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# Dr. Richard Cordero

Ph.D., University of Cambridge, England  
M.B.A., University of Michigan Business School  
D.E.A., La Sorbonne, Paris

59 Crescent Street  
Brooklyn, NY 11208-1515  
tel. (718) 827-9521; CorderoRic@yahoo.com

[Sample of letters to Judicial Misconduct Act Study Committee & members]

November 26, 2004

Justice Stephen Breyer  
Supreme Court of the United States  
1 First Street, N.E  
Washington, D.C. 20543

Dear Justice Breyer,

I am submitting hereby to you and the Judicial Conduct and Disability Act Study Committee a copy of my November 18 petition for review to the Judicial Conference [C:823] in the context of the dismissals by the chief judge of the court of appeals and the judicial council of the Second Circuit of my two misconduct complaints. It deserves your consideration as a test case of the misapplication of the Act because these dismissals are particularly egregious given the compelling evidence that supports reasonable suspicion of judicial corruption linked to a bankruptcy fraud scheme, yet the complaints were dismissed without any investigation at all.

Indeed, this case concerns the evidence that I submitted of a series of instances for over two years of disregard for the law, rules, and facts by U.S. Bankruptcy Judge John C. Ninfo, II, and other officers and parties in the U.S. Bankruptcy and District Courts, WDNY, so numerous and consistently to my detriment, the only non-local and pro se litigant, as to form a pattern of non-coincidental, intentional, and coordinated wrongdoing. Then evidence emerged of the operation of the most powerful driver of corruption: money!, a lot of money in connection with fraudulent bankruptcy petitions. This results from the concentration of *thousands* of bankruptcy cases in the hands of each of the private standing trustees appointed by the U.S. trustee. They have a financial interest in rubberstamping the approval of all petitions, especially those with the least merits, since petitions confirmed by the court produce fees for the trustees, even a fee stream as a percentage of the debtors' payments to the creditors. Who and what else is being paid?

That question was not even looked at, which follows from the fact that although I submitted the evidence that I had and that which kept emerging, for the underlying cases are still pending, to the Hon. John M. Walker, Jr., Chief Judge of the CA2 Court of Appeals, he neither conducted a limited inquiry nor appointed a special committee. Hence, I filed a complaint about him. It was dismissed too without any investigation, as were my petitions to the CA2 Judicial Council.

Therefore, since this case falls squarely within the mold of systematic dismissals of complaints and review petitions that the Committee is studying and given its particular nature, I respectfully request that you as well as the Committee as such, whether formally or informally:

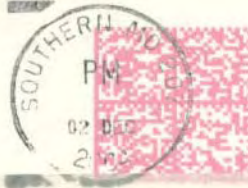
1. bring to the attention of the Judicial Conference or its members the advisability both of taking jurisdiction of the petition herewith [C:823], on grounds such as those set forth therein, and of investigating the complaints for the purpose, among others, of shedding light on the misapplication of the Act by chief judges and judicial councils;
2. include this case in your Study and investigate it as part thereof, and if the Committee holds hearings, invite me to be heard and answer your questions; and
3. if you believe that Judge Ninfo or any of the others has committed an offense, make a report of this case to the Acting U.S. Attorney General under 18 U.S.C. 3057(a).

Meantime, I look forward to hearing from you.

sincerely,

*Dr. Richard Cordero*

Thurgood Marshall Federal Judiciary Building  
One Columbus Circle, NE, Rm. 6100  
Washington, DC 20002-8003



Dr. Richard Cordero  
59 Crescent St.  
Brooklyn, NY 11208-1515

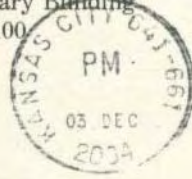
11208-1515 [Barcode]

[Dec 4, 04]

The Judicial Conduct and Disability Act Study Committee  
has received the information you submitted dated 11/26/04.  
If you have not filed a formal complaint and want to do so, please  
refer to section 351(a) of title 28 of the United States Code.



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One Columbus Circle, NE, Rm. 6100  
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Dr. Richard Cordero  
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[Dec. 6, 2004]

The Judicial Conduct and Disability Act Study Committee  
has received the information you submitted dated Nov. 26, 2004  
If you have not filed a formal complaint and want to do so, please  
refer to section 351(a) of title 28 of the United States Code.



## Dr. Richard Cordero

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[Sample of letters to Judicial Misconduct Act Study Committee & members]

December 20, 2004

Judge Sarah Evans Barker  
U.S. District Court, Southern District of Indiana  
46 East Ohio Street  
Indianapolis, IN 46204

Dear Judge Barker,

Last November 26, I submitted to you and the Judicial Conduct and Disability Act Study Committee a copy of my petition for review to the Judicial Conference [C:823] of the denials by the Judicial Council of the 2nd Circuit of two petitions for review. Those denials and the underlying complaint dismissals constitute a test case of the egregious misapplication of the Act given the compelling evidence of judicial corruption linked to a bankruptcy fraud scheme, yet the council and the chief judge disposed of the petitions and the complaints without any investigation at all.

Now, to render contempt for the Act complete, my petition to the Conference has been dismissed, before ever reaching it or even its Committee to Review Circuit Council Conduct and Disability Orders, by a clerk, that is, a member of the Administrative Office (AO) of the U.S. Courts that renders clerical services to the Conference. The event begs the question whether that clerk, Mr. Robert Deyling, Assistant General Counsel (GC) at the AO's GC's Office, was bold enough to pass judgment on his own on a jurisdictional issue despite lacking therefor any authority under both the Act and the Conference's Rules for Processing Petitions (1§I, infra) [AuC:5102], or whether in light of the circumstances of the dismissal by Mr. Deyling (2 §II)[C:881], he acted on instructions and, if so, who imparted them, out of what motive, and with what purpose.

This case supports the proposition that the judges who under the law are supposed to apply the Misconduct Act and its implementing Rules have rigged them so that they have become a useless pretense of the Judicial Branch's self-policing mechanism. In addition, according to Chief Justice Rehnquist, in the more than 200 years of our federal judiciary, only five federal judges have been convicted for offenses involving financial improprieties, income tax evasion, and perjury<sup>1</sup>...only one judge in more than every 40 years so that statistically, a judge has more chances of becoming chief judge of the Supreme Court than of being investigated, impeached, and convicted! The explanation for this oddity is not that judges are a superior kind of men and women nominated for their immunity to the lure of money, the mentality of a clique, and peer pressure, and who enter office after their incorruptibility has been confirmed. If neither the Act nor impeachment is effective in supervising judges and insuring their continued honesty and impartiality, is a judgeship a safe haven for wrongdoing? Since power corrupts, does non-controlled judicial power corrupt uncontrollably?

Therefore, I respectfully request that you and the Committee:

1. add this letter & supporting documents [C:845] to my case and include them in your Study; and
2. convey to the AO and the Conference that in the interest of studying the handling in the Act's last review stage of the first petition filed with it in many years [C:1771], my petition [C:823] should be forwarded to the Conference to be investigated and decided by it.

Looking forward to hearing from you,

sincerely, *Dr. Richard Cordero*

<sup>1</sup> Remarks of Chief Justice Rehnquist at the Federal Judges Association Board of Directors Meeting, May 5, 2003; at [http://www.supremecourtus.gov/publicinfo/speeches/sp\\_05-05-03.html](http://www.supremecourtus.gov/publicinfo/speeches/sp_05-05-03.html). [C:1384]

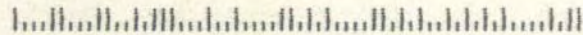


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Dr. Richard Cordero  
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Dec 30, 04

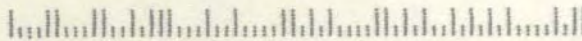
The Judicial Conduct and Disability Act Study Committee  
has received the information you submitted dated 12-20-04.  
If you have not filed a formal complaint and want to do so, please  
refer to section 351(a) of title 28 of the United States Code.



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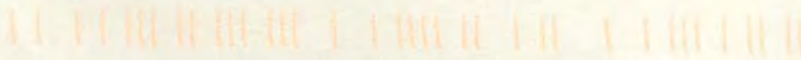


Dr. Richard Cordero  
59 Crescent Street  
Brooklyn NY 11208-1515



Recd. 10 Jan 05

The Judicial Conduct and Disability Act Study Committee  
has received the information you submitted dated 12/20/2004  
If you have not filed a formal complaint and want to do so, please  
refer to section 351(a) of title 28 of the United States Code.





## Dr. Richard Cordero

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[Sample of letters to Judicial Misconduct Act Study Committee & members]

March 9, 2005

Ms. Sally M. Rider  
Administrative Assistant to the Chief Justice  
Supreme Court of the United States  
1 First Street, N.E  
Washington, D.C. 20543

Dear Ms. Rider,

On November 26, I submitted to your consideration as member of the Judicial Conduct and Disability Act Study Committee [C:1751] a copy of my petition to the Judicial Conference [C:823] for review of the denials by the Judicial Council of the Second Circuit of petitions for review concerning my two judicial misconduct complaints. My petition opened precisely with an argument based on 28 U.S.C. §357(a) for the Conference to take jurisdiction of it. Nevertheless, as stated in my letter to you of December 20 [C:1754], the Office of the General Counsel of the Administrative Office of the U.S. Courts has blocked my petition from reaching the Conference by alleging that under §352(c) the Judicial Conference has no jurisdiction to determine it.

On January 8 and February 7 [cf. C:877; C:890], I brought in writing to the attention of General Counsel William R. Burchill, Jr., that neither his office nor even the Administrative Office has any authority to pass judgment on any argument, let alone on a specific jurisdictional argument, which is a question to be decided in limine by the Conference. I requested Mr. Burchill to forward my petition to the Conference. Far from doing so, he never replied to my letters.

