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PROFESSIONAL CONDUCT

## Who Judges the Judges?

*Federal and State Procedures Offer Guidance*

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*Special to the Legal*

Two Luzerne County Common Pleas Court judges pleaded guilty to federal offenses. A U.S. district court judge in Texas pleaded guilty to obstruction of justice. A judge in West Virginia failed to recuse himself after accepting \$3 million in campaign contributions from a litigant. These recent examples of judges in the news started us thinking: Who judges the judges?

In federal courts, if a complaint alleges conduct that rises to the level of an impeachable offense, the Judicial Conference refers the matter to the House of Representatives. Judges may be removed by impeachment by the House and, upon conviction by the Senate, under Article II of the Constitution, for “treason, bribery, or other high crimes and misdemeanors.”

Only 13 federal judges have been impeached in the history of the United States, and, of those, only seven were convicted. The first federal judge to be convicted was U.S. District Judge John Pickering in 1804. He was convicted of misconduct in a trial and intoxication. Since then, judges have been removed for accepting free trips to Europe, practicing law while serving as a federal judge,



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falsifying tax returns, obtaining bribes and favoritism in the appointment of bankruptcy receivers. The latest federal judge to be impeached was U.S. District Court Judge Walter L. Nixon who was charged with lying to a federal grand jury. He was convicted and removed

from office Nov. 3, 1989. However, while this article was being written, a House committee was voting to approve four articles of impeachment for U.S. District Court Judge Samuel Kent of Texas. Kent was sentenced last month to 33 months in prison for obstructing a federal investigation into his sexual assaults of courthouse employees.

The Canons of the Code of Judicial Conduct, established in 1972 by the Judicial Conference Committee on Codes of Conduct, set standards to guide judges in maintaining the integrity and independence of the judiciary. The code of conduct provides guidance on issues such as judicial integrity, impartiality, permissible extra-judicial activities and the avoidance of impropriety, or even the appearance of impropriety. A revision of the canons will be effective July 1, 2009.

For violations of the code of conduct that do not rise to the level of impeachable offenses, discipline may be imposed by the Judicial Conference or by the Judicial Councils in the respective circuits. In March 2008, the conference adopted Rules for Judicial Conduct and Judicial Disability Proceedings. Possible discipline for judicial misconduct on the federal level can include private or public reprimand, suspension of case assignments for a period of time, requesting the judge

to retire voluntarily with the provision (if necessary) that ordinary length-of-service requirements will be waived and, in the case of a circuit or district judge who is eligible to retire but does not do so, certifying the disability of the judge under 28 U.S.C. § 372(b) so that an additional judge may be appointed.

As to state court judges, every state's constitution provides for procedures to impeach, discipline and remove state judges. Each state and the District of Columbia have formed judicial disciplinary commissions. These commissions are often made up of judges, lawyers and private citizens. The judicial disciplinary commission is responsible for the investigation, prosecution and adjudication of cases of judicial misconduct. In Pennsylvania, we have the Court of Judicial Discipline. The court is composed of eight members, four of whom are appointed by the Supreme Court and four who are appointed by the governor. Each appointing authority may not appoint any more than two members of the same political party. According to the Web site for the Court of Judicial Discipline of the commonwealth of Pennsylvania, the appointments are as follows:

- Supreme Court appointees: two judges of the Common Pleas, Superior or Commonwealth courts; one magisterial district judge; and one non-lawyer elector.
- Gubernatorial appointees: one judge of the Common Pleas, Superior or Commonwealth courts; one non-lawyer elector; and two non-judge members of the bar.

A case in the Court of Judicial Discipline begins when the Judicial Conduct Board files a complaint

formally charging a judicial officer with misconduct. Charges may be based upon the specific language of Article V, §18(d) (1), or upon conduct prohibited under Article V, §17. Under Article V, §18(b) (5) of the Pennsylvania Constitution,

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“upon the filing of charges with the Court by the Judicial Conduct Board, the Court shall promptly schedule a hearing to determine whether a sanction should be imposed against the judicial officer.” The charged judicial officer is presumed innocent and the Judicial Conduct Board has the burden of proving the charges by clear and convincing evidence. Article V, §18(d)(1) provides that “a judicial officer may be suspended, removed from office or otherwise disciplined for conviction of a felony; violation of Section 17 of Article V; misconduct in office; neglect or failure to perform the duties of office or conduct which prejudices the proper administration of justice or brings the judicial office into disrepute, whether or not the conduct occurred while acting in a judicial capacity or is prohibited by law; or conduct in violation of a canon or rule

prescribed by the Supreme Court.” After findings of fact and conclusions of law become final, the court holds a hearing in open court on the issue of sanctions. Pursuant to Rule 504(b), following the sanction hearing, the court then enters a decision in writing containing the final findings of fact and conclusions of law and the sanction is then imposed on the judge.

State judges follow the American Bar Association's Model Code of Judicial Conduct. Most states have adopted the ABA's model, with a few states adopting their own set of rules for judges. The ABA's “Canons” govern integrity and independence of the judiciary, impropriety and the appearance of impropriety in all of the judge's activities, judicial office impartially, extra-judicial activities, and political involvement of judges.

Despite the recent rash of publicity about judicial misconduct, our years of litigation experience lead us to believe that these sorts of scandals are the exception, not the rule. The judges we appear before week in and week out are diligent, impartial and learned. They try to reach a result that's correct under the law and fair to the litigants. They toil in complicated and difficult cases with limited courtroom resources. They trust us to present our cases honestly and persuasively, and we trust them to render their decisions carefully and fairly. When everything works well and the case is over, no matter what the result, we leave the courtroom feeling that we have done our best for our client, and that the judicial system has done its best also.

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*Litigation associate Adam Taliaferro assisted with the research and drafting of this article. •*