Judges, Courts, and Judicial Conduct

A judge is a person who presides over court proceedings and adjudicates formal disputes between competing parties. A judge may sit as a member of a panel of judges on an appellate court deciding questions of law and often issuing written opinions; as an individual in trial court proceedings of a civil or criminal nature, and with or without a jury; or by themselves, in local court proceedings, such as in probate, small claims, or traffic matters. Judges serve at the national, state, and local level.

The appointment of judges varies depending on the court and jurisdiction in which they serve. U.S. Supreme Court justices are appointed by the President with the advice and consent of the U.S. Senate, as are those of the U.S. Court of Appeals and U.S. District Courts. Selection of judges at the state level, which was initially entrusted to state legislatures, became subject to popular election by the 1820s. Mississippi was the first state to mandate the popular election of all its judges for limited terms. By 1860, 23 of the 30 states had adopted the practice of popular election of judges for limited terms of six to eight years. While a majority of states continued popular elections of judges well into the 20th century, the post Civil War era witnessed a gradual shift toward merit selection, in response to the growing complexity of issues arising in an increasingly industrialized economy and the rising professionalism of the legal profession. Missouri led the way in this regard, with judges appointed by the governor for an initial period of service, after which they were subject to a retention referendum.

Other states adopted a variety of merit selection plans, particularly for state supreme and appellate court judges. Typically, this involved nominating commissions, composed primarily of lawyers, submitting names of qualified candidates to the governor or legislature. At present, 25 states employ such nominating commissions for their supreme courts, and often extend this process to appellate and trial courts as well. Twenty states hold popular elections for judges, and five assign that authority to the governor or legislature, without the use of a nominating commission.

In Connecticut, for example, judges of the Supreme Court (7 members), Appellate Court (9 members) and Superior Court (170 members) are screened by a judicial nominating commission, appointed by the governor, and confirmed by the Connecticut General Assembly. Judges of all three courts serve for a period of eight years, after which they must be renominated by the governor and confirmed by the General Assembly. A similar process exists in Rhode Island for all state judges, but, once appointed, they serve for life.

Whether appointed or elected, judges are expected to exercise independence and impartiality in the decision making and adhere to the rule of law. A judge who feels he cannot render impartial justice in a particular proceeding, or the appearance thereof, is obliged to recuse himself from such proceeding to avoid a potential conflict of interest. Nevertheless, judges are human beings and political animals who must, particularly in the

realm of policy, navigate between their own policy preferences and the need to render justice to the parties according to the law.

The conduct of judges both on and off the bench is also a matter of concern to the legal community and society at large. Judicial conduct was first addressed in 1924 by the ABA’s Canons of Judicial Ethics. This was followed by the Model Code of Judicial Conduct (1990) and the Model Code of Judicial Conduct (2007).

The law regarding federal judges is contained in Article III of the U.S. Constitution:

“The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.”

Pursuant to the authority laid out in Article III of the U.S. Constitution, the details regarding the federal courts are set out in Title 28 of the United States Code, Part I, Chapters 1-23. These chapters cover the Supreme Court, Courts of Appeals, District Courts, and other federal courts, Part III covers Court Officers and Employees, Part IV Jurisdiction and Venue, Part V Procedure, and Part VI Particular Proceedings. Federal appellate case law is another important source of law regarding the federal courts.

The organization of the judicial branch in the states, and method of selecting judges, is contained in their respective state constitutions and statutory codes. Case law regarding the state courts and their operation may be found in their respective state appellate court decisions.

For further information, see:

- www.uscourts.gov/about-federal-courts
- www.fjc.gov/history/courts/jurisdiction-federal-courts
- ballotpedia.org/United_States_federal_courts
- www.judges.org*
- aja.ncsc.dni.us/
- en.wikipedia.org/wiki/Judge

Research Guide:

- http://libguides.law.umn.edu/c.php?g=125797&p=823448
- wcl.american.libguides.com/c.php?g=563278&p=3877861
- law.duke.edu/lib/researchguides/dircourts/

Legal Treatises and Other Secondary Sources


Cost: O/P; from $120.17 on amazon.com (2019).

This casebook provides valuable insights and analyses of the judicial process, including the nuances of precedent, retroactivity, statutory construction, inductive and deductive reasoning, the exercise of discretion, and standards of review in appellate courts. There are also excerpts of teachings from American masters in the law, and discussion of the fundamental theories of philosophy and jurisprudence, with illustrative cases.


Cost: $40; from $29.76 on amazon.com (2019).

According to Judge Ruggero Aldisert, “a judicial opinion may be defined as a reasoned elaboration, publicly stated, that justifies a conclusion or decision. Its purpose is to set forth an explanation for a decision that adjudicates a live case or a controversy that has been presented before a court. This explanatory function of the opinion is paramount. In the common law tradition the court’s ability to develop case law finds legitimacy only because the decision is accompanied by a publicly recorded statement of reasons.” This guide to opinion writing is the product of the author’s more than forty years experience as a judge at both the state and federal levels and an abiding interest in the theory and craft of judicial drafting. The book is divided into four parts: (1) Theoretical Concepts Underlying an Opinion; (2) the Anatomy of an Opinion; (3) Writing Style; and (4) Opinion Writing Checklists.


