the professional and ethical conduct of judges. In this respect the federal system, often a model to which the state systems aspire, has lagged behind, not creating a formal judicial discipline system until 1980 and opting for one that operates entirely by self-regulation.[29]

Improved judicial ethics regulation, however, is not the end of the regulatory story. This is true in many respects, two of which this book highlights. First, as raised in Part III, judicial disqualification is not only guided and (sporadically) enforced in the system of judicial ethics regulation but also more commonly in statutory and common law and procedure. Second, as raised in Part IV, all pieces of Shaman's system understandably continue to need improvement and to struggle with seemingly intractable interpretative, constitutional, financial, capture, and other challenges.

III. Judicial Recusal and Disqualification

> To decide when a judge may not sit is to define what a judge is. To define what a judge is is to decide what a system of adjudication is all about.[30]

Focusing on recusal provides the transition from theory and systematic regulation to specific, recurring, judicial ethics-related problems. But perhaps more importantly, recusal principles are heavily constitutive of the desired jurist. Recusal law and procedure attempt (1) to ensure impartiality, independence, and integrity in the judge and (2) to

give confidence to the litigants and the public that the judge will embody and honor those values in the case or cases *sub judice*. As to the former, Sir Stephen Sedley notes:

> The judicial oath in England and Wales, widely echoed in the common law world, is to do justice "without fear or favour, affection or ill-will." Fear and favour are the enemies of independence, which is a state of being. Affection and ill-will undermine impartiality, which is a state of mind. But independence and impartiality are the twin pillars without which justice cannot stand, and the purpose of recusal is to underpin them. That makes the law relating to recusal a serious business.[31]

In this Part's first contribution, Judge and Professor Grant Hammond emphasizes the constitutive nature of recusal principles: "An understanding of judicial recusal helps clarify both what the adjudication of legal disputes is all about, and the essential nature of judging within the common law tradition."[32] After Hammond notes several immediately recognizable recusal controversies (some of which are also scrutinized in the works below), his work provides a comparative perspective of Great Britain, where recusal law was primarily founded on common law,[33] and the United States, where federal recusal law has long rested in part on statutory law.[34]

Analogous to the Canadian "reasonable apprehension of bias" test,[35] United States federal, state, common, and statutory laws and codes contain a unanimously consistent recusal standard: judges must recuse themselves whenever their "impartiality might reasonably be questioned."[36] Professor Leslie Abramson's heavily cited contribution comprehensively explores this standard, which removes actual bias in adjudication, assures litigants and the public that possible bias is removed, and avoids the delicate situation in which litigants or lawyers must accuse the judge of actual bias (rather, it is "merely" about appearances).[37] Abramson commendably spotted gaps in the standard and practice, and did so in a large number of frequently appearing factual applications.[38]

This appearances-based standard—while being solicitous of public impressions and sympathetic to litigants, lawyers, and even judges who must raise disqualification challenges against the target judges—is no panacea. The next contribution, by Professor Sarah Cravens, addresses one of Judge Markey's "delicate dichotomies" in judicial ethics, namely appearance v. reality: Professor Cravens' piece is a cogent rebellion against coveting appearances over realities in recusal law and practice.[39] To Cravens:

> The way to get at impartial judging—i.e., to eliminate actual bias—and promote public confidence is not through the development or application of unreliable[, appearance-based] recusal and disqualification standards but through an effort to achieve greater transparency by requiring judges to provide adequate legal reasoning for their decisions in written form.[40]

Cravens asserts that the advantages to this relatively extreme rethinking of recusal law and practice:

> would be more helpful to judges in developing their skill at judging impartially (separating their personal beliefs from their decisionmaking about what the law

> requires in a given instance); in protecting the integrity of the judicial role itself by supporting the ability of judges to do their job (rather than encouraging them to abdicate their role by over-recusal based on vague standards); and in more meaningfully addressing public confidence concerns by increasing transparency through the giving of explanations rather than reliance on appearances.[41]

Although Cravens's novel argument can be fairly criticized for the psychological premise (i.e. that judges are good or will become good at judging and regulating their own biases),[42] for the implicit jurisprudential premise (i.e. that the law contains the right answer for a good faith judge to articulate in a written decision and, if incorrect, for a reviewing judge to uncover),[43] and for the necessary demotion of the importance of public confidence, her contribution nevertheless makes great strides in exposing the unreliability (e.g. over- and under-inclusiveness) of the ubiquitous appearance-based tests. As other scholars have forcefully observed, changes in recusal process, not so much substantive standards, might finally bring recusal out of its conflicted and underenforced state.[44]

Moving from the overview to standards to now practice, we observe that some of the loudest controversies and most contentious debates have been over whether a certain judge or class of judges should recuse themselves (or, failing that, be forcefully disqualified by their colleagues or a higher court). Scholarship has carefully studied recurring recusal questions: whether and when judges should honor the so-called "duty to sit";[45] whether the common *ex post* appearances-based tests are sufficient to maintain public confidence in the judiciary;[46] whether judges should recuse themselves when lawyers or litigants have contributed or otherwise spent money to elect those same judges;[47] whether judges should recuse themselves when they have made tough-on-crime public promises or engaged in soft-on-crime attacks against judicial opponents;[48] or whether litigants should receive a preemptory challenge to assigned judges,[49] among many others.[50] Sadly, space does not permit their inclusion; their necessary exclusion is certainly not meant as commentary on their worth.

