

Commission's recommendations expressly call for Congressional action should the judiciary fail to comply. \*

Pursuant to discussions between the Executive Committee of the Conference and the chairman of this committee, this committee has now decided to recommend that the Conference approve a single resolution covering all five of these matters, instead of five separate resolutions. That single proposed resolution would note, for the public record, that the circuits and courts covered by the Act are now in compliance with these five of the National Commission's recommendations, so that no further action by the Conference is necessary.

The following is a brief discussion of each of these five National Commission recommendations, followed by the committee's proposed resolution pertaining to all five. This supplemental report should be substituted for the original report's discussion of recommendations 1, 2a, 3, 12, and 17 (found at pages 13-16, 16-17, 22-24, 42-43, and 49-50, respectively, of the committee's original report). To avoid confusion, the numbering used for each recommendation below is the same as that used in the committee's original report.

**1. Public Availability of Sanitized Chief Judge Dismissal Orders**

The Commission recommended "that all judicial councils adopt and strictly adhere to Illustrative Rule 17 as it relates to the public availability of a chief judge's orders dismissing complaints or concluding proceedings and any accompanying

memoranda. Care should be taken to eliminate information that would identify the judge or magistrate. 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 recommend[ed] that the 1980 Act be amended to impose it." Report at 107.

The Committee agrees with the Commission that all circuits and courts covered by the Act should make public chief judge dismissal orders as called for in existing Illustrative Rule 17(a). However, only one circuit does not currently do so and this circuit has recently decided to change its practice and adopt Rule 17(a).

Although research performed for the Commission shows that the section 372(c) mechanism, and related informal modes of judicial discipline, are working satisfactorily, even a system that works well will not be credible to the public, the press, and Congress if its operations are entirely invisible. Illustrative Rule 17, adopted in 1986, strikes a balance between total confidentiality and the kind of publicity which might lend credibility to unfounded and irresponsible complaints against judges. Illustrative Rule 17(a) provides that chief judge dismissal orders must be publicly available but in a sanitized form. This compromise enables interested members of the press and public to verify that complaints are being considered and resolved, while withholding the judges' and complainants' identities so as to minimize misuse of the orders. Public

availability of appropriately sanitized chief judge orders demonstrates tangibly to the public, the press, and Congress that complaints are being seriously reviewed and resolved -- not simply being dropped into a black hole. Public availability also enables orders construing the Act and rules to be published and circulated, see no. 4, below, so as to assist others in the implementation of the Act.

Since Illustrative Rule 17(a) was promulgated, it has been adopted in relevant part by all the circuits and courts subject to section 372(c) except for one circuit which has maintained a policy of keeping chief judge dismissal orders private. The Commission's recommendation, therefore, does no more than call for national uniformity of a practice already provided for in the Illustrative Rules and followed in all circuits but one. We note that the Illustrative Rules containing this provision were adopted in 1986 and that the Conference recommended their adoption by each of the circuits. While circuits commonly have discretion to alter specific provisions of the Illustrative Rules, the Commission felt that provisions regulating confidentiality were ones where the federal system should uniformly adhere to a single policy. For any one circuit to operate in secrecy was felt to undermine the credibility of section 372(c) procedures throughout the federal system.

This committee has been in touch with the one circuit that has not followed Illustrative Rule 17(a). That circuit has now decided to go along with all other circuits and courts. As a

result, the uniformity desired by the Commission would now seem to have been achieved. While this moots the matter, the committee believes that it would be useful if the Conference went on record as approving uniformity in this area. By so doing, the Conference will assure Congress and others that the Commission's views have been taken seriously; and the published proceedings of this Conference will serve as evidence of the judiciary's policy.

2a. Uniform national confidentiality policies

The Commission recommended "that council rules regarding confidentiality should be nationally uniform. The relevant provisions of the Illustrative Rules should be adopted to that end . . . . 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 recommend[ed] that the 1980 Act be amended to impose it." Report at 108.

Because the credibility of the entire section 372(c) mechanism nationally is affected by the confidentiality policies of individual circuits and courts covered by the Act, the Commission concluded that confidentiality was one area in which national uniformity was important. Our committee agrees. In fact, however, except for chief judge dismissal orders in one circuit (as discussed in no. 1 above), there now appears to be no serious lack of uniformity as to confidentiality among the circuits and courts covered by the Act.