Cost: $124.95 (106.20 to members; $99.95 to Sponsor Member); from $89 (print) on amazon.com (2019).

The Model Code of Judicial Conduct is designed to establish standards for ethical conduct of judges and provide guidance to judges and candidates for judicial office and structure for regulating conduct through disciplinary agencies. This authoritative analysis of the judicial ethics rules and the cases, ethics opinions, and other legal authorities essential to understanding them, prepared by the ABA Center for Professional Responsibility and Judicial Division. The book’s
organization follows the style of the Annotated Model Rules of Professional Conduct and builds upon the historical work presented in the 1973 Reporter’s Notes to Code of Judicial Conduct by E. Wayne Thode and The Development of the ABA Judicial Code written by Lisa L. Milord in 1992. The Model Code of Judicial Conduct consists of broad statements called Canons, specific rules set forth in Sections under each Canon, a Terminology Section, and an Application Section with Commentary. The text of the Canons and the Sections, including the Terminology and Application Sections, are considered to be authoritative. The book includes citations to nearly 1000 cases, hundreds of ethics opinions and numerous law review articles. It is based upon the 2011 edition of the Model Code of Judicial Conduct, including changes to the Application Section made in 2010.


It is Benjamin Barton’s contention that lawyer-judges instinctively favor the legal profession in their decision-making, and that this bias has far-reaching and harmful consequences for the American legal system. Judge Dennis Jacobs, Chief Judge of the U.S. Court of Appeals for the 2d Circuit, concurs, calling it an “ambient bias,” a frame of mind that closely surrounds and nurtures the legal community. In likening it to the existence of a close-knit professional fraternity, Judge Jacobs gives voice to sentiments that are frank and unusual for a sitting judge. The author contends that this bias occurs regardless of political affiliation, judicial philosophy, race, gender, or religion. The most significant personality characteristic of judges is that they were former lawyers and, as such, have, above all, sympathy and empathy for fellow lawyers. Despite the historical trappings and aura of judicial majesty and infallibility that surround the bench, it is far more common for the public to view judges as human and fallible. His analysis proceeds from a theoretical basis to a close examination of individual cases in a legal system that he describes as “uniquely complex and unwieldy.” Following his theoretical observations, the author examines their application in realms of constitutional criminal procedure, civil constitutional law, lawyer regulation, torts, evidence and civil procedure, the business of law, and concludes with a consideration of the ramifications of these findings and possible solutions. The author is the Director of Clinical Programs and Professor of Law at the University of Tennessee College of Law, and winner of the 2010 LSAC Philip D. Shelton Award for outstanding research in legal education. This is one of a number of recent books exposing the underside of the legal profession, including Lester Brickman’s Lawyers Barons, Walter Olson’s The Rule or Lawyers, and Philip K. Howard’s Life Without Lawyers.


Although most judges are generalists who hear cases on a broad range of subject areas, from antitrust to zoning, an increasing number in both federal and state courts hear cases in specialized subject areas. On the federal level, these include courts that hear cases in the areas of tax, bankruptcy and international trade. On the state level, judges sit on specialized courts that hear criminal, environmental, family, housing, juvenile, traffic, probate, small claims, tax, and workers’ compensation matters. While such specialization is often reflected in a court system’s organizational chart, it is also manifest within the courts themselves. This book provides an in-depth examination of the phenomenon of judicial specialization in the United States that has shown a marked growth since the late 19th century. It also explores the issue of how and why the courts have become more specialized, concluding that they have their origins in a long series of specific decisions based on the belief that specialization would produce desired results in a particular context. The author also addresses the effects of specialization, which are contingent on the conditions under which a particular court operates. Drawing upon these general observations, the author also analyzes specialize courts that deal with foreign affairs and internal security; criminal law; economic issues involving governmental litigation (including claims against the federal government); and economic issues involving private litigation (including patents, bankruptcy, corporate governance, and business courts). A concluding chapter considers the causes and consequences of specialization, the evaluation of judicial specialization, and the future of judicial specialization. This is the first book to examine the subject of specialized courts in a comprehensive and scholarly way. Lawrence Baum is professor of political science at Ohio State University and the author of Judges and the Audiences, among other books on the courts.


