

**Get the
free Profitable
Practice Playbook**



Organize case files.
Manage clients. Get paid faster.

thryv

DOWNLOAD NOW

Home / Web First / Supreme Court justices should follow binding...

MIDYEAR MEETING

Supreme Court justices should follow binding code of ethics, ABA House says

BY AMANDA ROBERT ([HTTPS://WWW.ABAJOURNAL.COM/AUTHORS/64780/](https://www.abajournal.com/authors/64780/))

FEBRUARY 6, 2023, 7:38 PM CST

Like 104

Share

Tweet



Share



The U.S. Supreme Court should adopt a binding code of ethics for its justices that is akin to the code of conduct the Judicial Conference of the United States adopted for other federal judges, the House of Delegates said after a spirited debate at the 2023 ABA Midyear Meeting in New Orleans on Monday.

Resolution 400 (https://www.americanbar.org/news/reporter_resources/midyear-meeting-2023/house-of-delegates-resolutions/400/), which was submitted by the King County Bar Association in Seattle, also urges all other bar associations to pass their own resolutions calling for the Supreme Court to adopt a code of judicial ethics that is binding on its justices.

James Williams, the Washington state delegate to the House of Delegates, introduced the resolution, saying it could be “the most consequential that we will have a conversation about during this House.” He contended the American people need to know that the legal system—at its highest level—has some code that governs their conduct.

“How do we explain to them when they find out that every lawyer in this room, every judge in this room, every lawyer and every judge across the United States of America has a code of conduct, but the United States Supreme Court does not?” Williams said. “How do you explain to the American people when they discover that every part of our government structure, all the other agencies, have codes of conduct, but the United States Supreme Court does not?”



Image from Shutterstock.

Williams also argued the resolution is vital to the legal profession and the Supreme Court itself.

“This resolution is about protecting the Supreme Court,” he said. “It is about bolstering the court’s reputation and its credibility with the American people and within this profession.”

While Supreme Court justices must adhere to some ethical requirements set by federal statute, they are not bound by any rules that include “the full sweep of basic ethical principles” that apply to other judges, the report accompanying the resolution says.

Members of the federal judiciary are covered by the Code of Conduct for United States Judges (<https://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges>), which was originally based on the ABA’s Model Code of Judicial Conduct

(https://www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct/?login). Every state has adopted some version of the model code.

Richard Bien, a Judicial Division delegate to the House of Delegates, made a motion to postpone Resolution 400 indefinitely—not because he disagreed that Supreme Court justices should have a code of conduct but because he said several entities needed more time to consider the resolution and report. In addition to the Judicial Division, he said this included the Standing Committee on Professionalism and Standing Committee on Professional Regulation.

“None of the proponents for this motion believe there should not be a code of conduct. It is consequential. It is significant. And it needs to be done in the best way that the ABA can do it,” said Bien, adding the resolution had only been circulating for two weeks.

Follow along with the ABA Journal’s coverage of the 2023 ABA Midyear Meeting here

(<https://www.abajournal.com/topic/midyear+meeting>).

Judge Joseph Blumel, chair of the Standing Committee on Ethics and Professional Responsibility’s Judges Advisory Committee, agreed that the resolution should be postponed. He invoked the words of ABA President Deborah Enix-Ross, saying House members should approach the issue with “civics, civility and collaboration.”

“Really, it comes down to postponing it for six months so we can sit here and actually talk about this,” said Blumel, a judge of the Third Judicial District Court in Wyoming. “Let’s collaborate, let’s take the time ... I submit to all of you that this is a situation where we need to sit down and figure out what does it mean when you say it’s going to be binding on all justices?”

The motion to postpone the measure ultimately failed.

Several ABA leaders spoke in favor of the resolution, including past ABA President Patricia Lee Refo. She argued the House shouldn’t wait six months to consider the resolution because Congress is considering the issue now.

“There was legislation introduced in the last Congress on this issue, and we could not speak at all,” Refo said. “We are expecting legislation to be introduced as early as this week on this issue, and in the absence of the passage of this resolution, we will be on the sidelines, unable to speak a word about a topic that is center to the core of who we are, what we do and why we gather here twice a year.”

Refo added that the resolution purposefully does not set forth a code of conduct for the Supreme Court. It simply asks that one exist, and for that reason, she said her peers did not need any more time to study the issue.

Several Supreme Court justices were questioned over potential ethics issues in the past year.

In March 2022, ethics experts called for Supreme Court Justice Clarence Thomas to recuse himself (<https://www.abajournal.com/news/article/post-election-texts-by-wife-of-justice-thomas-raise-ethics-issues-experts-say>) in some cases following revelations that his wife, Virginia “Ginni” Thomas, urged former White House Chief of Staff Mark Meadows to contest the 2020 presidential election loss for then-President Donald Trump. While federal law requires federal judges and justices to recuse themselves in any proceedings in which their “impartiality might reasonably be questioned,” justices make their own recusal decisions.

In November 2022, the New York Times reported allegations (<https://www.abajournal.com/news/article/calls-mount-for-binding-scotus-ethics-code-after-anti-abortion-crusader-alleges-hobby-lobby-leak>) by the Rev. Rob Schenck, who said he knew in advance that Supreme Court Justice Samuel Alito would write the opinion in *Burwell v. Hobby*

Lobby Stores, and that it would favor religious rights of employers. The June 2014 decision exempted corporations with religious objections from having to provide mandatory contraceptive coverage for employees.

Schenck, a leader in the anti-abortion movement, said he learned about the decision from Gayle Wright, a donor to his evangelical nonprofit, after she and her husband had dinner with Alito and his wife. While Alito denied telling the Wrights about the decision, Schenck's allegations led to calls for hearings and a binding ethics code for justices.

And just last week, Kendal Price, a former legal recruiter for Major, Lindsey & Africa, asked the U.S. Department of Justice and Congress to look into paychecks (<https://www.abajournal.com/news/article/critic-says-legal-recruiting-career-of-chief-justices-wife-could-pose-conflicts-sends-pay-details-to-congress>) earned by his former colleague Jane Sullivan Roberts, the wife of U.S. Chief Justice John Roberts. According to Price, Jane Sullivan Roberts earned millions of dollars from placing lawyers at law firms, including firms with business before the Supreme Court.

Price argues justices should disclose more information about their spouses' jobs, but a court spokeswoman told the New York Times that Chief Justice Roberts consulted the conduct code for federal judges as well as a 2009 advisory opinion that said a judge "need not recuse merely because" their spouse worked as a recruiter for a firm.

See also:

ABAJournal.com (<https://www.abajournal.com/news/article/op-ed-ethics-code-for-supreme-court-would-hold-justices-accountable-in-court-of-public-opinion>): "Op-ed: Ethics code for Supreme Court would hold justices accountable in court of public opinion"

Give us feedback, share a story tip or update, or report an error.