I have brought these unsuccessful requests to the attention of Chief Justice Rehnquist, to whom I have also submitted an addendum [C:899] to my jurisdictional argument. I am submitting it to you too for its consideration as part of the Committee's work. Together with it I also submit to you and the Committee the question whether one of the reasons why since March 2002 the *Report[s] of the Proceedings of the Judicial Conference of the U.S.* [cf.C:1771] have repeated the statement that there was no petition pending before the Conference is that petitions have been arbitrarily blocked by the General Counsel's Office and the Administrative Office. Hence the importance that the Conference consider the argument of its jurisdiction based on §357(a).

To that end, I respectfully request that you and the Committee, whether formally or informally, 1) make known to the Chief Justice the importance for the work of the Committee, which he himself appointed, that he cause the Conference to determine the jurisdictional issue either as presented in the addendum or by having my petition forwarded to it from the Administrative Office; and 2) convey to Mr. Burchill and the Director of the Administrative Office, Mr. Leonidas Mecham, the need to forward the petition so that the Conference be the one to perform that determination. These are necessary steps to answer the question in my December 20 letter whether the ineffectiveness of judicial misconduct complaints and impeachment procedures to discipline judges has allowed a judgeship to become a safe have for wrongdoing.

So that you may realize the need in legal and practical terms to have the Conference review this petition given the egregious nature and harmful effect on me of the misconduct of Complained-about Bkr. Judge John C. Ninfo, II, WBNY, I am including a copy of my motion for his recusal. [C:905] It describes the latest events showing his bias against me and suspiciously toward the debtors although the evidence points to them as participants in a bankruptcy fraud scheme. I look forward to hearing from you.

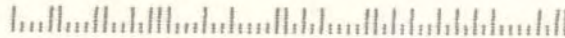
sincerely, 

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Dr. Richard Cordero  
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11208+1515



[received March 16, 05]

The Judicial Conduct and Disability Act Study Committee  
has received the information you submitted dated 3/9/05.  
If you have not filed a formal complaint and want to do so, please  
refer to section 351(a) of title 28 of the United States Code.

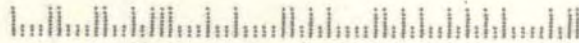


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Washington, DC 20002-8003



Dr. Richard Cordero  
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Mar 25, 05

The Judicial Conduct and Disability Act Study Committee  
has received the information you submitted dated March 9, 2005,  
If you have not filed a formal complaint and want to do so, please  
refer to section 351(a) of title 28 of the United States Code.



## Dr. Richard Cordero

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[Sample of letters to Judicial Misconduct Act Study Committee & members]

March 28, 2005

Judge Pasco M. Bowman  
U.S. Court of Appeals for the Eighth Circuit  
111 South 10th Street  
St. Louis, MO 63102

Dear Judge Bowman,

As stated in my letters to you of 9 instant and November 26 and December 20, 2004 [C:1751,-1754, 1757], last year I filed with the Administrative Office of the U.S. Courts a petition dated November 18, 2004 [C:823], for the Judicial Conference to review the denials by the Judicial Council, 2<sup>nd</sup> Cir., (Exhibits pg. 37=E-37; E-55)\* of two petitions for review (E-23; E-47) concerning two related judicial misconduct complaints (E-1; E-39) [C:1761], one against Judge John C. Ninfo, II, WBNY, and the other against Chief Judge John M. Walker, Jr., CA2.

By letter of December 9, a clerk for the Conference at the Administrative Office, namely, Assistant General Counsel Robert P. Deyling, Esq., blocked the petition from reaching the Conference by alleging that the latter had no jurisdiction to entertain it (23, *infra*) [C:859], thereby passing judgment in lieu of the Conference on the specific jurisdictional issue that I had raised in the petition (3§II, *infra*). As part of my efforts to have the petition submitted to the Conference to let it decide that issue, on January 8 and February 7, 2005 (43; 51), I wrote to the Hon. Judge Ralph K. Winter, Jr., Chairman of the Committee to Review Circuit Council Conduct and Disability Orders. Judge Winter answered by letter of February 15 (25) where he states that neither he nor the Conference has jurisdiction to act on my petition. I am submitting to you and the Study Committee a copy of my reply (28; 29) to his letter. Therein I argue, among other things, that under 28 U.S.C. §331 the Review Committee must review all petitions so that the Committee as a whole, not just he as its chairman, should consider mine; and that since the Review Committee derives its jurisdiction from that of the Conference, it should forward my petition to the latter with the request that it be the one to determine the jurisdictional issue that I raised.

I respectfully request that you and the Study Committee, whether formally or informally, bring to the attention of Judge Winter and the Review Committee the need to let the Conference decide that issue. If so, it would have the opportunity to contribute to your own Study by considering whether too narrow an interpretation of the jurisdictional provisions of the Judicial Misconduct Act accounts for the fact that since March 2002 not a single petition has been submitted to it. Thus, the Conference has not had occasion to consider petitions and in the process provide guidance to judicial councils and chief judges on the Act's proper application. Thereby the Act has become as useless as the impeachment process as a mechanism to control and discipline the judiciary. Instead of it being interpreted to protect individuals who suffer abuse and bias through judicial misconduct (53) or the public at large who must bear the loss of access to justice and the material cost caused by judges engaged in wrongdoing (E-83; E-109), the Act has been interpreted as a means for judges to take care of their own. Has the Conference not been aware of this for the past 25 years during which it issued only 15 misconduct orders? [C:1611]

sincerely, *Dr. Richard Cordero*

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\*These Exhibits were submitted to you and the Study Committee together with a copy of the petition last November 26. The Exhibits are not reproduced below, but reference to their page numbers is made hereinafter with the format (E-#).

# TABLE OF EXHIBITS

submitted on March 26, 2005, to the Members of the Committee to Review  
Circuit Council Conduct and Disability Orders  
in support of the request that they forward to  
the Judicial Conference of the United States for its determination  
the petition for review of November 18, 2004

by

**Dr. Richard Cordero**

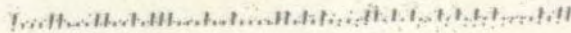
1. Dr. Cordero’s <b>petition</b> of <b>November 18, 2004, to the Judicial Conference</b> .....	1 [C:823]
2. Letter from Robert P. <b>Deyling</b> , Esq., Assistant General Counsel at the General Counsel’s Office of the <b>Administrative Office</b> of the U.S. Courts, of <b>December 9, 2004</b> , stating that <b>no jurisdiction</b> lies for further <b>review</b> by the <b>Judicial Conference</b> of the orders of the Judicial Council .....	23 [C:859]
3. Letter of <b>February 15, 2001</b> , of the Hon. Ralph K. <b>Winter</b> , Jr., Circuit Judge at the Court of Appeals for the Second Circuit and Chair of the Committee to Review Circuit Council Conduct and Disability Orders, to Dr. <b>Cordero</b> stating that the <b>Judicial Conference</b> does <b>not</b> have <b>jurisdiction</b> for further review .....	25 [C:893]
4. Dr. <b>Cordero’s letter</b> of <b>March 24, 2005, to Judge Winter</b> requesting that he formally submit to the other members of the Committee as well as to the Judicial Conference the following attachment:.....	28 [C:935]
a) Dr. <b>Cordero’s Reply</b> of March 25, 2005, to Judge <b>Winter</b> on the statutory requirement under 28 U.S.C. §331 for the whole Committee to review all petitions for review to the Judicial Conference and on the need for the <b>Conference to decide</b> the issue of <b>jurisdiction</b> .....	29 [C:936]
5. Dr. <b>Cordero’s letter</b> of <b>January 8, 2005</b> , and supporting files sent to Judge <b>Winter</b> to <b>request</b> that he withdraw or cause the Judicial Conference to <b>withdraw</b> Mr. <b>Deyling’s letter</b> of December 9 as ultra vires, and <b>forward</b> Dr. Cordero’s November 18 <b>petition</b> to the <b>Conference</b> for review .....	43 [C:877]
6. Dr. <b>Cordero’s letter</b> of <b>February 7, 2005</b> , and supporting files sent to Judge <b>Winter</b> , stating that he has received <b>no response</b> to his January 8 letter of and <b>requesting</b> that <b>action</b> be taken on that letter and its requests .....	51 [C:890]
7. Judge <b>Ninfo’s bias</b> and <b>disregard for legality</b> can be heard from his own mouth through the <b>transcript</b> of the evidentiary <b>hearing</b> held on <b>March 1, 2005</b> , and can be read about in a caveat on ascertaining its authenticity that illustrates <b>his tolerance for wrongdoing</b> .....	53 [C:951]
8. <b>Key Documents and dates in the procedural History</b> of the judicial misconduct complaints filed by Dr. Richard Cordero .....	i [C:886]
9. <b>Table of Exhibits of the petition</b> for review to the Judicial Conference .....	ii [C:845]
a) Exhibits.....	E-# [page num.]



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Washington, DC 20002-8003



Dr. Richard Cordero  
59 Crescent Street  
Brooklyn, NY 11208-1515



April 4, 05

The Judicial Conduct and Disability Act Study Committee  
has received the information you submitted dated 3.28.05.  
If you have not filed a formal complaint and want to do so, please  
refer to section 351(a) of title 28 of the United States Code.

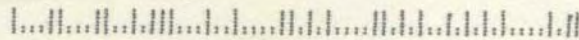


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One Columbus Circle, NE, Rm. 6100  
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Dr. Richard Cordero  
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Brooklyn NY 11208-1515

738



April 7, 05

The Judicial Conduct and Disability Act Study Committee  
has received the information you submitted dated March 26, 2005,  
If you have not filed a formal complaint and want to do so, please  
refer to section 351(a) of title 28 of the United States Code.