The process of judicial selection and confirmation has become increasingly contentious and acrimonious in recent years as the battleground for many policy disputes has shifted to this least democratic branch of government. The founding fathers’ original notion of judges as neutral arbiters of legal disputes has been seriously compromised as partisan and ideological disputes have intruded into the judicial process. In this environment, it is no wonder that the selection and confirmation of federal judges has become just another manifestation of this partisan political divide. In this insightful empirical analysis of the federal judicial confirmation process, the authors seek to reconstruct the history and contemporary practice of advise and consent, to identify the causes of conflict over the makeup of the federal bench in the post-WWII era, and to examine the consequences of battles over appointments to the federal courts. Their focus is directed to the experience with confirmation to the district and courts of appeals which serve as the courts of last resort for the vast majority of federal disputes. Indeed, since 1947, the percentage of nominees to the district courts and courts of appeals has fallen dramatically. Since 1992, for example, the confirmation rate for the courts of appeals has fallen to less than 60%, and less than 50% during some recent Congresses. The consequence of this highly partisan and ideological selection and confirmation logjam is a diminution in the integrity of the judicial process, both substantively and procedurally. Judicial integrity is compromised as society increasingly views judges
as simply a new breed of political agents whose decisions are made on the basis of ideology, and justice is delayed and denied as dockets increase in the face-off confirmation disputes. This is an essential resource for anyone interested in understanding the contemporary judicial confirmation process. Sarah Binder is a senior fellow in Governance Studies at the Brookings Institution and a professor of political science at George Washington University. Forrest Maltzman is a professor of political science at George Washington University and co-author of Crafting Law on the Supreme Court: The Collegial Game.


**Cost:** None to Bloomberg Law subscribers (2019).

An innovative analytical tool providing trial lawyers and clients with data-driven insights on a variety of litigation-related strategy considerations, including the length of time it takes judges to resolve cases, how those judges rule on dispositive motions, how often they are overturned on appeal and, based on those factors, where to file or remove a case, whether or not to settle, whether or not to pursue an action in the first place, or which law firm to engage in the first place. It also provides corporate legal departments with a source for competitive intelligence regarding competitors and industry peers, and each other, including how many products liability actions a firm has litigated in a given jurisdiction. **Litigation Analytics** covers all federal district courts, all case types, all practice areas, and leverages both case law and dockets. It is the first full-service legal research and business intelligence platform to provide litigators, their support staff, and corporate managers with a comprehensive collection of case law and dockets. In addition to providing insights about federal judges, **Litigation Analytics** includes extensive information on the litigation activities of more than 70,000 public and 3.5 million private companies, as well as the law firms that represent them. It is available without additional cost to existing Bloomberg Law subscribers.


**Cost:** $19.95; $1.45 (print) or $18.95 (Kindle) on amazon.com (2019).

Keith Bybee addresses one of the most fundamental questions in law today: whether judges are neutral and apolitical arbiters providing answers to controversial questions or political actors imposing their own ideological preferences on those issues. Many Americans regard judges as impartial arbiters of the law at the same time that they view many judicial rulings to be politically motivated, leading many to suspect that all the talk about the meaning and requirements of the law is simply empty rhetoric masking a world of legal realism. The more controversial the decision, the more the public views the courts as political, and, for example, the application of neutral rules of statutory construction. This thoughtful book explores the fundamental tension that exists between these alternative ways of looking at the judicial function which, despite the apparent hypocrisy, strengthens the law and sustains its legitimacy. The author is professor law at the Syracuse University College of Law.


**Cost:** OUT-OF-PRINT; from $13.24 on amazon.com (2019).

A scholarly examination of the appellate process by the Senior Judge for the United States Court of Appeals for the First Circuit. Based on more than 25 years experience as an appellate judge, this illuminating volume combines the elements of personal reflection and appellate advocate’s handbook in outlining the procedures for appeals in various court systems and the relationship between state and federal courts. Coffin reflects on his own work as an appellate judge by describing how he reads lawyers’ briefs and prepares for oral argument.


**Cost:** $20; from $5.05 on amazon.com (2019).

An experienced trial judge explains the intricacies of the settlement conference as an effective tool to speed civil cases through the judicial system.


**Cost:** available at no cost at: FJC web site (do Google search for title).

This volume was designed to assist Chief Judges of the U.S. District Courts in meeting the “complex challenges of leading their district courts.” It describes those challenges and the statutes and administrative policies that impact the District Courts. The Deskbook includes two kinds of materials: (1) summaries of statutes and Judicial Conference policies and descriptions of relevant sources and assistance available from the Federal Judicial Center and Administrative Office of the U.S. Courts; and (2) suggestions for chief judges to consider when confronting particular matters, those suggestions based upon comments from experienced chief judges and professional literature regarding the management of public and private organizations. The first edition of this volume was published in 1984.


