

*Report
of the
National
Commission
on Judicial
Discipline
& Removal*



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Ex "A"

authorized to release information, with appropriate safeguards, to government entities or properly accredited individuals engaged in the study or evaluation of experience under the Act.

The Commission recommends that council rules regarding confidentiality should be nationally uniform. The relevant provisions of the Illustrative Rules should be adopted to that end, but the uniform rules should not provide for automatic transmittal of a copy of complaints to the chief judge of the district court and the chief judge of the bankruptcy court. They should, however, authorize a chief judge to release information, with appropriate safeguards, to government entities or properly accredited individuals engaged in the study or evaluation of experience under the 1980 Act. If action by the judicial councils or the Judicial Conference does not result in national uniformity on the issue within a reasonable period of time, the Commission recommends that the 1980 Act be amended to impose it.

Chief Judge Orders. The Act requires that a chief judge's written order dismissing a complaint or concluding a proceeding state the chief judge's reasons. Seven of the twelve complaint dismissals identified as troublesome by the Commission's consultants were concentrated in two circuits in which, at least in past years, the chief judge did not delegate and frequently relied on form dismissals that do not articulate reasons for the stated conclusions. Earlier in this chapter of the Report the Commission recommended that chief judges avail themselves of assistance in reviewing complaints and preparing orders disposing of them, in part because of the causal connection suggested in the FJC study. That is another reason (in addition to the Act's requirement) why chief judge orders dismissing complaints or concluding proceedings, or memoranda accompanying them, should include a non-conclusory statement of the allegations of the complaint and the reasons for the disposition. Still another reason is that such a non-conclusory statement may be critical to a complainant's ability to understand the action taken as well as to the understanding of those engaged in oversight or evaluation (whether or not such orders are, as also recommended, uniformly available). The chief judges interviewed expressed no doubt that non-conclusory orders would facilitate evaluation of the integrity and credibility of the judiciary's implementation of the Act.

The Commission recommends that, as provided in Illustrative Rule 4(f), a chief judge who dismisses a complaint or concludes a proceeding should "prepare a supporting memorandum that sets forth the allegations of the complaint and the reasons for the disposition." This memorandum should "not include the name of the complainant or of the judge or magistrate whose conduct was complained of." In the case of an order concluding a proceeding on the basis of corrective action taken, the supporting memorandum's statement of reasons should specifically describe, with due regard to confidentiality and the effectiveness of the corrective action, both the conduct that was corrected and the means of correcting it. If action by the judicial councils or Judicial Conference does not result in national uniformity on the issue within a reasonable period of time, the Commission recommends that the 1980 Act be amended to impose it.

Publication of Orders. As noted earlier, problems arising from the Act's substantive ambiguity might best be addressed through the development of a body of interpretive precedents. The dissemination of some decisions might also help other judges to assess their conduct. At present, even those few orders required by the Act to be publicly available may not be easy to locate. Moreover, assuming the Commission's recommendation that chief judge orders dismissing complaints or concluding proceedings be publicly available is adopted, availability does not guarantee ease of access. Early in the implementation of the Act, some orders were published, but many orders have no precedential value, and publication is not otherwise an unmitigated good. What is needed is a system for the dissemination of information about the resolution of complaints, including selective publication, whether in reporters or computerized information systems.

The Commission recommends that the Judicial Conference devise and monitor a system for the dissemination of information about complaint dispositions to judges and others, with the goals of developing a body of interpretive precedents and enhancing judicial and public education about judicial discipline and judicial ethics.