

**Stephen N. Zack**  
President

**AMERICAN BAR ASSOCIATION**

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July 19, 2011

Bob Edgar  
President and CEO  
Common Cause  
Suite 900  
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Washington, DC 20036

Dear Mr. Edgar:

This is in response to your July 6, 2011 letter urging the American Bar Association to issue a public statement regarding whether certain U.S. Supreme Court Justices have engaged in activities in violation of the judicial code of conduct. Although the ABA does play a central role in the development of the Judicial Code of Conduct, we are a voluntary association with no enforcement authority, and we have neither the ability nor the authority to investigate allegations of judicial conduct.

The ABA is committed to the notion that an independent, impartial judiciary is indispensable to our system of justice. Equally important is the confidence of the public in the independence, integrity and impartiality of our judiciary. To this end, the ABA has worked tirelessly to develop model standards that provide sound, clear, and reasoned guidance to judges faced with difficult issues involving their conduct. Those standards also promote public confidence in the judiciary's integrity, independence, and impartiality.

It is worth noting that most of the Code of Conduct for United States Judges is identical to the ABA Model Code of Judicial Conduct, which also provides the basis for most state judicial ethics codes. We note that, although the Code of Conduct for United States Judges is not formally binding on members of the U.S. Supreme Court, the Court and the Justices rely on it for direction. In 1990, Congress created the National Commission on Judicial Removal and Discipline to study the problems attending and issues concerning judicial removal and discipline. The Commission's final report stated that "the Commission has been informed that the Court and the Justices use it for guidance on applicable ethical standards, that as a matter of practice, Supreme Court Justices consult the Court's Legal Counsel, as well as the General Counsel of the Administrative Office, for advice and guidance on ethical matters, and that both of these individuals typically look to the Code of Conduct, among other sources, in providing that advice and

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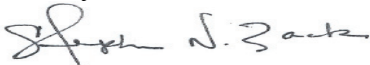
guidance.” *See* National Commission on Judicial Discipline & Removal, Report of the National Commission on Judicial Discipline and Removal (1993). Additionally, the Justices have agreed to “comply with the substance of Judicial Conference regulations concerning outside earned income, honoraria, and outside employment.” *Id.*

As you note in your letter, during their appearance before the House Appropriations Financial Services Subcommittee on April 14, 2011, Justices Anthony M. Kennedy and Stephen G. Breyer stated that the Court has agreed internally to be bound by the Code, and that they believe its canons are currently being followed by their colleagues.

The ABA shares Common Cause's view that U.S. Supreme Court Justices, along with all federal judges, must be held to the highest standards of ethical conduct. We note that ethical principles and the Code have guided the Court throughout its history. For example, Justice John Marshall recused himself in both the 1813 and 1816 hearings of *Martin v. Hunter's Lessee*, despite its significant constitutional implications, because he and his brother had contracted with Martin to buy the land in dispute. Justice Sandra Day O'Connor generally did not participate in cases involving telecommunications firms because she owned stock in them. Justice Breyer has disqualified himself in some cases involving insurance companies because of his participation in a Lloyd's of London syndicate. In two cases, Chief Justice William Rehnquist stepped down from the bench when cases were argued by an Arizona lawyer who had testified against Rehnquist at his confirmation hearing.

During the ABA's Midyear Meeting in Atlanta earlier this year, I stated that “[o]ur courts protect our freedom and our access to justice when we need it.” I know that Common Cause shares this perspective, and we look forward to working with you to protect it.

Sincerely,

A handwritten signature in cursive script that reads "Stephen N. Zack".

Stephen N. Zack