**Cost:** $379 (2019).

A comprehensive guide to the law in every American jurisdiction governing motions to disqualify judges. The author analyzes every legal basis for judicial disqualification, including constitutional provisions, state and federal statutes, court rules, and court decisions. The book’s twenty-seven chapters examine every possible aspect of judicial disqualification, including disqualification for cause, preemptory disqualification, bias, appearance of bias, gifts, favors and political support, interest, familial and social relationships, business and professional relationships, background and experience, prior activity as an attorney, judicial knowledge, knowledge obtained in criminal proceedings, ex parte communications, judicial conduct, adverse rulings or comments, procedure, timeliness, legal sufficiency, factors mitigating against disqualification, tactical motivations.
of moving party, procedure following disqualification, federal disqualification provisions, disqualification under 28 U.S.C. §455, disqualification under 28 U.S.C. §144, the relationship between §§144 and 455, and disqualification in state court. This is the most comprehensive work of its kind on the market and an essential tool for any judge or lawyer involved in judicial disqualification proceedings. The author, a graduate of Rutgers Law School, and adjunct professor at Boalt Hall School of Law, is a nationally recognized expert in the field of legal ethics who specializes in providing representation, advice and expert witness testimony on matters of legal and judicial ethics, legal malpractice, and breach of fiduciary duties. Originally published by Little Brown in 1996, the revised [second] edition was published in 2007.


Originally published and distributed by the Administrative Office of the United States Courts in 1996, these Guidelines were drafted to help explain the drafting and editing choices reflected in the Federal Rules of Appellate Procedure and to open the rulemaking process to public scrutiny and participation. Bryan Garner, as Consultant to the Rules Committees, was also assigned the task of drafting Guidelines to assist the committee members in their work. This volume has undergone several reprints, the most recent in 2002. Bryan Garner has established himself as the nation’s leading authority on legal writing, usage, and drafting. A Professor of Law at the Southern Methodist University School of Law, he is the author or co-author of eighteen books on legal writing.


This reference tool provides guidance to judges in the drafting of judicial opinions. The author reviews existing methods, styles, rules, and techniques of opinion writing and provides guidance in writing opinions which clearly illuminate the legal issues and facts involved. A section discussing Finding of Fact and Conclusion of Law is included for the benefit of the trial judge. The work includes forms and structure outlines. The fourth edition includes two new sections. Judges Views contains comments of judges about how to write effectively. Criticism of Judges Opinions discusses the climate of criticism, both legitimate and illegitimate, and how to respond to it.


The Model Code of Judicial Conduct is intended to establish standards for ethical conduct of judges, provide guidance to judges and candidates for judicial office and provide structure for regulating conduct through disciplinary agencies. It consists of broad statements called Canons with specific rules set forth in Sections under each Canon, a Terminology Section, an Application Section and Commentary. The text of the Canons and the Sections, including the Terminology and Application Sections, is authoritative. Adopted in 1924, the Canons of Judicial Ethics consisted of 36 provisions that included both generalized, hortatory admonitions and specific rules of proscribed conduct. In 1972, these were replaced by a new Code of Judicial Conduct, a document revised and adopted most recently in 2007, as the Model Code of Judicial Conduct. As Reporters, Professors Charles Geyh and W. William Hodes listened to, observed, and helped evaluate the voluminous testimony and comments presented to the ABA Commission to Evaluate the Model Code of Judicial Conduct. This volume is a Rule-by-Rule record of their notes and the comments contributed by participants in that process.


This guide explores the code of judicial conduct restrictions that affect a judge as a member of a family and the guidance the rules give to family members. It lists examples of permitted and prohibited conduct in areas such as misuse of office, disqualification, hiring family members, and political activity, and provides practical suggestions on issues such as stress and security. A related discussion guide contains materials for use in programs on ethics and related topics for judges and their families.


This volume address the conduct of part-time judges who are also involved in the practice of law. The discussion reflects the rules of the code of judicial conduct, judicial ethics advisory opinions. It also includes a self-test and discussion questions designed to guide part-time judges in adjusting their conduct accordingly.


This examination of state judicial discipline sanctions begins with a brief overview of the state judicial discipline systems, supplemented by tables that identify the sanctions available in each state. The author then examines all the cases decided between 1990 and 2001 in which judges have been removed from office as a result of judicial discipline. proceedings and categorizes each by the type of misconduct. The author also analyzes the cases in which there has been disagreement about the appropriate sanction, either between the commission and the state supreme court or among the members of the supreme
Point Made: How to Write Like the Nation’s Top Advocates, 2d ed (2014).


Keeton, Robert E. Judging. St. Paul, West Group, 1990. 842 p. No supplementation. Cost: OUT-OF-PRINT; from $93.85 on amazon.com (2019). A valuable manual and sourcebook on the theory and practice of judging by an experienced judge, former law school professor and trial attorney. His audience includes not only new and experienced members of judiciary, but trial attorneys who wish to understand the mindset of the trial judge. Judge Keeton addresses such topics as the distinction between the law and facts, values in reasoned decision making, limits on state and national governmental powers, making merits and managerial decisions, judge and jury, a judge’s writing and speaking, judging statutes, professional roles, overseeing trials and other evidentiary proceedings, judgments, and more. A Professor of Law at Harvard Law School from 1953 to 1979, Judge Keeton has served as a U.S. District Judge for the District of Massachusetts since 1979. He has also served on a number of judicial committees, including the U.S. Judicial Conference Committee on Admission of Attorneys to Federal Practice, the Committee on Court Administration, and the Committee on Rules of Practice and Procedure. Judge Keeton has made a welcome contribution to the literature on the art of judging.
Kuhne, Cecil C., III. **Convincing the Judge: Practical Advice for Litigators.** Chicago: American Bar Association, General Practice, Solo and Small Firm Division, 2008. 197 p. **Cost:** $84.95 ($68.95 to Section members); from $29.99 on amazon.com (2019).