## Dr. Richard Cordero

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M.B.A., University of Michigan Business School  
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[Sample of letters to Judicial Misconduct Act Study Committee & members]

August 5, 2005

Judge D. Brock Hornby  
U.S. District Court for the District of Maine  
156 Federal Street  
Portland, Maine 04101

Dear Judge Hornby,

Last March 9, I wrote to you as member of the Judicial Conduct Act Study Committee (exhibit page 12, infra=E:12) to inform you that on November 18, 2004, I had petitioned the Judicial Conference [C:823] to review the denials by the Judicial Council, 2<sup>nd</sup> Cir., of my petitions for review of my two judicial misconduct complaints. However, by letter of December 9, a clerk for the Conference at the Administrative Office of the U.S. Courts, namely, Assistant General Counsel Robert P. Deyling, Esq., blocked the petition from reaching the Conference by alleging that the latter had no jurisdiction to entertain it. [C:859] My direct appeals to the Conference members to cause it to seize the petition and decide the threshold jurisdictional issue did not succeed.

Now, last July 28, I wrote to the Conference to petition an investigation under 28 U.S.C. §753(c) of a court reporter's refusal to certify the reliability of her transcript [C:1083], which is yet another in a long series of acts of disregard for duty and legality stretching over more than three years and pointing to a bankruptcy fraud scheme and a cover up. Indeed, on March 1 the evidentiary hearing took place of the motion to disallow my claim in the bankruptcy case of David and Mary Ann DeLano. Bankruptcy Judge John C. Ninfo, II, WBNY, disallowed my claim against Mr. DeLano. Oddly enough, he is a 32-year veteran of the banking industry now specializing in bankruptcies at M&T Bank, who declared having only \$535 in cash and account when filing for bankruptcy in January 2004, but earned in the 2001-03 fiscal years \$291,470, whose whereabouts neither the Judge nor the trustees want to request that he account for.

At the end of the hearing, I asked Reporter Mary Dianetti to count and write down the numbers of stenographic packs and folds that she had used; she did. For my appeal from the disallowance, I requested her to estimate the transcript's cost and state the numbers of packs and folds that she would use to produce it. She provided the estimate, but on three occasions expressly declined to state those numbers. Her repeated failure to state numbers that she necessarily had counted and used to calculate her estimate was quite suspicious. So I requested that she agree to certify that the transcript would be complete and accurate, distributed only to the clerk and me, and free of tampering influence. But she asked me to prepay and explicitly rejected that request! [C:1155-1165]

I called the Administrative Office last August 3, to confirm its receipt of this petition. Mr. Deyling acknowledged it, but again stated that he will not forward it to the Conference because the latter cannot intervene and I do not have a right to petition it. He disregarded my argument that the Conference is a governmental administrative body that under §753(c) has a duty to act on this matter and that I have a constitutional right "to petition the Government for a redress of grievances" under the First Amendment. To the extent that Mr. Deyling is following instructions from the Conference, I pose the question for your Committee whether the uselessness of the Misconduct Act since its enactment 25 years ago results from the determination of the Conference and the judges never to police themselves formally. [cf. C:1611, 1771] I also respectfully request that you let me know to whom in the Conference I can address my petition so as to seize that body thereof.

sincerely, *Dr. Richard Cordero*



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*Aug 15, 05*

The Judicial Conduct and Disability Act Study Committee  
has received the information you submitted dated August 5, 2005,  
If you have not filed a formal complaint and want to do so, please  
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## Dr. Richard Cordero

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[Sample of letters to Judicial Misconduct Act Study Committee & members]

September 1, 2005

Hon. Judge J. Harvie Wilkinson, III

**As Member of the Judicial Conduct Act Study Committee**

In care of: U. S. Court of Appeals for the Fourth Circuit  
255 West Main Street  
Charlottesville, VA 22902

Dear Judge Wilkinson,

Last August 5, I sent you a letter explaining the submission to the Committee of my petition under 28 U.S.C. §753(b-c) [C:1083] to the Judicial Conference for an investigation, in the context of a bankruptcy fraud scheme pointing to official corruption, of a court reporter's refusal to certify the reliability of her transcript and the designation of another individual to prepare it.

I also submitted the petition to Chief Justice Rehnquist [cf. C:1082] as presiding member of the Conference. On August 11, I received a letter [C:1121] returning it. Anybody who had bothered to read my letter, let alone the caption of the petition, would have realized that neither dealt with an Article III case sent to the Court. Rather, they concerned §753 reporter-related duties of the Conference.

Likewise, the copies of the petition that I filed with the Administrative Office have been returned. A perfunctory letter (E:263) does not even mention my discussion of §753 as authority for Conference action (Petition §V); wrongly copies *a docket entry* on exhibit page 230; and states that because I filed in district court a motion concerning the reporter, the Office "cannot address the court on behalf of a private party". But I never asked the Office to do anything, much less address any court; anyway, does it ignore what concurrent jurisdiction is? I filed the copies with it as the "clerk of Conference" and expected it to forward them to the Conference. Neither the Office has any authority to pass judgment on such filings nor the Conference should use it to avoid its statutory duty or stop a citizen from exercising his 1<sup>st</sup> Amendment right "to petition the [3rd Branch of] Government" by requesting that I cease writing to it. The disingenuousness of the letter is revealed by the fact that nobody wanted to take responsibility for it: it is unsigned! [C:1120]

Another letter [C:1119] pretends that a circuit chief judge cannot forward to a colleague who is the chair of a Conference committee a petition within its jurisdiction with a note "for any appropriate action". I wrote to the Executive Committee chair [C:1123], but have received no answer. There is a pattern: Judges avoid investigating one another by resorting to cursory reading, disingenuous answering, and indifference to official corruption. Yet, there is evidence of a scheme: I served a motion for replacement on the Reporter on July 18 [C:1183], but she did not file even a stick-it with the scribble "I oppose it", though by default she could lose her job, as could the Trustee, who has also disregarded my motion of July 13 [Add:881] for his removal. How did they know that Judge D. Larimer would not act on those motions, which implicate Judge J. Ninfo?

I am respectfully submitting to you and the Committee a Supplement [C:1127] to the Petition showing how the reporter's refusal to certify her transcript is part of a bankruptcy fraud scheme whereby a judge and a trustee have confirmed a debt repayment plan upon the pretense that an investigation cleared the bankrupts of fraud, yet the evidence shows that there was never any investigation and the bankruptcy was fraudulent. I kindly request that you set an example for your peers of concern for judicial integrity and compliance with judges' duty under 18 U.S.C. §3057(a) by referring both the Petition and its Supplement to Attorney General Alberto Gonzales.

sincerely, *Dr. Richard Cordero*



Thurgood Marshall Federal Judiciary Building  
One Columbus Circle, NE, Rm. 6100  
Washington, DC 20002-8003



Dr. Richard Cordero  
59 Crescent Street  
Brooklyn NY 11208-1515

001



*Sept. 10, 25*

The Judicial Conduct and Disability Act Study Committee  
has received the information you submitted dated Sept. 1, 2005,  
If you have not filed a formal complaint and want to do so, please  
refer to section 351(a) of title 28 of the United States Code.

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

**March 11, 1997**

The Judicial Conference of the United States convened in Washington, D.C., on March 11, 1997, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

**First Circuit:**

Chief Judge Juan R. Torruella  
Chief Judge Joseph L. Tauro,  
District of Massachusetts

**Second Circuit:**

Chief Judge Jon O. Newman  
Chief Judge Peter C. Dorsey,  
District of Connecticut

**Third Circuit:**

Chief Judge Dolores K. Sloviter  
Chief Judge Edward N. Cahn,  
Eastern District of Pennsylvania

**Fourth Circuit:**

Chief Judge J. Harvie Wilkinson III  
Judge W. Earl Britt,  
Eastern District of North Carolina

**Fifth Circuit:**

Chief Judge Henry A. Politz  
Judge William H. Barbour, Jr.,  
Southern District of Mississippi

**Sixth Circuit:**

1. Authorized an additional full-time magistrate judge position at Orlando;
2. Authorized an additional full-time magistrate judge position at Tampa; and
3. Made no change in the number, locations, or arrangements of the other magistrate judge positions in the district.

## **Committee to Review Circuit Council Conduct and Disability Orders**

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### **Processing of Petitions for Review**

The *Rules of the Judicial Conference of the United States for the Processing of Petitions for Review of Circuit Council Orders under the Judicial Conduct and Disability Act (Rules for the Processing of Petitions for Review)* govern the handling by the Committee to Review Circuit Council Conduct and Disability Orders of petitions for Judicial Conference review filed pursuant to 28 U.S.C. § 372(c)(10). These rules do not impose any time limit upon the filing of a petition for review with the Conference. Because of the potential problems created by the absence of a clear time limit for filing a petition for review, the Committee recommended, and the Judicial Conference approved, an amendment to Rule 6 of the *Rules for the Processing of Petitions for Review* to establish a 60-day time limit for the filing of a petition for Conference review of final action of a circuit council, with an additional 30 days for the filing of cross-petitions.

As a result of the above amendment, two conforming changes to the Illustrative Rules Governing Complaints of Judicial Misconduct and Disability are necessary. On recommendation of the Committee, the Judicial Conference approved (a) the deletion of Illustrative Rule 17(d) (Special rule for decisions of judicial council) and the renumbering of the other subsections of Rule 17; and (b) the deletion of the last sentence of Illustrative Rule 18(e) (Judge under investigation) to conform to the amended Judicial Conference Rule 6.

