

## Overview of the General Provisions of the Proposed Judicial Discipline and Auditing Commission Act

(first draft as of November 2006)

The proposed Judicial Discipline Commission Act would set up an independent judicial discipline commission constituted by persons unrelated to the judiciary who have been nominated by persons equally unrelated to it, and confirmed by lawmakers alone.

The Commission would be mandated to function with complete independence from the judiciary in the discharge of its duty to receive and act on judicial misconduct complaints. To that end, it would be required to conduct investigations and be endowed with subpoena power to order a judge –a term inclusive of any justice of the Supreme Court- or any other person to appear and be deposed at public hearings; produce documents, and comply with other forms of discovery. It would be enabled to impose any warranted administrative sanctions, including the suspension without pay for up to a year from conducting any judicial or administrative business of the courts; and/or recommend referral to the U.S. attorneys for a determination of, and prosecution for, any violation of a criminal law of the United States; and/or recommend referral of a judge to Congress for impeachment for failure to maintain good behavior.

Grounds for referral for impeachment by the Commission and for impeachment in Congress would be any violation of ethical rules; bias; abuse of power; failure to dispatch the business of the courts promptly or with due regard for the law, the rules, or the facts; display of temperament incompatible with the equanimity required for judicial decision making; conflict of interests; and use of judicial office for the pursuit of a personal or political agenda.

To the conduct the impeachment process, Congress would have power to issue subpoena to appear, testify, produce documents, and comply with other forms of discovery; hold a person in contempt; and make a finding of perjury; to sanction knowing and intentional failure to comply with a subpoena; conduct in contempt of Congress; and perjury with a fine of up to \$1 million and to order restitution of three times any amount of money or the fair market value of any benefit unduly acquired or received by the judge or one time any such amount or value attempted to be acquired or received.

Congress would hold all impeachment proceedings open to the public. Upon Congress finding by a majority of its quorum that the judge failed to maintain good behavior, it would remove such judge from office for life and, as appropriate, declare the judge's ineligibility to hold any other public office for a period of years or for life; and/or refer the case to the U.S. attorney for prosecution under any criminal law that may have been violated.

The Act would provide for judges to be liable for compensatory and punitive damages to those that they have injured through their bias, knowing and intentional disregard of the law, rules, and the facts in judicial decision making; failure to disqualify himself from a case as required by law; and coordinated wrongdoing in violation of ethical rules or any criminal law.

The Commission would also audit the use by the judiciary of public funds, for which it would have subpoena power; make recommendations for improvements in their use; remove any judge or other person from a position of financial responsibility; and refer for prosecution to the U.S. attorney any judge or other person believed to have violated any criminal law, whether financial or otherwise.