According to the author of this volume, it took years of practice before he came to the simple, yet poignant, realization that judges are human beings too. Indeed, learning how to deal effectively with both trial court and appellate judges is a skill that often takes years to master because it encompasses a mature understanding of human nature. This practical guide attempts, in the interests of justice, and smooth and efficient case management, to impart the time-tested wisdom and advice of judges for the benefit of courtroom litigators. In 18 succinct chapters, he distills the most important elements of the lawyer’s demeanor in the courtroom or chambers likely to win over the judge and advance the interests of his or her client. These include discussion of the judicial role, what judges like, what judges don’t like, the difficult judge, case management, discovery disputes, pretrial motions, settlement negotiations, general trial considerations, the voir dire, opening statements, evidence, witnesses, closing statements, jury instructions, appeals, appellate briefs, and oral arguments.

Maveety, Nancy. **Picking Judges (Presidential Briefings).** New Brunswick, NJ: Transaction Publishers (see Routledge), 2016. 122 p. Paperbound and Kindle. **Cost:** $44.95; from $18.99 (print) and $46.95 (Kindle) on amazon.com (2019).

This brief volume explores the nature of the President’s Article II appointment power to nominate federal judicial candidates for confirmation by the U.S. Senate. The author provides a useful historical overview of the presidential appointment process from the presidency of George Washington to that of Barack Obama, and its role in policymaking, with particular attention to Franklin Roosevelt’s efforts at court-packing packaged as judicial reorganization for purposes of efficiency. She goes on to consider the process of selecting candidates for judicial appointment and the criteria by which they are chosen, including such qualifications as experience, educational merit, constitutional knowledge, temperament, ethics, ABA ranking, general competence and diversity considerations. Consideration is also given to the contextual elements that guide presidential nomination process, including political polarization that has characterized judicial appointments in a deeply divided country, and Senate, and the micromanagement of appointments in an effort to influence the ideological leanings of specific circuit courts based on their current makeup. She also devotes some attention to how specific presidential administrations successfully manage the nomination process to ensure realization of policy goals. She observes that, in exercising this power, the President can advance his policy agenda far beyond his term of office. The author is also unapologetic in arguing that presidents not only can but should “pack” the courts, with the understanding that judges are very much political animals whose appointment can further the chief executive’s policy goals. This volume is both informative and provocative, with the aim of shaking up readers’ preconceived ideas about what staffing the federal bench should look like. Nancy Maveety is professor of political science at Tulane University, where she has taught courses in law and the courts for over twenty-five years. She is the author of several books on the US Supreme Court and judicial politics.


Public confidence in the judiciary is fundamental to the fate of the third branch of government and the proper functioning of our governmental system. Judges must be perceived as fair and impartial in their conduct on the bench and above reproach in their conduct off-the-bench. Only when judges exhibit independence, fairness and impartiality in the decision-making process will the public cede power to the judiciary and accept its rulings. But just what standards are to be applied to their off-the-bench conduct and activities? And, specifically, how are judges to behave in their professional, educational, religious, charitable, fraternal, or civic activities? In this exhaustive examination of judicial ethics off-the-bench, Raymond McKoski traces the history of model ethical rules for judges, beginning with the ABA’s **Canons of Judicial Ethics** (1924) and continuing with the **1972 Code of Judicial Conduct,** the **1990 Model Code of Judicial Conduct,** and the **2007 Model Code of Judicial Conduct.** Unlike the first **Canons of Professional Ethics** promulgated by the ABA for lawyers in 1908, the 1924 **Canons of Judicial Ethics** applied far more stringent standards to the conduct of judges, set special limits on their participation in extrajudicial activities “concerning the law, the legal system, and the administration of justice,” and participation in extrajudicial activities of an “educational, religious, charitable, fraternal, or civic” nature. Yet, due to, in part, to the paucity of scholarship on judicial ethics, the exact boundaries circumscribing such conduct were often ill-defined. This was true of the 1924 **Canons of Judicial Ethics,** which provided a sweeping admonition that a “judge’s official conduct should be free from impropriety and the appearance of impropriety” and a judge’s personal behavior “should be beyond reproach.” The subsequent model codes of judicial conduct, while somewhat less stringent, preserved the bar against the “appearance of impropriety” which was removed from the **Model Rules of Professional Conduct** for lawyers in 1969, as being too ambiguous. It is this ambiguous standard that the author seeks to address as it applies specifically to a judge’s involvement in law-related, educational, religious, charitable, fraternal, and civic activities, all of which the ABA fails to define, and whose absence forms the motivation for, and substance of, this book. The introductory chapter covers the history of the ABA Model Rules, aspirational guidelines, disciplinary commissions, judicial ethics advisory committees, preliminary definitions, defining the terms educational, religious, charitable, fraternal, and civic; and identifying organizations that concern the law, the legal system, or the administration of justice. The four remaining chapters cover the state’s interests in restricting extrajudicial activities; the evolution of restrictions on the extrajudicial activities of judges; restrictions on law-related, educational, religious, charitable, fraternal and civic activities of judges; and extrajudicial activities and the First Amendment. Chapter four, which constitutes the meat of the book, addresses the manner in which jurisdictions have construed judicial conduct rules to protect the state interests offered to justify the curtailment of specific off-bench activities of judges, ranging from participation in fund raising events to marketing publications authored by judges, among many others. The author’s discussion throughout is amply supported by citations to the **Code of Judicial Conduct,** state judicial ethics opinions, advisory committee opinions, and other relevant
This exemplary contribution to the literature on judicial ethics fills a substantial void on the issue of extrajudicial activities that will be of immense value to judges and those scrutinizing them, including members of judicial disciplinary commissions, advisory panels, attorneys, and anyone interested in the issue of judicial ethics. Raymond McKoski is a retired judge of the Illinois Circuit Court, an adjunct professor at John Marshall Law School, vice-chair of the Illinois Judicial Ethics Committee, and serves on the ethics advisory committees of the ABA and the National Center for State Courts. He is a summa cum laude graduate of DePaul University College of Law.