Space at least permits two worthy works on recusal practice. For an excellent historical summary of recusal practice, we are able to turn first to Professor James Sample's nearly full tracing of recusal on the Supreme Court of the United States.[51] In addition to recounting and contextualizing some of the most widely recognized recusal controversies to date, Sample analyzes the unique, or at least allegedly unique, features of recusal dilemmas facing high courts.

Consistent with the above-described trajectory, the final contribution is the most granular case study of the lot. Professor Monroe Freedman critically and compellingly tells the story of Supreme Court Justice Stephen Breyer's problematic participation in both conflicts of interest and an official report that should have exposed (but largely soft-pedalled) misconduct and neglect in the federal judicial disciplinary process.[52] Importantly, the late and already missed Professor Freedman uses Breyer's failures to expose the troubling practice of judges (particularly federal and high court judges) who fail to recuse themselves, and Freedman sheds new light on the oft-difficult questions of when prior issue or legislative advocacy or service compels recusal.

In the final Part below, we move from the constitutive problem of recusal to a sampling of diverse, perplexing, and recurrent judicial ethics problems.

IV. Problems in Judicial Ethics: Old and New

This final Part explores a diverse sampling of timeless or timely judicial ethics problems. On judging generally, important work of late has exposed subconscious biases and heuristics in judges (as in other humans).[53] In a similar vein, Professor Michele Benedetto Neitz recently brought into focus one of the most pervasive biases of all in the judiciary—its socioeconomic bias.[54] Although judges in many locales have finally become (a bit) more diverse, almost all judges remain wealthier and more "culturally elite" than the parties appearing before them. Benedetto Neitz shows specific case examples of the bias,[55] and she recommends new rules and training, which might reduce biases as other studies have shown. Benedetto Neitz's work is another small but significant step toward honoring the value of equality in the judiciary.[56]

In what might be described as the first piece dealing directly with the plethora of practical and recurring judicial ethics problems, well-known and time-tested, Professor Andrew Kaufman contributes his institutional knowledge of legal and judicial ethics to four "less-often" explored—but frequently faced—ethical problems.[57] After Professor Kaufman recounts and contextualizes the modern attention to, and treatment of, judicial ethics,[58] he illuminates the four difficult questions of professional conduct: communicating *ex parte*; reporting lawyers' misconduct to regulatory authorities; commenting extrajudicially on cases;[59] and associating with others (particularly spouses) who might be engaging in controversial or potentially conflicting activities. This last question has seen a resurgence in the United States with the recent instances of Supreme Court Justice Clarence Thomas, Ninth Circuit Judge Stephen Reinhardt, their spouses, and their spouses' various financial and other connections to high-profile cases pending before those jurists,[60] among other examples.

Professor Kaufman's last question also introduces the next contribution's questions as to what off-the-bench conduct and associations are permissible. Distinguishing corruption and dishonesty—the "easy cases"—Professor Steve Lubet argues that "[t]he truly complex questions in judicial ethics arise in the realm of private conduct."[61] As he puts some of the key questions ably explored in his work: "What is the need to oversee judges' friendships, social associations, and romances? Does the Code of Judicial Conduct draw the right lines? What are the limits of regulation concerning personal or private activity?"[62] After listing and discussing the "policy justifications for placing restrictions on off-the-bench activities,"[63] Professor Lubet contributes a particularly helpful and balanced approach to regulating judges in undignified or offensive behavior.[64]

The next contributor exemplifies why scholarship should never be wholly divorced from practice. Doug Richmond is both a practitioner and a top legal advisor (in addition to being a prolific author and adjunct professor of law). Without his practical experience—specifically, without having had to deal firsthand with pouring his and his clients' hard-earned time and money into arguing and briefing important cases only to have judges unthinkingly copy the opposing parties' briefs or proposed orders—Mr. Richmond would never have been in a position to observe and write forcefully on this common practice of judicial plagiarism.[65] After discussing the problematic practice, the general and disciplinary case law, and the prevailing professional attitudes, Richmond

concludes that "judicial plagiarism rises to the level of judicial misconduct when . . . the plagiarized findings of fact, conclusions of law, opinion, or order do not reflect the court's independent judgment," which calls into question "the judge's bias or partiality, as well as the judge's competence and diligence."[66]

The final two contributions are fascinating for reasons different than anything above. One of the most well-known and outspoken federal appellate judges, Alex Kozinski, challenges judicial ethics authorities and their traditional approach to judicial ethics problems. Judge Kozinski's point is mundane yet highly intriguing:

> [T]he modern approach, with its focus on appearance of impropriety, overlooks the most frequent and important ethical issues judges face. Many of these issues are dull, so get ready to be bored. Nonetheless, they represent the bread and butter of judicial life.[67]

Kozinski then goes on to raise and explore looming challenges of conscience and enforcement:

> Giving short shrift to small cases, signing on to the work of staff and calling it my own, bending the law to reach a result I like—and the dozens of other ways in which I feel the pressure to do something unethical, yet wholly undetectable by anyone other than me—all these temptations I must fight off many times every single day.[68]

To Kozinski, and to a significant extent in reality, "[j]udicial ethics, where it counts, is hidden from view, and no rule can possibly ensure ethical judicial conduct."[69]

Our final contribution raises a key issue that is not "hidden from view" but rather in plain sight and part of a conspiracy of sorts. I have argued for a triangular view of justice for parties (and particularly for criminal defendants); in other words, the defense, the prosecution, and the court all have varying responsibilities to ensure due process and to avoid significant injustice.[70] Professor Stephen Saltzburg's atypical contribution similarly views the three main actors as interconnected in justice, not three disconnected ships passing in the night.[71] His work is also an indictment of the rather rampant problem of poor lawyering and judicial indifference to it.[72] Through a detailed and high-profile case example, the primary point of Saltzburg's work is:

> to illustrate just how poor the performance of lawyers can be and how largely indifferent judges often are to such performances. It is a death penalty prosecution. With the defendant's life on the line, it appears that the prosecutor acted unprofessionally and disregarded the constitutional right of the defendant in a capital case to rely on mitigation evidence, the defense counsel failed in his responsibility to protect the defendant from the prosecutor's improper conduct, the trial judge failed to correct the prosecutor's conduct or to take measures to assure that conduct did not prejudice the defendant, and the California Supreme Court (and to some extent the United States Supreme Court) pretended that nothing untoward had occurred.[73]

Neither bad lawyering nor injustice can be avoided through professional indifference; the ethical judge (and lawyer) cannot avoid responsibility by omission. At the same time, we must acknowledge that neither judges nor ethics operates in isolation.

Conclusion

Even at this book's end, it still seems fair to observe the relatively uncharted nature of judicial ethics; indeed, its broad stretches of un- or under-explored territory make judicial ethics practice and scholarship particularly exciting. Although much work remains in the evolution of modern judicial ethics, the foregoing lights have created new interdisciplinary, historical, cultural, and doctrinal understandings of judicial character, conduct, regulation, and development; and we have only scratched the surface of the outstanding scholarship in this relatively new but commendably growing field (or, more accurately, fields). We have not covered adequately judicial ethics in elective environments,[74] bench–bar conflicts and biases,[75] technology,[76] independent research,[77] financial affairs,[78] judicial education,[79] and many other critical domains. We have, however, had the privilege of bringing together several consequential "canons" (or soon-to-be canons) of modern judicial ethics, and we should eagerly anticipate the next evolution of scholarship that these great works have necessarily inspired.

Notes

1 Charles Gardner Geyh, *The Dimensions of Judicial Impartiality*, 65 Fla. L. Rev. 493, 498 (2013) (quoting Plato, in turn quoting Socrates; citing Franklin Pierce Adams, *Book of Quotations* 466 (1952)).

2 As I have moreover noted in the blogosphere,

> Judicial ethics is a curiously under-, and in many ways un-, explored field. It could not be more important, however. On its most important level (perhaps arguably), compare *Brown v. Board of Education* (good?), with *Korematsu v. United States* (evil?). Compare as well *Buck v. Bell* (Holmes, J.) (upholding forced sterilization law on the basis of its perceived—now debunked—societal good), with *Lawrence v. Texas*. Granted, judicial ethics is more commonly thought of by the more (seemingly) mundane rules embodied in (more or less from state to state) the Model Codes of Judicial Conduct, but these too are fascinating. Take, as one randomly picked illustration, the judge who, during a death penalty case, allegedly engaged in an undisclosed romantic relationship with the prosecutor, yet the defendant, Charles Hood, received the death penalty. There is more. Judicial ethics is inextricably tied to enforcement, namely, judicial discipline, and equally tied to the propriety to sit, judicial disqualification/recusal.

Keith Swisher, *Maiden Post: The Importance of Judicial Ethics*, Judicial Ethics Forum, July 16, 2008, http://judicialethicsforum.com/2008/07/16/maiden-post-the-importance-of-judicial-ethics/.

3 Keith Swisher, *The Judicial Ethics of Criminal Law Adjudication*, 41 Ariz. St. L.J. 755 (2009); *see also* Keith Swisher, *The Short History of Arizona Legal Ethics*, 45 Ariz. St. L.J. 813, 816 n.4 (2013) (noting that the same definition largely prevails in legal ethics).

4 For a comprehensive treatise covering judicial ethics regulation and citing the Codes of Judicial