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JUDGING THE JUDGES

Veil of secrecy stirring calls for change

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Just 12 chief federal judges wield almost exclusive power over secret misconduct investigations of more than 2,000 fellow jurists — though some have themselves been accused of botching reviews or committing ethical blunders, according to a Houston Chronicle review.

At least four current or former chief circuit judges have been the subject of recent high-profile complaints about their behavior; one posted photos of naked women painted to look like cows and other graphic images on his publicly accessible Web site; another manipulated the outcome of a vote in a death penalty case.

Not one faced formal discipline.

Nationwide, the integrity of the federal judicial misconduct system relies heavily on chief judges. Each oversees complaints — more than 6,000 in the last 10 years — against all circuit, district, senior, bankruptcy and magistrate judges in multi-state regions called circuits.

Third Circuit Chief Judge Anthony Scirica, who is also chairman of the executive committee of the Judicial Conference of the United States, told the Chronicle, “The federal judiciary takes its ethical responsibilities with the utmost seriousness. Every misconduct complaint is carefully

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reviewed.”

He was the only chief circuit judge who directly responded to Chronicle requests for comment, though other circuits' staff replied.

In seven circuits, according to the Chronicle analysis, supervising judges took no public disciplinary action at all in the last decade, meaning not a single federal judge faced any sanctions in 29 states with more than 875 full-time federal judges, despite thousands of complaints.

Defenders of the system, like Scott Gant, a Washington, D.C.-based attorney, argue that under-enforcement is a small price to pay for strong federal judges.

“That's the nature of the system — anytime you have a group investigate itself. But if we want to have an independent judiciary, I think we have to accept that,” he said.

Error rate ‘far too high’

Most experts argue that the secretive self-policing helps protect judges who uphold the nation's laws from unfounded slurs and allegations slung by convicts and disgruntled citizens.

But a recent spate of well-publicized illegal behavior by judges — including frequenting

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prostitutes, falsifying federal court records, molesting court employees and committing motor vehicle homicide — has prompted experts and members of Congress alike to call for reforms and more disclosure of federal disciplinary decisions.

One of those cases involved former U.S. District Judge Samuel Kent of Galveston, now imprisoned for obstruction of justice involving the sexual assault of two female employees.

In 2006, a Supreme Court committee, led by Justice Stephen Breyer, reported the system handled routine matters well, but botched five of 17 high-profile cases, an error rate “far too high.”

The report named no names but described matters bungled by four of 12 regional circuits: the Chicago-based 7th Circuit, the Cincinnati-based 6th Circuit, the San Francisco-based 9th Circuit and the St. Louis-based 8th Circuit, the Chronicle found.

James B. Loken, who oversees the vast seven-state Midwest territory of the 8th Circuit, was among the supervising judges criticized for failing to properly investigate. Federal rules say chief judges should form a committee to probe matters “reasonably in dispute.”

But Loken has never formally investigated a complaint since becoming chief judge in 2003, according to Michael Gans, the 8th Circuit Clerk who works with Loken.

Early in his tenure, he dismissed allegations from an attorney as “signed by a person whose signature is illegible” and questioned whether he was even “a person ... entitled to file” it, records show. The system allows anyone to file a judicial



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misconduct complaint.

Later, Loken rejected published allegations that a U.S. district judge in St. Louis improperly urged 314 newly minted citizens at a public ceremony to register and vote for his congressman friend “so he can continue his good work.” Loken accepted the jurist's denials without formal review.

When asked about Loken's decisions, Gans said: “The court does not comment on its orders or opinions.”

Behind the scenes

Critics such as California-based attorney Lara Bazelon said the system leaves “the mice in charge of the cheese” and the emphasis on secrecy permits supervising judges to ignore, conceal or explain away embarrassing errors or even crimes by colleagues.

“Judges are human beings just like the rest of us, and putting on a black robe should not immunize them from legitimate punishment,” she wrote in a recent Kentucky Law Journal article.