Cost: $72.95; from $1.50 on amazon.com (2019).

Unlike the executive and legislative branches of government which are overtly political in their orientation, the courts are both legal and political institutions. Judges stand for election or are appointed by elected officials, yet they, at least theoretically, make decisions based on the rule of law, impartiality, and precedent. This collection of articles, scrutinizes the intersection of law and politics and the role of the judiciary in the political process. While directed primarily at an undergraduate audience, it provides invaluable insights for anyone interested in exploring the political context of the judicial branch and the decision-making process. Mark Miller contributes an illuminating introductory essay on the study of judicial politics and the role of political scientists in that enterprise, with attention to the empirical and behavioralist approaches to scholarship. The contributing authors examine the differences in state judicial election, the role of pressure groups and federal judicial election process, the role of lawyers in the courts and society, the politics of jury reform, the role of state trial courts in achieving justice in civil litigation, the role of the U.S. District courts, state supreme courts as policymakers, the U.S. Courts of Appeals, the role of the Solicitor General, U.S. Supreme Court law clerks, the boundaries of judicial power, women and the law, the federal courts and terrorism, interaction between the federal courts and the other branches, comparative judicial studies, and the role of the U.S. Supreme Court as Super Legislature. Mark C. Miller is associate professor and former chair of the Dept. of Government and International relations at Clark University. The chapter authors are primarily professors of law and political science.


Cost: $57; from $35.04 (print); and $41.39 (Kindle) on amazon.com (2019).

Many Americans express opinions on the judicial process or specific judges without an adequate understanding of the judge's role or the often conflicting philosophies that guide their determinations. This invaluable collection of extra-judicial essays on the role of the judge assembles the views many of the leading judicial minds in modern history, both living and dead. Among the contributors are Chief Justices Warren Burger, William H. Rehnquist, and John G. Roberts, Associate Justices Felix Frankfurter, Robert H. Jackson, William J. Brennan, Hugo Black, Ruth Bader Ginsburg, Lewis F. Powell, John Paul Stevens, Steven G. Breyer, and Thurgood Marshall; Judges Jerome Frank, Robert Bork, Frank Easterbrook, and Richard A. Posner, among others. The essays address such topics as judicial review and American politics, the dynamics of the judicial process, the judiciary and the Constitution, the judiciary and federal regulation, statutory interpretation, and our dual Constitutional system: the Bill of Rights and the states. The appendices include a selective bibliography of off-the-bench commentaries, Federalist No. 78 on the judicial department, and a time chart of the U.S. Supreme Court justices.


An invaluable collection of articles which address a variety of issues of special interest to judges and those interested in understanding the nature of the judicial role. The articles focus on such topics as the personal and professional qualities of a judge, the work of judging, communicating with juries, sentencing criminals, writing opinions, managing cases, the relationship between courts and communities, the judicial role, the judicial reform movement, and more.


Cost: $44.95; from $22 (print) on amazon.com (2019).

How to judges arrive at a decision? What factors do they...