## **Committee on Rules of Practice and Procedure**

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### **Federal Rules of Civil Procedure**

The Committee on Rules of Practice and Procedures submitted to the Judicial Conference proposed amendments to Federal Rule of Civil Procedure 73 (Magistrate Judges; Trial by Consent and Appeal Options) and proposed amendments abrogating Rules 74 (Method of Appeal From Magistrate Judge to District Judge Under Title 28, U.S.C. § 636(c) and Rule 73(d)), 75 (Proceedings on Appeal From Magistrate Judge to District Judge Under Rule 73(d)), and 76



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

**September 23, 1997**

The Judicial Conference of the United States convened in Washington, D.C., on September 23, 1997, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Juan R. Torruella  
Chief Judge Joseph L. Tauro,  
District of Massachusetts

Second Circuit:

Chief Judge Ralph K. Winter, Jr.  
Chief Judge Peter C. Dorsey,  
District of Connecticut

Third Circuit:

Chief Judge Dolores K. Sloviter  
Chief Judge Edward N. Cahn,  
Eastern District of Pennsylvania

Fourth Circuit:

Chief Judge J. Harvie Wilkinson III  
Judge W. Earl Britt,  
Eastern District of North Carolina

Fifth Circuit:

The accelerated funding program was established to provide prompt magistrate judge assistance to judicial districts seriously affected by drug filings or impacted by the Civil Justice Reform Act. On recommendation of the Magistrate Judges Committee, the Judicial Conference designated the new magistrate judge positions at Texarkana, Texas; San Diego, California; and Atlanta, Georgia, for accelerated funding in fiscal year 1998.

## **COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS**

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### **JUDICIAL REFORM ACT OF 1997**

The Committee to Review Circuit Council Conduct and Disability Orders reported that it has been following closely the progress of two legislative proposals in the 105<sup>th</sup> Congress that would amend the Judicial Conduct and Disability Act, 28 U.S.C. § 372(c). H.R. 702 and section 4 of the original version of the Judicial Reform Act of 1997 (H.R. 1252) would provide that any complaint of judicial misconduct or disability filed under the Act shall be referred to another circuit for complaint proceedings. On recommendation of the Committee, the Judicial Conference, in a mail ballot, expressed opposition to the provision (see *infra*, "Mail Ballots," pp. 84-85). The Committee will continue to monitor these legislative proposals.

## **COMMITTEE ON RULES OF PRACTICE AND PROCEDURE**

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### **FEDERAL RULES OF APPELLATE PROCEDURE**

The Advisory Committee on Appellate Rules completed a style revision project to clarify and simplify the language of the appellate rules. The Committee on Rules of Practice and Procedure concurred with the advisory committee's recommendations and submitted revisions of all 48 Rules of Appellate Procedure and a revision of Form 4, together with Committee Notes explaining their purpose and intent. The Judicial Conference approved the proposed amendments to Appellate Rules 1 to 48 and to Form 4 and agreed to transmit them to the Supreme Court for its consideration with the recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

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### **FEDERAL RULES OF BANKRUPTCY PROCEDURE**

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed revisions to Official Bankruptcy Forms 1 (Voluntary Petition), 3 (Application and Order to Pay Filing Fee in Installments), 6 (Schedule F), 8 (Chapter 7 Individual Debtor's Statement of Intention), 9A-9I (Notice of Commencement of Case Under the Bankruptcy Code, Meeting of Creditors and Fixing of Dates), 10 (Proof of

## COURTHOUSE MANAGEMENT

In March 1988, the Judicial Conference approved guidelines for the establishment of delegations of authority from the General Services Administration for courts to manage and operate court facilities (JCUS-MAR 88, p. 40). Although Conference policy currently allows up to ten courts to participate in the delegated building management program (JCUS-SEP-89, pp. 81-82), it appears that many more courts may be interested in the program. On recommendation of the Committee on Security, Space and Facilities, the Judicial Conference agreed (a) to expand its policy limiting participation in the delegated building management program to ten courts and to allow any court meeting the Conference-approved conditions to participate in the program; and (b) to amend the conditions established in March 1988, under which courts may assume responsibilities for managing a court facility under a delegation of the General Services Administration's authority, by adding the following:

All courts and court units occupying a building must approve a request for a delegation of General Services Administration's management and operations authority prior to submission of the request by the Administrative Office to the General Services Administration.

## MAIL BALLOTS

The Judicial Conference completed two mail ballots since its last session. On April 14, 1997, the Conference concluded a ballot endorsing transmittal to Congress of a letter from the Chair of the Criminal Law Committee expressing the Conference's preference for a statutory approach, as opposed to a constitutional amendment, on victims' rights (see *supra*, "Victims' Rights Legislation," pp. 66-67).

By mail ballot concluded on May 9, 1997, the Conference considered three sections (2, 4, and 5) of a proposed Judicial Reform Act of 1997 (H.R. 1252, 105<sup>th</sup> Congress). The Conference voted to adhere to its 1995 position in opposition to three-judge panels generally and to oppose section 2, which would require that three-judge panels consider challenges to state laws adopted by referenda (see *supra*, "Judicial Reform Act of 1997," p. 71). In the same ballot, Conference members voted to oppose section 4, which would amend the Judicial Conduct and Disability Act to provide that complaints under the Act be referred to another circuit for proceedings (see *supra*, "Judicial Reform Act of 1997," pp. 81-82), and also to oppose section 5, which would limit court-imposed taxation. See also *supra*, "Judicial Reform Act of 1997," pp. 64-65.

## FUNDING

All of the foregoing recommendations which require the expenditure of funds for implementation were approved by the Judicial Conference subject to the availability of

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March 10, 1998

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magistrate judge positions in the district.

Western District of Washington

1. Discontinued the part-time magistrate judge position at Olympic National Park;
2. Increased the salary of the part-time magistrate judge position at Vancouver from Level 6 (\$10,557 per annum) to Level 5 (\$21,115 per annum); and
3. Made no change in the number, locations, salaries or arrangements of the other magistrate judge positions in the district.

## **TENTH CIRCUIT**

District of Wyoming

1. Increased the salary of the part-time magistrate judge position at Casper from Level 8 (\$3,167 per annum) to Level 7 (\$5,279 per annum); and
2. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

## **COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS**

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### **COMMITTEE ACTIVITIES**

The Committee reported on pending legislation, H.R. 1252 (105th Congress), which would amend the Judicial Conduct and Disability Act of 1980, 28 U.S.C. § 372(c), to provide that any complaint of judicial misconduct or disability filed under the Act that is not dismissed at the outset by the chief judge of the circuit in which the complained-against judge serves shall be transferred to another circuit for further complaint proceedings. The provision has been amended since the Judicial Conference opposed it in April 1997 (JCUS-SEP 97, pp. 81-82). The Committee advised that no new Judicial Conference action was necessary, but that it would continue to monitor the legislation.

## **COMMITTEE ON RULES OF PRACTICE AND PROCEDURE**

# Report of the Proceedings of the Judicial Conference of the United States

**September 15, 1998**

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Beach, Florida; and Columbus, Georgia, for accelerated funding in fiscal year 1999.

## **Committee to Review Circuit Council Conduct and Disability Orders**

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### **Committee Activities**

In May 1997, the Judicial Conference determined to oppose legislation introduced in the 105<sup>th</sup> Congress to amend the Judicial Conduct and Disability Act of 1980 (28 U.S.C. § 372(c)) regarding the transfer to another circuit of complaints of judicial misconduct (JCUS-SEP 97, pp. 81-82). The Committee to Review Circuit Council Conduct and Disability Orders reported that there had been no action on this proposal in the Senate, and that the Committee would continue to monitor any legislative developments in this area. The Committee further reported that it determined to add commentary to the Illustrative Rules Governing Complaints of Judicial Misconduct and Disability to provide guidance in dealing with the problem of mass filings of identical section 372(c) complaints by different individuals against the same judge or judges.

## **Committee on Rules of Practice and Procedure**

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### **Federal Rules of Bankruptcy Procedure**

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Bankruptcy Rules 1017 (Dismissal or Conversion of Case; Suspension), 1019 (Conversion of Chapter 11 Reorganization Case, Chapter 12 Family Farmer's Debt Adjustment Case, or Chapter 13 Individual's Debt Adjustment Case to Chapter 7 Liquidation Case), 2002 (Notices to Creditors, Equity Security Holders, United States, and United States Trustee), 2003 (Meeting of Creditors or Equity Security Holders), 3020 (Deposit; Confirmation of Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case), 3021 (Distribution under Plan), 4001 (Relief from Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Use of Cash Collateral; Obtaining Credit; Agreements), 4004 (Grant or Denial of Discharge), 4007 (Determination of Dischargeability of a Debt), 6004 (Use, Sale, or Lease of Property), 6006 (Assumption, Rejection and Assignment of Executory Contracts and Unexpired Leases), 7001 (Scope of Rules of Part VII), 7004 (Process; Service of Summons, Complaint), 7062 (Stay of Proceedings to Enforce a Judgment), 9006 (Time), and 9014 (Contested Matters). The proposed amendments were accompanied by Committee Notes explaining their purpose and intent. The Judicial Conference approved the amendments and authorized their transmittal to the Supreme Court for its consideration with the recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

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

March 16, 1999

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1. Authorized an additional full-time magistrate judge position at Ocala; and
2. Made no change in the number, locations, or arrangements of the other magistrate judge positions in the district.

## **Committee to Review Circuit Council Conduct and Disability Orders**

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### **Committee Activities**

The Committee to Review Circuit Council Conduct and Disability Orders reported that the 105<sup>th</sup> Congress adjourned without enactment of any proposal to amend the Judicial Conduct and Disability Act, 28 U.S.C. § 372(c). A measure passed in the House of Representatives in April 1998 would have amended the Act to provide that any complaint of judicial misconduct or disability filed under the Act that was not dismissed at the outset by the chief judge of the circuit in which the complained-against judge serves would be transferred to another circuit for further complaint proceedings. In April 1997, the Judicial Conference approved a resolution expressing opposition to a similar version of this legislation (JCUS-SEP 97, pp. 81-82). The Committee will continue to monitor legislative developments in this area in the 106<sup>th</sup> Congress.

