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# Judicial Conference Adopts New Ethics Code, Seeks New Judgeships

By Tony Mauro | All Articles

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The Judicial Conference on Tuesday adopted revisions to the federal judiciary's code of conduct aimed at broadening and clarifying how judges should handle conflicts of interest and the "appearance of impropriety." The conference also agreed to ask Congress to create 63 new judgeships -- 12 appeals court judges and 51 at the district court level. As usual at the conference, which is the policy-making body for the federal judiciary, met behind closed doors at the Supreme Court, with Chief Justice John Roberts Jr. presiding.

The revised code, which takes effect July 1, defines for the first time the term "appearance of impropriety," which judges are commanded to avoid as much as actual impropriety. The definition: "An appearance of impropriety occurs when reasonable minds, with knowledge of all the relevant circumstances disclosed by a reasonable inquiry, would conclude that the judge's honesty, integrity, impartiality, temperament, or fitness to serve as a judge is impaired."

The conference decided to "clean things up" in the wording of the code, and to provide judges with clearer guidance, said Anthony Scirica, chief judge of the 3rd U.S. Circuit Court of Appeals, and chair of the conference's executive committee. Scirica briefed reporters afterward, stating that the new code also makes it clearer that the code covers "not just professional but personal conduct." He said the revisions also specify that judges may not tell court personnel to do something that would violate the code if judges did it themselves. Another change: judges are now specifically permitted to encourage lawyers to do pro bono work.

Scirica said the changes Tuesday represent the conference's final action to implement the recommendations of the so-called Breyer Committee, chaired by Justice Stephen Breyer, which **issued a report in 2006 on the judiciary's policies and procedures for handling misconduct complaints against judges**. Congress at the time was pressuring the judiciary to improve its ethics procedures. The revisions also reflect recent case law as well as changes made by the American Bar Association to its judicial code of ethics. The Judicial Conference does not set rules for the Supreme Court, but by tradition, the Supreme Court adheres to the Code of Conduct as a matter of policy.

On the issue of creating judgeships, Scirica said the conference "hopes the administration and Congress will move ahead on this." Sens. Patrick Leahy, D-Vt., and Arlen Specter, R-Pa., both addressed the conference and indicated their support for more judgeships, Scirica said. Congress has occasionally added district judgeships over the years, but no new appeals court seats have been created since 1990.

The recommendations made by the conference would add five judges to the 9th Circuit, two each to the 2nd and 3rd, and one each to the 1st, 6th and 8th. Some would be permanent seats and some would be temporary -- meaning that when the judge appointed retires or dies, it would not be refilled. Currently, there are 167 authorized appeals court judgeships. At the district court level, the conference recommends adding 51 judgeships to the existing 678.

Scirica indicates disagreements were aired during the meeting over how many district court judgeships should be added in Texas. The conference recommended adding two each to the eastern and southern districts of

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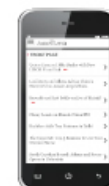
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Texas, and four to the western district of Texas.

In a separate action, the conference also voted to make the existence of sealed cases more apparent in online dockets. Press and citizen groups have complained that that some sealed cases simply vanish from the docket in many district courts, making it impossible to learn about them or challenge the sealing. The conference said even sealed cases should be listed with a docket number and a name, such as Sealed v. Sealed.

Scirica also was asked about the law passed by Congress last year barring judges from accepting honorary or free memberships valued at more than \$50 to private clubs. The *ABA Journal* recently reported that the **University Club in Washington, D.C., had devised a deeply discounted membership fee for judges** that the club believed complies with the law, but ethics experts questioned it. Scirica said the issue was not discussed, but said the conference "has become aware" of efforts by clubs to find ways for judges to become members in spite of the law. Several judges have asked the code of conduct committee for advice, Scirica said. "We're looking into it more systematically."

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