A comprehensive guide to judicial conduct and ethics in federal, state, and local courts. The authors’ discussion and analysis draws upon and cites to Supreme Court decisions, ethics advisory opinions, and the ABA’s 1990 Model Code of Judicial Conduct. The chapter coverage examines such topics as the use of power, demeanor, impartiality and competence, disqualification and conflict of interest, ex parte communications, case management and administrative imperatives, personal finances, financial disclosures, civil and charitable activities, personal conduct, speech and association, election and political activities, appointment and confirmation, regulatory organization and procedure, civil and criminal liability, and judicial disability and retirement. An Appendix contains Guidelines for Cases Involving Judicial Disability. The volume also includes a table of cases and index. Jeffrey Shaman is a Professor of Law at DePaul University. Steven Lubet is Professor of Law and Director of the Program on Advocacy and Professionalism at the Northwestern University School of Law. James Alfini is Dean of the Northern Illinois University College of Law.


Cost: $71; from $1.98 (print); and $50.26 (Kindle) on amazon.com (2019).

Landing a judicial clerkship after law school is one of the most valuable initial experiences a newly-minted lawyer can garner. A judicial clerkship provides unique insights into the inner workings of the judicial process, whether at the trial or appellate court level, that can last a lifetime. This book provides essential background into the types of knowledge clerks should possess on their first day on the job, including such basic tasks as reading a docket sheet, working with a case file, drafting jury instructions, understanding standards of review, sources of authority commonly relied upon by the courts, and the ethical considerations which must be observed both during and after court employment. Chapters also address the civil and criminal litigation process, the research process, writing technique when drafting documents to the court, drafting a judicial opinion, drafting a bench memorandum, legal citation, and applying for a clerkship. The author also provides useful checklists for drafting documents, a useful system for note taking, and exercises at the end of chapters to evaluate the reader’s comprehension and application of the materials. The text is a product of the author’s own experience as a judicial clerk as well as her involvement with the externship programs at Appalachian School of Law and Mercer University School of Law.


Cost: OUT-OF-PRINT; from $2.34 on amazon.com (2019).

This fascinating and sometimes provocative anthology of articles by and about judges provides valuable insights into the types of issues faced by judges at both the state and federal levels. Designed as a textbook for the classroom component of a judicial externship, the articles provide an invaluable introduction to the role of the judge for law students contemplating a judicial clerkship, or a judicial career. The readings in each chapter are preceded by an introductory essay and followed by a series of questions designed for classroom discussion. The articles address such topics as sentencing, the judge’s role in settlement, the mysteries of judicial decision making, criticism of judges, dissents, the clerks role in drafting appellate court decisions, the
juvenile justice system, cameras in the courtroom, the notion of the impartial judge, judicial ethics and private lives, civility among judges, protecting the appearance of judicial impartiality in the face of law clerk employment negotiations, public comments which lead to recusal, charting the bounds of proper criticism by judges of other judges, opinion writing assistance involving law clerks, lending impaired judges a hand, 10 trial mistakes, and responding to judicial alcohol abuse, among others. The author is Professor of Law and Director of the Legal Writing Program, Villanova University School of Law.


Cost: $42; from $38.01 on amazon.com (2019).

This volume navigates the nuances of the appointment process under the U.S. Constitution in which the President, with the advice and consent of the Senate, appoints judges to the federal courts. The author argues that “republican and structural safeguards matter when assessing governing relationships” and that the democratic controls that guide judicial appointments are rooted in the Constitution. And while the specific mechanisms that guide the appointment process are not found in the Constitution, the process is ultimately rooted in the notion that a fully functioning government must be based on the idea of representation, as James Madison affirmed it in The Federalist No. 49. This book takes a close look at the various procedures that comprise the judicial appointment process, from the overarching role of Congress and the courts, to textual direction, statutory qualification, the pre-nomination process, the role of the Senate Judiciary Committee, Senate floor action, and reform proposals. The concluding chapter examines the issues of democratic controls versus executive governance, and majority rule versus minority rights. The Appendices contain the White House Personal Data Statement Questionnaire, the Executive Branch Personnel Public Financial Disclosure Report, the Senate Judiciary Committee Questionnaire for Judicial Nominees, the Senate Judiciary Committee Financial Disclosure Report, and the “Blue Slip” soliciting the approval or non-approval of nominees by members of the Senate. The volume also includes an extensive bibliography of sources regarding the appointment process, table of cases, and index. The author is an assistant professor of political science at the University of Michigan-Dearborn.


Cost: $83.99; from $82.71 (print); and $51.38 (Kindle) on amazon.com (2019).

Intended as a text for upper-division and graduate level courses in criminal justice, the judicial system, criminal law, and law and society, this book looks beyond the idealized conception of sentencing as a process by which the judge weighs the facts and circumstances of the case, the background and blameworthiness of the offender, and his own philosophy of punishment. In the author’s view, the sentences meted out by judges in state and federal courts are generally the result of a collaborative process involving legislators, and criminal justice officials in supporting roles, and are often heavily influenced by guidelines that specify minimum sentences to be imposed. Such sentences may not reflect a coherent philosophy of punishment, a rational assessment of the seriousness of the crime, or the culpability of the offender, but rather inconsistencies based on a variety of variables, including the offender’s race, social class, ethnicity, or gender. This volume examines the goals of sentencing (including its theoretical models), the sentencing process, the decisional process of the judge, sentencing disparity and discrimination by gender, race and ethnicity, the sentencing reform movement, and the impact of sentencing reform. The author draws upon the latest scholarly research to frame her analysis. The volume also features an extensive bibliography of scholarly sources and chapter discussion questions. The author is professor in the School of Criminology and Criminal Justice at Arizona State University and author of three books in the field of criminal justice.


