

Judge on the hot seat

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Public should learn if Nottingham is punished

Editorial

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It's too early to say whether U.S. District Judge Edward Nottingham's, er, indiscretions might eventually lead to his impeachment.

We're not sure they should, but we understand why Colorado Sen. Ken Salazar, the state's former attorney general, is concerned enough to publicly express his disapproval of the judge's conduct.

Among the unsavory information that's recently emerged, 9News reported in March that the judge's name and cell-phone number were on a client list seized during the raid of a Denver prostitution ring. And last year we learned that Nottingham had spent \$3,000 over two days at the Diamond Cabaret strip club and claimed to be too drunk to recall what happened while he was there.

Soon after the prostitution allegations aired, the *Rocky's* Sara Burnett reported that the 10th U.S. Circuit Court of Appeals is moving forward with a formal complaint that Nottingham "has brought disrespect to the judiciary."

Nottingham may not face impeachment, of course. But some formal sanction could be imminent. The vast majority of the hundreds of complaints filed against federal judges each year are dismissed after an initial review - and this one wasn't - suggesting Nottingham may be in trouble.

That said, whatever punishment he might receive could remain a secret. If Nottingham gets what amounts to a slap on the wrist, the 10th Circuit is not obligated to disclose that penalty to the public.

This shield of confidentiality reaches far beyond Nottingham's case, and it's a disgrace.

Congress has allowed judges to deal with their own, as it were, because of a legitimate desire to maintain an independent judiciary. As a consequence, however, the judicial branch has been able to throw a blanket of secrecy over many allegations of judicial misconduct.

New guidelines recently approved by the federal judiciary that will take effect this month will afford better disclosure of the worst offenses. But Congress needs to demand even more openness.

The public deserves to know what people are complaining about, and how those challenges are resolved.

The new guidelines require any complaint against a judge that results in a serious penalty - such as a reduction in a judge's caseload or a request that he retire - be made public, most often on that federal circuit's Web site. The only penalties that now must be publicized are referrals for impeachment.

Judicial complaints that are dismissed or that lead to lesser penalties will be publicized, too - with a catch. Public reports of dismissals will not identify the judge or the party filing the complaint. And when judges are privately reprimanded - which could be Nottingham's fate - that information will also remain confidential unless the circuit chooses to publicize it.

Consider how much information would still be swept under the rug even with these "open" rules. Out of nearly 3,700 complaints filed against federal judges from 2001-2005, sanctions were imposed on only four judges. The new rules would keep information about the dismissed complaints confidential.

Too much secrecy remains. Even if 95 percent of the complaints are dismissed as frivolous, the public deserves to know which judges are drawing attention, who's complaining, and why the complaints deserved no further action.

Such disclosure would not threaten judicial independence. But it would give the public more confidence that judges are using their extraordinary power over the life, liberty and property of individual Americans wisely - and that the judiciary can effectively police itself.