

**VOL 49 ISS 2 | 0 | INTRODUCTION**

Judicial misconduct has increasingly become the subject of public and legal scrutiny. The American Bar Association has promulgated rules that restrict judges' personal and professional conduct! Presumably, judges' personal and professional lives are inseverable because judges are neutral public servants. Society entrusts judges with the duty of providing an outcome based on fair and impartial evaluation of a given dilemma. If the outcome is unfair and partial, society expects the legal and political systems to provide a remedy. Judges, however, generally are not subject to civil liability for acts of misconduct because the doctrine of judicial immunity protects them.

In American jurisprudence, the doctrine of judicial immunity is very inclusive; therefore, any actual instance of civil liability for a judge is rare. Our society, however, has a very broad based system of judicial accountability for acts of misconduct, including appeal, criminal prosecution, and various kinds of discipline. Because these sanctions intend to correct the system rather than compensate individual loss, society views judicial misconduct primarily as an offense against the public and the legal system, rather than an offense against any individual member of society.

Ancient Roman culture experienced a remarkably similar phenomenon. In ancient Rome, the public held judges accountable under very limited circumstances, similar to the limited accountability of judges under the American doctrine of judicial immunity today. Initially, Roman judges were liable only for intentional conduct, such as bribery, that received a punishment of death. Eventually, the basis for judicial liability extended to unintentional conduct, such as negligence, which coincided with a less severe punishment - a fine as opposed to the death penalty. Concurrent with this growth of a more broad-based accountability for judicial misconduct was the development of an appeals system in Roman law.

This Article proposes that although the basis for judicial liability in Roman culture broadened to allow an aggrieved litigant to redress a wrong, the corresponding sanctions diminished in severity in an effort to define judicial misconduct as an offense to society rather than a personal wrong deserving of violent retribution. First, this Article discusses the American doctrine of judicial immunity and the legal system's response to the problem of judicial misconduct today. Then, this Article examines the basis of the American doctrine: the Roman approach to judicial



misconduct, and the corresponding sanctions through the Republican, Classical, and post-Classical Periods.

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### Footnotes

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<sup>1</sup>. See generally ***MODEL RULES OF PROFESSIONAL CONDUCT (1983); MODEL***