## **Committee on Rules of Practice and Procedure**

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### **Federal Rules of Criminal Procedure**

Forfeiture Procedures. A proposed new Criminal Rule 32.2 would establish a comprehensive set of forfeiture procedures, consolidating several procedural rules (Rules 7, 31, 32, and 38) currently governing the forfeiture of assets in a criminal case. Under the proposed amendments, the nexus between the property to be forfeited and the offense committed by the defendant would be established during the first stage of the proceedings as part of the sentencing. In the second stage, procedures governing ancillary proceedings are prescribed to determine the claims of any third party asserting an interest in the property. After considering public comments, and making revisions in light of those comments, the Advisory Committee on Criminal Rules recommended, and the Standing Rules Committee concurred, that the Judicial Conference

**REPORT OF THE PROCEEDINGS  
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OF THE UNITED STATES**

**September 15, 1999**

The Judicial Conference of the United States convened in Washington, D.C., on September 15, 1999, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Juan R. Torruella  
Judge Joseph A. DiClerico, Jr.,  
District of New Hampshire

Second Circuit:

Chief Judge Ralph K. Winter, Jr.  
Chief Judge Charles P. Sifton,  
Eastern District of New York

Third Circuit:

Chief Judge Edward R. Becker  
Chief Judge Donald E. Ziegler,  
Western District of Pennsylvania

Fourth Circuit:

Chief Judge J. Harvie Wilkinson III  
Chief Judge Charles H. Haden II,  
Southern District of West Virginia

Fifth Circuit:

Chief Judge Carolyn Dineen King  
Judge Hayden W. Head, Jr.,  
Southern District of Texas

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## **ACCELERATED FUNDING**

On recommendation of the Committee, the Judicial Conference agreed to designate the new magistrate judge positions at Greenville, Spartanburg, or Anderson, South Carolina; El Paso and Del Rio, Texas; Little Rock, Arkansas; Davenport, Iowa; Sioux Falls, South Dakota; and Yuma, Arizona, for accelerated funding in fiscal year 2000.

## **COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS**

---

### **COMMITTEE ACTIVITIES**

The Committee reported on the status of litigation arising from an order issued by the Judicial Council of the Fifth Circuit and affirmed by the Committee, imposing sanctions against a district judge.

## **COMMITTEE ON RULES OF PRACTICE AND PROCEDURE**

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### **FEDERAL RULES OF CIVIL PROCEDURE**

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Civil Rules 4 (Summons), 5 (Serving and Filing Pleadings and Other Papers), 12 (Defenses and Objections—When and How Presented—By Pleading or Motion—Motion for Judgment on the Pleadings), 14 (Third-Party Practice), 26(d) (Timing and Sequence of Discovery), 26(f) (Conference of Parties; Planning for Discovery), and 37 (Failure to Make Disclosure or Cooperate in Discovery: Sanctions), along with amendments to the Supplemental Admiralty Rules B (In Personam Actions: Attachment and Garnishment), C (In Rem Actions: Special Provisions), and E (Actions in Rem and Quasi in Rem: General Provisions). The Judicial Conference approved these amendments and the accompanying Committee Notes for transmittal to the Supreme Court.

**REPORT OF THE PROCEEDINGS  
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OF THE UNITED STATES**

**March 14, 2000**

The Judicial Conference of the United States convened in Washington, D.C., on March 14, 2000, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Juan R. Torruella  
Judge Joseph A. DiClerico, Jr.,  
District of New Hampshire

Second Circuit:

Chief Judge Ralph K. Winter, Jr.  
Chief Judge Charles P. Sifton,  
Eastern District of New York

Third Circuit:

Chief Judge Edward R. Becker  
Chief Judge Donald E. Ziegler,  
Western District of Pennsylvania

Fourth Circuit:

Chief Judge J. Harvie Wilkinson III  
Chief Judge Charles H. Haden II,  
Southern District of West Virginia

Fifth Circuit:

Chief Judge Carolyn Dineen King  
Judge Hayden W. Head, Jr.,



*Judicial Conference of the United States*

1. Increased the salary of the part-time magistrate judge position at Saint George from Level 4 (\$32,749 per annum) to Level 2 (\$54,582 per annum); and
2. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

**ELEVENTH CIRCUIT**

Middle District of Alabama

Made no change in the number, location, or arrangements of the magistrate judge positions in the district.

**COMMITTEE TO REVIEW CIRCUIT  
COUNCIL CONDUCT AND DISABILITY ORDERS**

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**COMMITTEE ACTIVITIES**

The Committee to Review Circuit Council Conduct and Disability Orders reported on the status of litigation arising from an order issued by the Judicial Council of the Fifth Circuit and affirmed by the Committee, imposing sanctions against a district judge.

**COMMITTEE ON RULES OF PRACTICE AND PROCEDURE**

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**COMMITTEE ACTIVITIES**

The Committee on Rules of Practice and Procedure reported that it reviewed the status of a number of proposed rules changes and approved proposed amendments to the Appellate and Criminal Rules for publication and comment. The Committee also considered issues relating to rules governing attorney conduct and rules requiring non-governmental corporate parties to disclose financial interests, and embarked on a second comprehensive national local rules project.

**REPORT OF THE PROCEEDINGS  
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OF THE UNITED STATES**

**September 19, 2000**

The Judicial Conference of the United States convened in Washington, D.C., on September 19, 2000, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Juan R. Torruella  
Judge Joseph A. DiClerico, Jr.,  
District of New Hampshire

Second Circuit:

Chief Judge Ralph K. Winter, Jr.  
Judge Charles P. Sifton,  
Eastern District of New York

Third Circuit:

Chief Judge Edward R. Becker  
Chief Judge Donald E. Ziegler,  
Western District of Pennsylvania

Fourth Circuit:

Chief Judge J. Harvie Wilkinson III  
Chief Judge Charles H. Haden II,  
Southern District of West Virginia

effective functioning of magistrate judges. The Committee communicated these positions to the Committees on Security and Facilities and Court Administration and Case Management.

## **COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS**

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### **COMMITTEE ACTIVITIES**

The Committee to Review Circuit Council Conduct and Disability Orders reported that it has published, and will distribute to the courts, a pamphlet containing the current version of the Illustrative Rules Governing Complaints of Judicial Misconduct and Disability and related materials that may be useful to judges and court staff in implementing the complaint procedure established by 28 U.S.C. § 372(c).

## **COMMITTEE ON RULES OF PRACTICE AND PROCEDURE**

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### **FEDERAL RULES OF BANKRUPTCY PROCEDURE**

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed revisions to Bankruptcy Rules 1007 (Lists, Schedules, and Statements; Time Limits), 2002 (Notices to Creditors, Equity Security Holders, United States, and United States Trustee), 3016 (Filing of Plan and Disclosure Statement in Chapter 9 Municipality and Chapter 11 Reorganization Cases), 3017 (Court Consideration of Disclosure Statement in Chapter 9 Municipality and Chapter 11 Reorganization Cases), 3020 (Deposit; Confirmation of Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case), 9006 (Time), 9020 (Contempt Proceedings), and 9022 (Notice of Judgment or Order). The proposed amendments were accompanied by Committee Notes explaining their purpose and intent. The Conference approved the amendments and authorized their transmittal to the Supreme Court for its consideration with the recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law. In addition, the Committee submitted and the Conference approved proposed revisions to Official Form 7 (Statement of Financial Affairs).

**REPORT OF THE PROCEEDINGS  
OF THE JUDICIAL CONFERENCE  
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**March 14, 2001**

The Judicial Conference of the United States convened in Washington, D.C., on March 14, 2001, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Juan R. Torruella  
Chief Judge D. Brock Hornby,  
District of Maine

Second Circuit:

Chief Judge John M. Walker, Jr.  
Judge Charles P. Sifton,  
Eastern District of New York

Third Circuit:

Chief Judge Edward R. Becker  
Chief Judge Sue L. Robinson,  
District of Delaware

Fourth Circuit:

Chief Judge J. Harvie Wilkinson III  
Chief Judge Charles H. Haden II,  
Southern District of West Virginia

Fifth Circuit:

Chief Judge Carolyn Dineen King  
Judge Hayden W. Head, Jr.,  
Southern District of Texas

March 14, 2001

established by the Judicial Conference, as it has to date, and that it will continue to monitor the growth of the magistrate judges system carefully. The Committee forwarded background materials and a statement of the issues on this topic to the Executive Committee (*see supra*, “Miscellaneous Actions,” p. 5).

## **COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS**

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### **COMMITTEE ACTIVITIES**

The Committee to Review Circuit Council Conduct and Disability Orders reported that it has distributed to the courts a pamphlet containing the current version of the Illustrative Rules Governing Complaints of Judicial Misconduct and Disability and related materials that may be useful to judges and court staff in implementing the complaint procedure established by 28 U.S.C. § 372(c).

## **COMMITTEE ON RULES OF PRACTICE AND PROCEDURE**

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### **COMMITTEE ACTIVITIES**

The Committee on Rules of Practice and Procedure reported that it approved for immediate publication proposed amendments to Rule C of the Supplemental Rules for Certain Admiralty and Maritime Claims to conform with recent legislation. The Committee's Subcommittee on Technology is working with the Committee on Court Administration and Case Management studying privacy issues that arise from electronic case filing and developing guidance for courts to implement an electronic case filing system. The Advisory Committees on Appellate, Bankruptcy, Civil, and Criminal Rules are reviewing comments from the public submitted on amendments proposed to their respective sets of rules, including most significantly a proposed comprehensive style revision of the Federal Rules of Criminal Procedure.

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

**September/October 2001**

The Judicial Conference of the United States convened in Washington, D.C., on September 11, 2001, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Michael Boudin  
Chief Judge D. Brock Hornby,  
District of Maine

Second Circuit:

Chief Judge John M. Walker, Jr.  
Judge Charles P. Sifton,  
Eastern District of New York

Third Circuit

Chief Judge Edward R. Becker  
Chief Judge Sue L. Robinson,  
District of Delaware

Fourth Circuit

Chief Judge J. Harvie Wilkinson III  
Chief Judge Charles H. Haden II,  
Southern District of West Virginia

Fifth Circuit

Chief Judge Carolyn Dineen King  
Judge Hayden W. Head, Jr.,  
Southern District of Texas



The Committee determined not to seek a change to the regulations to address the issue, but instead to add language to the selection and appointment pamphlet that each panel member must disclose to all other panel members any personal or professional relationships with any applicants for the position. The Committee also declined to adopt a judge's suggestion that the regulations be modified to allow career law clerks with at least five years of clerkship experience to have that clerkship time considered in computing the five-year active practice of law requirement.

