

**REPORT OF THE PROCEEDINGS
OF THE JUDICIAL CONFERENCE
OF THE UNITED STATES**

MARCH 15, 1994

WASHINGTON, D.C.

**ADMINISTRATIVE OFFICE
OF THE U.S. COURTS
L. RALPH MECHAM, DIRECTOR**

Ex "B"

The Review Committee submitted to the Judicial Conference its recommendations in response to those of the National Commission which were within its jurisdiction. The Conference took the following actions:

- 1) a) Declined to endorse modification of the "Illustrative Rules Governing Complaints of Judicial Misconduct and Disability" (Illustrative Rules) to provide that copies of complaints be sent to the various relevant chief judges only **at the discretion** of the chief judge of the circuit; and
b) Endorsed modification of the Illustrative Rules so as to permit a judicial council to provide for access by judiciary researchers to confidential materials, except insofar as the council may determine that any disclosure of particular materials would be contrary to the interests of justice or that particular materials constitute purely internal communications outside the official record of a complaint, in order to perform research concerning the implementation of the Judicial Conduct and Disability Act, 28 U.S.C. § 372(c) (the Act), expressly authorized by the Judicial Conference or the Review Committee and under appropriate requirements for shielding the confidentiality of such materials.
- 2) Agreed to urge all circuits and courts covered by the Act to submit to the West Publishing Company, for publication in *Federal Reporter 3d*, and to Lexis all orders issued pursuant to § 372(c) that are deemed by the issuing circuit or court to have significant precedential value or to offer significant guidance to other circuits and courts covered by the Act.
- 3) Directed the Review Committee, in consultation with the Administrative Office, to reevaluate what data is required to be reported under 28 U.S.C. § 604(h) and to formulate and approve specific changes improving the accuracy and usefulness of the data reported.
- 4) Approved the need for reporting of formal orders issued by judicial councils pursuant to 28 U.S.C. § 332 that relate to judicial misconduct and disability (including delay), and directed the Review Committee, in consultation with the Administrative Office, to formulate and approve a system for the reporting of these orders.

March 15, 1994

- 5) **Endorsed modification of the Illustrative Rules to give effect to the substance of the Commission's recommendation that the Act's confidentiality provisions not be thought to bar chief judges from seeking staff assistance or consulting with other judges in the process of complaint disposition.**
- 6)
 - a) **Agreed to urge each circuit council that has not already done so to publish its rules under the Act in United States Code Annotated;**
 - b) **Agreed to urge that a reference to the Act and the circuit council's rules implementing the Act be included in the local rules of each district court; and**
 - c) **Agreed to urge each circuit council to consider other ways by which to increase awareness of and education about the Act among lawyers, judges, court personnel, and members of the public.**
- 7) **Agreed to recommend to the individual circuits and courts covered by the Act that they consider whether and what committee(s) or other structures or approaches, at the district or circuit level, might best serve the purpose of assuring that justified complaints are brought to the attention of the judiciary without fear of retaliation.**
- 8) **Charged the Review Committee with the responsibility of considering whether and to what extent to alter the language of the commentary to Illustrative Rule 1 relative to the Commission's recommendation regarding delay.**
- 9) **Endorsed modification of the Illustrative Rules so as to give effect to the substance of the Commission's recommendation to include as an additional ground for chief judge dismissal that allegations have been shown to be plainly untrue or incapable of being established through investigation.**
- 10) **Endorsed modification of the Illustrative Rules to give effect to the substance of the Commission's recommendation "that the Illustrative Rules be amended to permit chief judges and judicial councils to invoke a rule of necessity authorizing them to continue to act on multiple-judge complaints that otherwise would require multiple disqualifications".**

- 11) **Endorsed modification of the Illustrative Rules to provide (a) that if a chief judge or circuit council dismisses, solely for lack of jurisdiction under § 372(c), non-frivolous allegations of criminal conduct by a federal judge, the order of dismissal shall inform the complainant that the dismissal does not prevent the complainant from bringing such allegations to the attention of appropriate federal or state criminal authorities; and (b) that where the chief judge or circuit council dismisses, solely for lack of jurisdiction, allegations of criminal conduct that were originally referred to the circuit by a Congressional committee or member of Congress, the chief judge or circuit council shall notify the Congressional committee or member that the judiciary has concluded that it lacks jurisdiction under § 372(c).**
- 12) **Approved in principle the promulgation of a uniform policy on the limitations a judicial council should impose on a judge who is personally implicated in the criminal process, and directed the Review Committee, or another committee of the Conference, to draft such a policy for subsequent approval by the Conference.**
- 13) **Endorsed in principle the Commission's recommendation that there be "informal meetings of high-level representatives of the three branches of the federal government to promote oversight and understanding of judicial discipline, disability, and impeachment" and charged the Review Committee with the responsibility to study further and recommend the best way to implement the Commission's recommendation.**
- 14) **Endorsed, in principle, the recommendations of the National Commission:**
 - a) **that Illustrative Rule 17(a), providing for the public availability of sanitized chief judges' orders dismissing or concluding complaints, be uniformly adopted and adhered to by all circuits and courts covered by the Act;**
 - b) **that the provisions of the Illustrative Rules regarding confidentiality be adopted and adhered to by all circuits and courts covered by the Act;**
 - c) **that chief judges' orders dismissing or concluding complaints set forth the allegations of the complaint and the reasons for the disposition as required by Illustrative Rule 4(f);**