

## **Binding National Rules Adopted for Handling Judicial Misconduct Complaints**

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Tony Mauro, Legal Times

The Judicial Conference on Tuesday adopted the [first-ever binding nationwide procedures for handling complaints of judicial misconduct](#).

The conference, the policy-making body of the federal judiciary, adopted the new rules unanimously to end gaps and inconsistencies between circuits in how complaints of judicial wrongdoing are handled.

"There were no standards," said Judge Ralph Winter of the 2nd U.S. Circuit Court of Appeals, chairman of the committee that devised the rules and will oversee how they are implemented.

At a post-meeting press conference, Winter said the new rules provide a "step-by-step analysis" of how and when complaints of misconduct should be investigated, resolved and made public.

"They tell chief judges when they can initiate a proceeding, and when they must," said Winter, adding that "there has been a great deal of uncertainty" on this point. The rules call for creation of circuit committees of three or more judges to investigate significant complaints in which there is "a genuine conflict" over what happened. Complaints will be made public only when a judge is sanctioned.

Winter also said a mechanism is provided for the first time to enable an investigation of a complaint against a judge in one federal circuit to be transferred to another circuit when the judge's home circuit perceives a conflict of interest. "I expect there will be more transfers" as a result, Winter said.

The conference's action Tuesday marks a major milestone in the judiciary's efforts to improve its self-regulation, first launched in 2004 by late Chief Justice William Rehnquist.

At the time, members of Congress were pressuring the judiciary to increase consistency and transparency, some even threatening to pass a law creating an inspector general who would investigate complaints against judges. Rehnquist named a committee headed by Supreme Court Justice Stephen Breyer to investigate the process as well as specific cases of misconduct. In September 2006, Breyer's committee reported that some complaints were not investigated fully enough and that the process nationwide was significantly flawed and haphazard.

The conference on Tuesday enacted all of the Breyer committee's suggested reforms and then some, Winter said. "We went beyond the Breyer committee," Winter said.

Between 600 and 800 complaints are filed against judges annually, Winter said, and only about one in 100 alleges something that "requires further inquiry."

Winter added, "Judges always leave half their customers unsatisfied," prompting some on the losing side to allege judicial misconduct. He said the judicial conference was insistent that the actual merits of a decision -- whether it was right or wrong -- could never form the basis of a misconduct investigation against the judge who made the decision. But he said an improper motive that led to the decision could be investigated.

Thomas Hogan, chief judge of the U.S. District Court for the District of Columbia and chairman of the Judicial Conference's executive committee, said he believes the conference has been responsive to Congress in enacting the new rules and making the disciplinary process more accessible on court Web sites and elsewhere.

"The whole process has been good for the judiciary," Hogan said at the press conference in the press room of the Supreme Court. He acknowledged that "judges hate change more than lawyers," but said the conference recognized the need for better disciplinary procedures. The next step will be to update the judiciary's code of judicial conduct, Hogan said.

As usual, the conference, which is chaired by Chief Justice John Roberts Jr. and includes representatives from federal courts and circuits across the country, met behind closed doors Tuesday.

Asked if anything that occurred at the closed meeting could not have taken place in public, Hogan said, "No, I don't think so," though he added that if the meeting were public, the candor of participants would be "hampered greatly."