## **COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS**

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### **COMMITTEE ACTIVITIES**

The Committee to Review Circuit Council Conduct and Disability Orders reported that it met in August 2001 to consider a petition for review of an order entered by the Judicial Council of the District of Columbia Circuit in proceedings conducted under the Judicial Conduct and Disability Act, 28 U.S.C. § 372(c). The petition, filed in April 2001, was taken under advisement.

## **COMMITTEE ON RULES OF PRACTICE AND PROCEDURE**

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### **FEDERAL RULES OF APPELLATE PROCEDURE**

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Appellate Rules 1 (Scope of Rules; Title), 4 (Appeal as of Right -- When Taken), 5 (Appeal by Permission), 21 (Writs of Mandamus and Prohibition, and Other Extraordinary Writs), 24 (Proceeding in Forma Pauperis), 25 (Filing and Service), 26 (Computing and Extending Time), 26.1 (Corporate Disclosure Statement), 27 (Motions), 28 (Briefs), 31 (Serving and Filing Briefs), 32 (Form of Briefs, Appendices, and Other Papers), 36 (Entry of Judgment; Notice), 41 (Mandate: Contents; Issuance and Effective Date; Stay), 44 (Case Involving a Constitutional Question When the United States Is Not a Party) and 45 (Clerk's Duties), and new Form 6 (Certificate of Compliance With Rule 32(a)), together with Committee notes explaining their purpose and intent. The Judicial Conference approved the amendments and new form and authorized their transmittal to the

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

**March 13, 2002**

The Judicial Conference of the United States convened in Washington, D.C., on March 13, 2002, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Michael Boudin  
Chief Judge D. Brock Hornby,  
District of Maine

Second Circuit:

Chief Judge John M. Walker, Jr.  
Chief Judge Frederick J. Scullin, Jr.,  
Northern District of New York

Third Circuit:

Chief Judge Edward R. Becker  
Chief Judge Sue L. Robinson,  
District of Delaware

Fourth Circuit:

Chief Judge J. Harvie Wilkinson III  
Chief Judge Charles H. Haden II,  
Southern District of West Virginia

Fifth Circuit:

Chief Judge Carolyn Dineen King  
Judge Martin L. C. Feldman,  
Eastern District of Louisiana

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## **COMMITTEE ACTIVITIES**

The Committee reported that it discussed the allocation of pro se law clerk positions and voted unanimously to advise the Judicial Resources Committee that it favors changing the current allocation procedure to enable courts to offer at least a two-year commitment when hiring pro se law clerks (*see supra*, “Pro Se Law Clerks,” p. 22). Also, the Committee identified the following as the four most important long-range planning issues for the magistrate judges system: 1) appropriate limits on magistrate judge numbers and authority; 2) roles of magistrate judges in court governance; 3) appropriate chambers staffing for magistrate judges; and 4) contributions of magistrate judges to the quality of justice and the evaluation of full, fair, and effective utilization of magistrate judges.

## **COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS**

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### **COMMITTEE ACTIVITIES**

The Committee to Review Circuit Council Conduct and Disability Orders reported that it has undertaken a review and analysis of H.R. 3892 (107<sup>th</sup> Congress), legislation to amend the Judicial Conduct and Disability Act, 28 U.S.C. § 372(c), that was introduced on March 7, 2002.

## **COMMITTEE ON RULES OF PRACTICE AND PROCEDURE**

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### **FEDERAL RULES OF CRIMINAL PROCEDURE**

In September/October 2001, the Judicial Conference approved amendments to the Federal Rules of Criminal Procedure, including comprehensive style revisions, and forwarded them to the Supreme Court for approval (JCUS-SEP/OCT 01, p. 70). Subsequent to the Conference’s approval, but prior to Supreme Court action on the proposal, Congress passed the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT ACT), Public Law No. 107-56, which amended Criminal Rules 6 and 41.

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

**September 24, 2002**

The Judicial Conference of the United States convened in Washington, D.C., on September 24, 2002, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Michael Boudin  
Chief Judge D. Brock Hornby,  
District of Maine

Second Circuit:

Chief Judge John M. Walker, Jr.  
Chief Judge Frederick J. Scullin, Jr.,  
Northern District of New York

Third Circuit:

Chief Judge Edward R. Becker  
Chief Judge Sue L. Robinson,  
District of Delaware

Fourth Circuit:

Chief Judge J. Harvie Wilkinson III  
Chief Judge Charles H. Haden II,  
Southern District of West Virginia

Fifth Circuit:

Chief Judge Carolyn Dineen King  
Judge Martin L. C. Feldman,  
Eastern District of Louisiana

courts to continue efforts to achieve diversity in all aspects of the magistrate judge selection process. The Committee also discussed the issue of magistrate judge involvement in court governance. The Committee agreed to write to the chief judges of those circuits without a magistrate judge on the circuit council to encourage them to consider including magistrate judges on their respective circuit councils.

## **COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS**

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### **INFORMATION ON COMPLAINT PROCEDURES**

In recognition of the increasing importance of on-line availability of information for the transaction of legal business, and at the suggestion of two members of Congress, the Committee to Review Circuit Council Conduct and Disability Orders recommended that the Judicial Conference:

- a. Urge every federal court to include a prominent link on its website to its circuit's forms for filing complaints of judicial misconduct or disability and its circuit's rules governing the complaint procedure; and
- b. Encourage chief judges and judicial councils to submit non-routine public orders disposing of complaints of judicial misconduct or disability for publication by on-line and print services.

The Conference adopted the Committee's recommendations.

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### **COMMITTEE ACTIVITIES**

The Committee to Review Circuit Council Conduct and Disability Orders continued to monitor the status of H.R. 3892 (107<sup>th</sup> Congress), legislation to amend (in several minor respects) the Judicial Conduct and Disability Act, 28 U.S.C. § 372(c), that was introduced on March 7, 2002.

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

**March 18, 2003**

The Judicial Conference of the United States convened in Washington, D.C., on March 18, 2003, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Michael Boudin  
Judge D. Brock Hornby,  
District of Maine

Second Circuit:

Chief Judge John M. Walker, Jr.  
Chief Judge Frederick J. Scullin, Jr.,  
Northern District of New York

Third Circuit:

Chief Judge Edward R. Becker  
Chief Judge Sue L. Robinson,  
District of Delaware

Fourth Circuit:

Chief Judge William W. Wilkins  
Judge David C. Norton,  
District of South Carolina

Fifth Circuit:

Chief Judge Carolyn Dineen King  
Judge Martin L. C. Feldman,  
Eastern District of Louisiana

## **COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS**

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### **COMMITTEE ACTIVITIES**

The Committee to Review Circuit Council Conduct and Disability Orders reported that it is monitoring the status of *Spargo v. New York State Commission on Judicial Conduct*, 244 F.Supp. 2d 72 (N.D.N.Y. 2003). That ruling strikes down, as an impermissible prior restraint under the First Amendment, discipline of a New York state judge based on his alleged violation of provisions of the New York Code of Judicial Conduct restricting New York state judges' political activities (apart from their own campaigns for judicial office). The court also found that generally-worded provisions of the New York Code (such as the provision that a judge should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary) were too vague to support discipline for activity otherwise protected by the First Amendment.

## **COMMITTEE ON RULES OF PRACTICE AND PROCEDURE**

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### **COMMITTEE ACTIVITIES**

The Committee on Rules of Practice and Procedure approved for publication proposed amendments to Rule 4008 of the Federal Rules of Bankruptcy Procedure, which would establish a deadline for filing a reaffirmation agreement. The Committee also approved for publication proposed amendments to Rules B and C of the Supplemental Rules for Certain Admiralty and Maritime Claims. These proposed amendments are modest and technical in nature. The Advisory Committees on Bankruptcy, Criminal, and Evidence Rules are reviewing comments from the public submitted on amendments proposed in August 2002 to their respective sets of rules. The Committee also received the report of its Local Rules Project and referred it to the committees' reporters for their review.

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

**September 23, 2003**

The Judicial Conference of the United States convened in Washington, D.C., on September 23, 2003, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Michael Boudin  
Judge D. Brock Hornby,  
District of Maine

Second Circuit:

Chief Judge John M. Walker, Jr.  
Chief Judge Frederick J. Scullin, Jr.,  
Northern District of New York

Third Circuit:

Chief Judge Anthony J. Scirica  
Chief Judge Sue L. Robinson,  
District of Delaware

Fourth Circuit:

Chief Judge William W. Wilkins  
Judge David C. Norton,  
District of South Carolina

Fifth Circuit:

Chief Judge Carolyn Dineen King  
Judge Martin L. C. Feldman,  
Eastern District of Louisiana



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## **ACCELERATED FUNDING**

On recommendation of the Committee, the Judicial Conference agreed to designate for accelerated funding in fiscal year 2004 the new full-time magistrate judge positions at Brooklyn, New York; Central Islip, New York; Chattanooga, Tennessee; and Baltimore or Greenbelt, Maryland.

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## **COMMITTEE ACTIVITIES**

The Committee on the Administration of the Magistrate Judges System reported that it decided to defer, but not withdraw, its position that service as an arbitrator or mediator by retired magistrate judges and bankruptcy judges should not be considered the practice of law under the Regulations of the Director Implementing the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act. The Committee also discussed possible additional criteria for the creation of new full-time magistrate judge positions and decided that the current Judicial Conference criteria are comprehensive and that the Committee's detailed review of each request ensures that only justified requests are approved. Further, the Committee considered an item on law clerk assistance for Social Security appeals that was also considered by the Court Administration and Case Management and Judicial Resources Committees, and requested that detailed materials be prepared on this subject for these committees' December 2003 meetings.