Some chief judges pursued no disciplinary action even after confirming that colleagues improperly dished out insider information, slept during trials, hurled obscenities in court, or broke laws themselves, the Chronicle's review of more than 3,000 records stored in a little-known judicial archive shows.

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Yet many complaints, on topics ranging from alcoholism to personality disorders, are successfully managed behind the scenes through counseling, and, when necessary, quiet resignations, circuit court officials say.

“There's a lot more being done that doesn't appear (in public records),” said Collins Fitzpatrick, a longtime 7th Circuit executive who has worked on complaints for years and studied the system.

A dramatic and unusually public example of proactive action came in July when Chief Circuit Judge Karen Williams of the Richmond-based 4th Circuit resigned at 57 and disclosed her own diagnosis of early Alzheimer's disease.

“Judge Williams' decision to retire while able to perform her judicial duties in order to avoid any questions about future decisions is an admirable example of action preempting any future conduct issue,” Patricia S. Connor, circuit clerk, told the Chronicle.

Taxpayers have no way to know about most behind-the-scenes fixes. Both Fitzpatrick's and Williams' circuits are among seven that took no public disciplinary action in a decade.

Most federal judicial misconduct complaints deserve dismissal. One, for example, blamed a judge for “loss of vision and loss of teeth,” the Chronicle's review showed.

David Pimentel, an assistant professor at the Florida Coastal School of Law, said frivolous complaints tend to “siphon off the energy from legitimate complaints that I'm convinced are out there — and when they do get voiced, they don't get treated properly.”



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Nationwide, about 50 out of 3,000 complaints in the last five years were resolved quietly after judges took some kind of private and anonymous action, statistics and the Chronicle's public orders show.

Disclosures vary

Only a handful of federal judges apologized publicly or privately even after admitting they made mistakes or broke laws, records show.

In 2007, a potential juror in the Northeast admitted in a questionnaire that she'd recently been sexually assaulted, a disclosure she assumed confidential. Instead, a federal judge grilled her about it in open court.

“The people in that room did not have a right to know about a very personal and private crime that had been committed against me,” she wrote in a formal complaint, according to a 2008 order from the New York City-based 2nd Circuit.

The matter was dismissed after the judge privately apologized.

Generally, chief judges alone decide how much to reveal about reviews in public summaries. Only four of 12 circuits post them on Web sites.

Some disclose more than others. Lengthy orders and documents of complaints get issued in the

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Northeast's 1st and 2nd circuits, as well as by the 9th Circuit in San Francisco.

5th Circuit stands out

The New Orleans-based 5th Circuit has most aggressively sought punishment — taking on rogue judges who lied to judicial investigators or broke laws.

The 11th Circuit oversees about 175 full-time judges in Alabama, Georgia and Florida. But it's hard to tell what — if anything — the circuit has done, based on public orders.

In 2005, the chief judge launched a probe into allegations that a Georgia magistrate judge abused his powers to enrich friends and family. Results were never revealed.

The incestuous nature of reviews gets more complicated when chief judges stand accused.

Circuit Judge Alex Kozinski, based in San Francisco, turned critic breaking ranks with his 9th Circuit peers for failing to respond to reports of abuse of power by a senior Los Angeles district judge.

“It does not inspire confidence in the federal judiciary, when we treat our own so much better than we treat everyone else,” he wrote in a rare disciplinary dissent.

When he became the 9th Circuit Chief Judge in 2007, he began posting misconduct reviews on the Internet. But he also quickly drew complaints about his behavior: While overseeing an obscenity case in 2008, Kozinski ran a personal Web site that included lewd photos of women, an aroused donkey and other off-color content, a



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complaint disclosed.

In 2009, Kozinski was admonished, a public scolding considered just short of formal discipline, by the Philadelphia-based 3rd Circuit for showing “poor judgment” that “caused embarrassment” to the judiciary.”

That circuit has no reported disciplinary actions.

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