Cost: $25; eBook: $18; from $18 (print) and $18.75 (Kindle) on amazon.com (2019).

For the recent law school graduate, a judicial clerkship can provide an excellent learning and career-enhancing experience. Most law school graduates never apply for judicial clerkships because they lack knowledge of the process and the potential career benefits. This guide provides prospective applicants with a complete overview of the application and interview process, the types of clerkship opportunities available, choosing a court and judge who’s best for you, tools for research on courts and judges, the nature of the work involved in serving as a clerk, the life-long career benefits provided, and the opportunities for minorities and women. This is an indispensable roadmap to the process of landing a judicial clerkship and its benefits. This updates the first edition published in 2002. The author is a graduate of Yale Law School and former Director of its Judicial Clerkship Counseling and Programs. She has also served as Project Director of the National Judicial Clerkship Study sponsored by the National Association for Law Placement (NALP) and the American Bar Association (ABA), and authored the report on the 2000 National Judicial Clerkship Study. She is currently Professor of Business Law at the Fairfield University Charles F. Dolan Scholl of Business.

Cost: Free of charge; a limited number of print copies are available from the FJC upon request (see address in Appendix A); or as a free download at: http://www.fjc.gov

A invaluable overview of the administrative structure of the federal judicial system and of the organizations and agencies that are responsible for the nonjudicial business of the courts, including the Judicial Conference of the United States, the Administrative Office of the U.S. Courts, the Federal Judicial Center, and the Circuit Judicial Council, among others. An essential read for any federal judge or administrative staff member who wishes to understand the organizational structure and operations of federal judicial administration. The Federal Judicial Center was created by act of Congress in 1967 for the purpose of conducting research on federal court operations and procedures and for providing orientation and continuing education for judges and court personnel.


Based on the Federal Rules of Evidence, this volume is designed to assist judges in making proper evidentiary rulings in trials and preliminary hearings. In addition to the text of the Federal Rules of Evidence, it includes official comments, analysis, illustrative examples, summaries of relevant cases, checklists, and cross references. Also useful for trial lawyers dealing with evidentiary issues.

For further information, see:

www.nolo.com/legal-encyclopedia/the-right-trial-jury.html
https://govt.westlaw.com/wccj/index?irTS=20180427214602563

Research guides:
http://libraryguides.law.marquette.edu/c.php?q=318617&p=3680634

Legal Treatises and Other Secondary Sources


Juries, Jury Instructions, and Jury Verdicts

Jury trials are an essential element of the American judicial system. Under U.S. law, juries are charged with rendering decisions in many civil and criminal trials. In other circumstances, a judge may perform that function. A substantial amount of power is vested in this group of ordinary men and women, who are charged with deciding matters of fact and delivering a verdict of guilt or innocence based on the evidence presented in court. Juries have a long pedigree in the English common law tradition. Trial by jury has maintained a central role in U.S. courtrooms since the colonial era, and it is firmly established as a basic guarantee in the U.S. Constitution.

The U.S. Constitution provides for the right to a trial by jury in three separate provisions: Article III, Sec. 2 provides: “The trial of all crimes shall be by jury and such trial shall be held in the state where the said crimes have been committed.” The Sixth Amendment says: “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state where the said crimes shall have been committed.” Finally, in civil matters, the Seventh Amendment provides: “In all suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved and no fact tried by a jury shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.”

Jury members are impaneled after being first chosen randomly from state voter registration or motor vehicle records and told to appear at the courthouse. From this initial pool, jurors are selected to hear a particular case by a process known as Voir dire (literally “to speak the truth”). Lawyers for the opposing sides look for jury members most likely to render an unbiased verdict, or those who may favor their client. The aim of Voir dire is to achieve the constitutional right to an impartial jury, but it is not a constitutional right in itself. Typically, a number of prospective jurors are called to the jury box, given an oath, and then questioned as a group by counsel or the court.

Once the formal proceedings of a trial are concluded, the judge will instruct the jury as to the law and charge it with the task of rendering a verdict. Judges often use pattern jury instructions, which may be either national in scope, or state-specific, to instruct the jury in the law to be applied to the case they have heard. Matters of fact are decided by the jury and those factual determinations will then hold for the remainder of the trial and any appeals that may be brought. Jury instructions often enter into jury deliberations, help determine how the jury will decide who is guilty, and are given by the judge in order to make sure their interests are represented and nothing prejudicial is said. Although trial by jury is enshrined in the U.S. Constitution, the procedures regarding juries, their selection, and instruction are contained in the rules of the respective court hearing the case.