## **COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS**

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### **COMMITTEE ACTIVITIES**

The Committee to Review Circuit Council Conduct and Disability Orders reported that, in the absence of any petition before it for review of judicial council action under the Judicial Conduct and Disability Act, it has continued to monitor congressional activity in the area of judicial conduct and disability.

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

**March 16, 2004**

The Judicial Conference of the United States convened in Washington, D.C., on March 16, 2004, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Michael Boudin  
Chief Judge Hector M. Laffitte,  
District of Puerto Rico

Second Circuit:

Chief Judge John M. Walker, Jr.  
Chief Judge Frederick J. Scullin, Jr.,  
Northern District of New York

Third Circuit:

Chief Judge Anthony J. Scirica  
Chief Judge Thomas I. Vanaskie,  
Middle District of Pennsylvania

Fourth Circuit:

Chief Judge William W. Wilkins  
Judge David C. Norton,  
District of South Carolina

Fifth Circuit:

Chief Judge Carolyn Dineen King  
Judge Martin L. C. Feldman,  
Eastern District of Louisiana

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## **COMMITTEE ACTIVITIES**

The Committee on the Administration of the Magistrate Judges System reported that it opposes elimination of the statutory authority of magistrate judges to vote on the selection of chief pretrial services officers, disagreeing with the Criminal Law Committee's recommendation to the Judicial Resources Committee that legislation be sought to amend 18 U.S.C. § 3152(c) to make the selection process for chief pretrial services officers the same as the selection process for chief probation officers under 18 U.S.C. § 3602(c). The Judicial Resources Committee will consider both committees' views at its June 2004 meeting. The Magistrate Judges Committee also agreed to include in all future survey reports that analyze requests for new magistrate judge positions information on the space implications of any new positions, and, if available, the related costs of such requests.

## **COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS**

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### **COMMITTEE ACTIVITIES**

The Committee to Review Circuit Council Conduct and Disability Orders reported that, in the absence of any petition before it for review of judicial council action under the Judicial Conduct and Disability Act, it has continued to monitor congressional activity in the area of judicial conduct and disability.

## **COMMITTEE ON RULES OF PRACTICE AND PROCEDURE**

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### **COMMITTEE ACTIVITIES**

The Committee on Rules of Practice and Procedure reported that it approved for publication proposed amendments to Rules 5005 (Filing and Transmittal of Papers) and 9036 (Notice by Electronic Transmission) of the Federal Rules of Bankruptcy Procedure. The Committee also approved for later publication proposed style amendments to Civil Rules 16-37 and 45. Publication of these rules as well as proposed style amendments to Civil Rules

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

**September 21, 2004**

The Judicial Conference of the United States convened in Washington, D.C., on September 21, 2004, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Michael Boudin  
Chief Judge Hector M. Laffitte,  
District of Puerto Rico

Second Circuit:

Chief Judge John M. Walker, Jr.  
Chief Judge Frederick J. Scullin, Jr.,  
Northern District of New York

Third Circuit:

Chief Judge Anthony J. Scirica  
Chief Judge Thomas I. Vanaskie,  
Middle District of Pennsylvania

Fourth Circuit:

Chief Judge William W. Wilkins  
Judge David C. Norton,  
District of South Carolina

Fifth Circuit:

Chief Judge Carolyn Dineen King  
Judge Martin L. C. Feldman,  
Eastern District of Louisiana

2. Discontinued the part-time magistrate judge positions at Monticello and Vernal upon the appointment of the new full-time magistrate judge at Salt Lake City; and
3. Made no other change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

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### **ACCELERATED FUNDING**

On recommendation of the Committee, the Judicial Conference agreed to designate the new full-time magistrate judge position at Las Cruces, New Mexico, for accelerated funding in fiscal year 2005.

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### **COMMITTEE ACTIVITIES**

The Committee on the Administration of the Magistrate Judges System reported that it voted unanimously to recommend to the Judicial Branch Committee that it recommend that the Judicial Conference support pending legislation to extend the “FEGLI fix” to magistrate judges and bankruptcy judges. The Magistrate Judges Committee also considered updated diversity statistics from *The Judiciary Fair Employment Practices Annual Report* published for the period October 1, 2002 to September 30, 2003, and noted that magistrate judges were a more diverse population in 2003 than in 2002.

## **COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS**

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### **COMMITTEE ACTIVITIES**

The Committee to Review Circuit Council Conduct and Disability Orders approved a study to examine the operation of the existing procedures under the Judicial Conduct and Disability Act (28 U.S.C. § 351 *et seq.*), proposed by the Judicial Conduct and Disability Act Study Committee appointed by Chief Justice Rehnquist and chaired by Justice Stephen Breyer. The Committee communicated its approval to Justice Breyer by letter dated August 16, 2004. Pursuant to Rule 16(h) of the Illustrative Rules Governing Complaints of Judicial Misconduct and Disability (which has been adopted by most of the circuits), the Committee’s approval permits the circuit councils to authorize access to confidential materials for purposes of this research project.

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

**March 15, 2005**

The Judicial Conference of the United States convened in Washington, D.C., on March 15, 2005, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Michael Boudin  
Judge Hector M. Laffitte,  
District of Puerto Rico

Second Circuit:

Chief Judge John M. Walker, Jr.  
Chief Judge Michael B. Mukasey,  
Southern District of New York

Third Circuit:

Chief Judge Anthony J. Scirica  
Chief Judge Thomas I. Vanaskie,  
Middle District of Pennsylvania

Fourth Circuit:

Chief Judge William W. Wilkins  
Judge David C. Norton,  
District of South Carolina

Fifth Circuit:

Chief Judge Carolyn Dineen King  
Chief Judge Glen H. Davidson,  
Northern District of Mississippi

[The Report of the Proceedings of the  
Judicial Conference of the United States  
of **March 15, 2005**,  
contained no entry from the  
Committee to Review Circuit Council Conduct and Disability Orders.  
<http://www.uscourts.gov/judconfindex.html>]

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

**September 20, 2005**

The Judicial Conference of the United States convened in Washington, D.C., on September 20, 2005, pursuant to the call of the late Chief Justice of the United States, William H. Rehnquist, issued under 28 U.S.C. § 331. Associate Justice John Paul Stevens presided in accordance with 28 U.S.C. § 3, and the following members of the Conference were present:

First Circuit:

Chief Judge Michael Boudin  
Judge Hector M. Laffitte,  
District of Puerto Rico

Second Circuit:

Chief Judge John M. Walker, Jr.  
Chief Judge Michael B. Mukasey,  
Southern District of New York

Third Circuit:

Chief Judge Anthony J. Scirica  
Chief Judge Thomas I. Vanaskie,  
Middle District of Pennsylvania

Fourth Circuit:

Chief Judge William W. Wilkins  
Judge David C. Norton,  
District of South Carolina

Fifth Circuit:

Chief Judge Carolyn Dineen King  
Chief Judge Glen H. Davidson,  
Northern District of Mississippi



- Approved a recommendation of the Committee on Financial Disclosure to authorize the chair of that committee to work on the Conference's behalf to obtain enactment of legislation extending, in the broadest possible terms, the Conference authority to redact financial disclosure reports for security purposes that is scheduled to expire on December 31, 2005, with the understanding that, if extension is otherwise unattainable, the Conference would not oppose legislation limiting that authority to protection against physical danger;
- On recommendation of the Committee on Criminal Law, approved a revised Statement of Reasons form to be attached to the Judgment in a Criminal Case;
- On recommendation of the Committee on the Budget, agreed to seek legislation to give the judiciary the flexibility in multi-year contracting and contract payments already permitted to executive branch and certain legislative branch agencies;
- Approved interim fiscal year 2006 financial plans for the Salaries and Expenses, Defender Services, Court Security, and Fees of Jurors and Commissioners accounts, and for the Electronic Public Access program, pending congressional enactment of the judiciary's appropriations for fiscal year 2006;
- Recommended to the Committee on Federal-State Jurisdiction a recommendation regarding the proposed REAL ID Act of 2005 (H.R. 418 and H.R. 1268, 109<sup>th</sup> Congress) for development of a more general position that would address any legislation intended to preclude judicial review of constitutional claims (see also *infra*, "Legislation to Eliminate Federal Court Jurisdiction," p. 23);
- Approved an amended jurisdictional statement for the Committee to Review Circuit Council Conduct and Disability Orders that reflects minor technical changes to the Judicial Conduct and Disability Act;
- Approved a recommendation of the Committee on Judicial Resources that the judiciary seek legislation to amend 5 U.S.C. § 6391(a)(2) to include judicial branch agencies among those agencies authorized to participate in emergency leave transfer programs; and
- Deferred for six months implementation of a policy adopted by the Conference in March 2005 relating to funding of circuit judicial conferences so that various practical issues could be studied.

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

**March 14, 2006**

The Judicial Conference of the United States convened in Washington, D.C., on March 14, 2006, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Michael Boudin  
Judge Hector M. Laffitte,  
District of Puerto Rico

Second Circuit:

Chief Judge John M. Walker, Jr.  
Chief Judge Michael B. Mukasey,  
Southern District of New York

Third Circuit:

Chief Judge Anthony J. Scirica  
Chief Judge Garrett E. Brown, Jr.,  
District of New Jersey

Fourth Circuit:

Chief Judge William W. Wilkins  
Judge David C. Norton,  
District of South Carolina

Fifth Circuit:

Chief Judge Edith Hollan Jones  
Chief Judge Glen H. Davidson,  
Northern District of Mississippi

California from Level 5 (\$25,512 per annum) to Level 2 (\$63,786 per annum), and made no changes in the number, locations, salaries, or arrangements of the full-time and part-time magistrate judge positions in the following districts: the District of New Jersey, the Middle District of North Carolina, the Southern District of West Virginia, the Southern District of Ohio, the Western District of Tennessee, and the Western District of Missouri. The Judicial Conference also made no change in the location, salary, or arrangements of the part-time magistrate judge position at Salisbury in the District of Maryland.

