

# Judges may be open to more scrutiny

On March 11 the Judicial Conference of the United States adopted a new set of rules for processing misconduct complaints against federal judges. The Judicial Conference, headed by Chief Justice John Roberts, is the policy-making arm of the federal judiciary, and its rules governing federal judicial discipline have attracted recent criticism by watchdog groups alleging weakness.

Presently, the doctrine of judicial immunity, which gives broad protection to judges for their judicial activities, is supported by two pillars that judges have erected for themselves. The first derives from the 1978 Supreme Court ruling in *Stump v. Sparkman*, which insured that judges could not be sued for errors committed while on the bench.

The second pillar is the set of rules implemented by the Judicial Conference pursuant to the Judicial Conduct and Disability Act of 1980, which regulates federal judicial discipline and complaints filed by litigants against federal judges.

The public has been vocal in its dissatisfaction with the way judges have dealt with complaints against their colleagues, and in 2004, in response to similar concerns raised by Congress, Chief Justice William

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OPINION



Rehnquist appointed a committee of judges, led by Justice Stephen Breyer, to gather data on how complaints against judges are handled and to offer recommendations.

The Breyer Committee Report, which was released September 2006, concluded that very little needed to be changed in the way that federal judges police themselves, and in July 2007, Breyer's Committee on Judicial Conduct and Disability released its "Draft Rules Governing Judicial Conduct and Disability Proceedings" for public comment. It has become the subject of some controversy.

According to figures published by the Administrative Office of the U.S. Courts, of the 7,462 judicial misconduct complaints filed from 1997 through 2006, nearly 99.9 percent were dismissed with little or no explanation, regardless of merit. Confidentiality rules have prevented

the public and members of Congress from inspecting these complaints.

The Draft Rules, adopted at the March 11 meeting, promises to make meaningless any complaints alleging that important evidence was misrepresented or ignored, or that a judicial outcome was invalid because of bias or conflict of interest. Such allegations would automatically be considered "merits-related" and dismissed without further investigation.

The Center for Judicial Accountability, a nonprofit organization that advocates for effective and meaningful judicial selection and discipline, attempted to dissuade the Judicial Conference from adopting the rules that would provide for automatic dismissals, claiming that existing law does not require automatic exclusion of "merits-related" complaints.

However, CJA's recommendations, were ineffective, and the new rules are scheduled to take effect 30 days from March 11. It will be interesting to see whether the new rules will trigger a separation of powers conflict between the judicial and legislative branches of government and lead to congressional hearings.

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