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Interview with Ralph K. Winter: Role changes for Judicial Conduct

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Judge Ralph K. Winter was appointed to the U.S. Court of Appeals for the Second Circuit in 1981 and served as chief judge from 1997 to 2000. He also served as a member of the Executive Committee of the Judicial Conference, and as the committee's chairman from 1999 until he assumed senior status in September 2000. Judge Winter has led the Judicial Conference Committee on Judicial Conduct and Disability since October 2004.

Q. Has the function of your committee changed in light of the report of the Judicial Conduct and Disability Act Study Committee, the so-called Breyer Committee Report?

A. Yes. Before the Breyer Committee issued its report, the function of the Committee on Judicial Conduct and Disability was in the main limited to deciding petitions for review of judicial council actions taken under the Judicial Conduct and Disability Act of 1980. There was no systematic effort by the Conduct Committee to collect information regarding implementation of the Act by chief circuit judges and judicial councils or to guide them in interpreting the Act. Indeed, the Breyer Committee Report accurately referred to the Conduct Committee as the review committee.

The Breyer Committee recommended that the Conduct Committee become more active in a number of areas, including the provision of advice to chief circuit judges and judicial councils with regard to issues arising under the Act, periodic monitoring of the administration of the Act, and the creation and maintenance of resources such as educational programs and a compendium of precedents to aid those implementing the Act.

As a result, the Conduct Committee has begun to meet more often and to address numerous policy issues arising from both the Act and the Breyer Committee's report and recommendations.

Q. The Judicial Conference asked your committee to consider and make recommendations as to implementation of the reforms suggested by the Breyer Committee. How has your committee proceeded with this directive?

A. The Conduct Committee has taken steps to implement various recommendations in the areas mentioned in the answer to your first question. In particular, the Conduct Committee concluded that achievement of the Breyer Committee's reform goals required the drafting and promulgation by the Judicial Conference of rules governing proceedings undertaken pursuant to the Act.

The Breyer Committee noted complaints from chief circuit judges that in many critical areas the Act provided little guidance as to the disposition of complaints filed under the Act and as to when chief circuit judges were themselves required to initiate complaints. Indeed, the Breyer Committee itself found it necessary to formulate substantive guidelines, found in Appendix E to its report, in order to assess the Act's implementation in the quarter century since its passage.

Also, issues had arisen as to the scope of the Judicial Conference's - and the Conduct Committee's - jurisdiction over matters in which chief circuit judges had not appointed special investigating committees and even over the authority of the Judicial Conference to review decisions by the review committee.

Finally, monitoring administration of the Act was difficult because of the lack of information regarding the filing of complaints and the disposition of them. The existence of these issues led the committee to conclude, as I noted above, that a need existed for a set of mandatory and clarifying rules establishing jurisdiction over and venue for complaints and petitions for review, substantive standards to guide decisions on the merits of complaints, standards for chief circuit judges to initiate complaints, responsibility for credibility decisions, information sharing provisions, and procedural rules for proceedings under the Act.

Q. Is there a timeline for implementation of the Breyer Committee's recommendations?

A. Most of the recommendations of the Breyer Committee have either been implemented, are in the final stages of implementation, or will be implemented upon promulgation of the rules previously described. A draft of those rules is presently the subject of a 90- day public comment period, with a public hearing to be held in New York City on Sept. 27. After the public comment period, another draft of the rules will be sent to the Judicial Conference with a recommendation for promulgation at its March 2008 meeting. Informational and educational programs for judges and staff regarding the rules will be established after their promulgation.

Q. Many people familiar with the Act's complaint procedure believe that it has led to a vast number of complaints by litigants - mostly pro se litigants - who are simply dissatisfied with the merits of decisions rendered against them. Others, however, believe that instances of misconduct not involving the merits of decisions or disability have gone unremedied. Do these views reflect a fundamentally flawed system?

A. No. It is simply a matter of fact that hundreds of misconduct or disability complaints are filed every year that do not on their face allege cognizable misconduct or the existence of a disability. Of these, many assert as their sole complaint error in a judicial decision, a matter expressly excluded from the Act's purview. Federal judges render thousands of decisions every year in which roughly 50 percent of litigants go away deeply disappointed.

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