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### **COMMITTEE ACTIVITIES**

The Committee on the Administration of the Magistrate Judges System reported that as part of its cost-containment efforts it would continue its practice of not considering any requests for additional full-time magistrate judge positions at its December meetings. Pursuant to the September 2004 Judicial Conference policy regarding the review of magistrate judge position vacancies (JCUS-SEP 04, p. 26), the Committee considered requests from three courts to fill vacancies in magistrate judge positions and determined that the three vacancies should be filled. Currently, three magistrate judge positions are being held vacant. As part of its ongoing oversight and review of the magistrate judge recall program, the Committee reviewed a cost-benefit study of the program prepared by staff. It determined that the program to recall retired magistrate judges to active service continues to be effective in providing needed assistance to courts at a lower cost than authorizing additional permanent positions and should be continued.

## **COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS**

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### **COMMITTEE ACTIVITIES**

The Committee to Review Circuit Council Conduct and Disability Orders reported that it continues to carry out its responsibilities with regard to considering petitions for review of final actions by circuit judicial councils on complaints of misconduct or disability of federal judges.

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**UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT  
THURGOOD MARSHALL UNITED STATES COURTHOUSE  
40 CENTRE STREET  
New York, New York 10007  
212-857-8500**

**JOHN M. WALKER, JR.  
CHIEF JUDGE**

November 17, 2005

**PRESS RELEASE**

Chief Judge John M. Walker of the Court of Appeals for the Second Circuit, jointly with Bettina B. Plevan, President of the Association of the Bar of the City of New York, and Joan Wexler, President of the Federal Bar Council, announced the continuing and new members of the Joint Committee on Judicial Conduct, originally created in 2001.

The Committee's mission is to serve as an intermediary between members of the bar and the federal courts, in receiving confidential written complaints from members of the Bar regarding conduct (as opposed to the merits of decisions) of judges of the Second Circuit and the Eastern and Southern Districts of New York. The committee was created, with the concurrence of the Chief Judges of those courts, to address such complaints, in appropriate circumstances, in a "constructive, confidential and effective manner" with the approval and *ex officio* participation of the presidents of both bar associations.

The Committee's procedure involves reviewing the complaints and then taking such action as it deems appropriate, but the Committee's rules mandate that no communication may be made with any judge without the prior approval of the presidents of both bar associations. Further, the complainant's name, which must be contained on any complaint, is kept confidential and will not, without the complainant's consent, be disclosed to anyone other than the members of the Committee and the presidents of both bar associations. The rules also mandate that the Committee members must personally perform the Committee's work and may not delegate it to others.

The Committee's focus is on complaints that "indicate a possible pattern of behavior on the part of the judge" – for example, improper courtroom behavior, including improper treatment of and consideration to attorneys, witnesses, and others; improper physical conduct; persistent tardiness; or persistent failure to dispose of business promptly. In addition, the Committee may, in its discretion, also consider complaints dealing with a "single occurrence."

Chief Judge Walker stated “I welcome both the new members of this Committee and the Committee’s continued presence which can only help assist these courts in continuing their practice of judging in accordance with the highest standards.”

The Committee is comprised of six members who are appointed by the presidents of the two Bar Associations to serve staggered terms. The current members of the Committee are Barry M. Kamins, Loretta E. Lynch, Hon. E. Leo Milonas, Mary Kay Vyskocil, Gerald Walpin, and William E. Willis.

Persons wishing to submit a complaint to the Committee should send them in writing and signed, to the Committee on Judicial Conduct, c/o the President of the Association of the Bar of the City of New York, 42 West 44<sup>th</sup> Street, New York, N.Y. 10036-6689.

Federal judges have no grant of immunity from the Constitution

In a system of “equal justice under law” they must be liable to prosecution as defendants in a class action like anybody else

by

**Dr. Richard Cordero, Esq.**

<http://Judicial-Discipline-Reform.org>

The judicial power of the United States is established by Article III of the U.S. Constitution. That article does not immunize judges for their judicial actions from prosecution under the laws of the United States, or those of any state for that matter. The sole protection that it affords judges is found in section 1, which provides that they “during their Continuance in Office shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished”. (Authorities Cited:U.S. Constitution; all references are found at [Judicial-Discipline-Reform.org](http://Judicial-Discipline-Reform.org)) Neither the Legislative nor the Executive Branches can retaliate against judges by diminishing their salary; otherwise, Article III leaves judges as exposed to other sanctions for their official and personal acts as any government officer or private person is.

Indeed, that same Article III, section 1 specifically states that “The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour”. To be meaningful, this necessarily implies that they ‘can no longer hold their Offices’ if they engage in ‘bad Behaviour’. Given the fundamental principle of our democracy that government is by the rule of law, judges engage in ‘bad Behaviour’ when they, as members of the Third Branch of Government, violate such law.

As a matter of fact, Article II, section 4, of the Constitution sets forth types of ‘Behaviour’ that when engaged in by judges results in the obligation, not merely the possibility, that they “shall be removed from Office”. They include not only “Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes”, but also “Misdemeanors”. This means that the offense need not threaten national security, involve corruption, or manifest itself outrageous evil or harmful to warrant removal from office, but rather it may entail such a relatively small deviation from legally accepted conduct as to be classified as a misdemeanor and still give cause for removal.

Removal from office is not the only consequence that judges risk for ‘Bad Behaviour’. This follows also from Article II, section 4, for it provides the same consequence for “The President, the Vice President, and all civil Officers of the United States”. Never has it been affirmed even by a reasonable judge, let alone by Congress or any top member of the Executive Branch, that citizens that are elected or nominated and confirmed, not to mention merely hired, as “civil Officers of the United States”, receive a grant of immunity providing that if they, whether in their official or personal capacity, commit any act of “Treason, Bribery, or other high Crimes and Misdemeanors”, no sanction shall be visited upon them graver than removal from office and no compensation shall be demanded of them for the benefit of those that they harmed. Hence, judges, like “all civil Officers”, may not do whatever they want, however unlawfully injurious to the life, liberty, and property of others, and if they are caught, they simply move on to a different job.

Far from it, when judges engage in ‘bad Behaviour’, they expose themselves to any other punishment that the law imposes on any other lawbreaking person. This follows from the other fundamental principle that is the corollary to the one mentioned above, namely, nobody is above that law. This principle is expressed on the frieze below the pediment of the Supreme Court building by the inscription “Equal Justice Under Law”. Consequently, judges that violate the law are liable to third parties as much as all the other “civil Officers” are. Stamping the label ‘judicial



act' on any of their unlawful actions neither limits their loss to that of their offices nor deprives any third party of any compensation for the harm inflicted upon them by such actions.

Since neither the Constitution nor Congress endows a federal judgeship with a blanket exemption from liability for lawbreaking, judges cannot fashion one from the bench for the benefit of their peers. That would in itself constitute a violation of the law, which provides at 28 U.S.C. §453 that "before performing the duties of office, [they shall] solemnly swear (or affirm) that [they] will **administer justice without respect to persons**, and **do equal right** to the poor and to the rich, and that [they] will faithfully and **impartially** discharge and perform all the duties incumbent upon [them] under the Constitution and the laws of the United States". (emphasis added)

Therefore, when judges are sued in court, whether by the district attorney or private persons, the sitting judges cannot simply dismiss their complaints in order to insulate their peers from any further legal action, just as during the proceedings before them they must not show bias in their favor by issuing rulings or decisions that are either unwarranted under the law or even motivated by the desire of securing a positive outcome for the defendant judges. By doing so, they would both breach their oath to administer equal justice "without respect to persons", abuse the power of their offices, and deny the plaintiffs due process under law. Nor are judges entitled to hold the prejudice that members of their judicial class 'can do no wrong' and thus, cannot be held accountable to anybody for what their actions, for that assumption contradicts the explicit statement of Article II, section 4, of the Constitution that judges, just like all other "civil Officers", are liable to "Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors".

"Crimes and Misdemeanors" are offenses against the people that the government prosecutes on their behalf. Yet, an indictment by the government does not prevent those individual members of the people proximately injured by the criminally accused from becoming plaintiffs in civil actions and bringing them directly against the accused named as defendants. What is more, neither filing their complaints nor litigating their causes of action depends on the government having secured a conviction. Indeed, the government's failure to establish the guilt of the accused upon application of the highest standard of legal responsibility of "guilty beyond a reasonable doubt", has no bearing on the plaintiffs' ability to obtain a judgment against the defendants upon application of the lower standard of 'clear and convincing proof', let alone the lowest standard applied in most civil actions, namely, 'by a preponderance of the evidence'.

When those individual members of the people "(1)...are so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to [them and], (3) the claims or defenses of the representative parties are typical of [their] claims or defenses" (FRCP 23(a)), they may be certified as a class to maintain a class action. Rule 23 and the Class Action Fairness Act of 2005 (Pub.L. 109-2, Feb. 18, 2005, 119 Stat. 4; cf. 28 U.S.C. §1711 et seq.), do not prevent a group of people from forming a class to take legal action against a group of judges. Their provisions can neither constitutionally exclude nor as a matter of fact exclude judges from becoming a defendant class while exposing any other group of people to become such a class, for that would constitute unequal treatment under the law. The Racketeer Influenced and Corrupt Organizations Act (RICO, 18 U.S.C. §1961 et seq.), does not exclude judges from its scope either.

Whether a judge or panel of judges will apply the law "without respect to persons" or disregard it in order to take care of their own and themselves remains to be seen. One can only hope that, as in other groups of people, there are judges who value their personal integrity and that of their office enough to do, not what is expedient and predetermined to immunize their peers, but rather what is right and appears to be right, namely, to administer "equal justice under law".

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