



ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

WASHINGTON, D.C. 20544

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March 4, 1991

Honorable Levin H. Campbell
United States Court of Appeals
1618 John W. McCormack Post Office
and Courthouse
Boston, Massachusetts 02109

Dear Judge Campbell:

You will recall that it was agreed at our October meeting, as manifested in the minutes, that I would contact the Federal Judicial Center to determine how they are exercising their responsibility under Rule 17(b), Illustrative Rules Governing Complaints of Judicial Misconduct and Disability, to be the public repository of orders by circuit chief judges and judicial councils resolving complaints under the Judicial Conduct and Disability Act. You also asked that I try to assess the degree of cooperation by the various circuits in providing this material to the Center.

The Center collects these materials in its Information Services Section, which is part of its Publications Division. They are retained in the custody of Leonard Klein, Information Specialist for the Center, and are housed on the ground floor of the Dolley Madison House. This week I conducted a telephone interview with Len Klein to familiarize myself with his operation.

I am informed that the Center's formal collection of conduct complaint materials dates from the Fall of 1987, recognizing that the circuits generally did not adopt the Illustrative Rules until approximately that time. (The Judicial Conference resolution urging adoption of those rules by the circuits occurred in March, 1987). A few of the circuits had sporadically submitted complaint orders to the Center prior to that time. I understand that the actual use of this collection by members of the public has been extremely rare and has occurred on only about four occasions, most of those being inspections by members of the press that took place in the aftermath of the Twentieth Century Fund's release of its 1989 report, *The Good Judge*.

It was Mr. Klein's observation that those inspecting the materials at the Center tend to browse through them en masse rather than trying to identify complaint proceedings against a particular judge. He further noted that he maintains the files of

these materials by circuit, and each circuit's file is organized according to the docket numbers utilized by the court of appeals clerk upon initiation of each complaint. Thus, unless an order names the judge complained against, it would be virtually impossible to identify a particular order with the judge involved unless the reader knows the docket number assigned to that complaint when it originated at the circuit level.

Mr. Klein explained that the Center's objective is to collect all conduct and disability complaint materials that the circuits (or national courts) consider to be available for public inspection. You will recall that the Act is not entirely clear on which orders must be made public. Section 372(c)(15) of title 28, U. S. Code, requires that "[e]ach written order to implement any action under paragraph 6(B) of this subsection . . . shall be made available to the public. . . ." This section and the remainder of the Act are silent on making public the orders of chief judges dismissing complaints under section 372(c)(3) where no investigating committee is ever formed and the complaint never reaches the council. Nevertheless Rule 17 of the Illustrative Rules provides that a docket-sheet record of orders of the chief judge or council, as well as the text of any memoranda supporting such orders, will be made public except that, if the complaint is disposed of without appointment of a special committee or is dismissed by the council (other than for mootness), the publicly available materials will not disclose the name of the judge complained against without that judge's consent. Thus the Center endeavors to collect orders of the latter type, as well as those implementing actual council actions under section 372(c)(6).

As you know, there are 15 entities subject to the Act, including the 12 circuit judicial councils and three so-called national courts (Court of Appeals for the Federal Circuit, Court of International Trade, and United States Claims Court). Thirteen of these entities have adopted the Illustrative Rules; the Judicial Council of the Fifth Circuit and the Claims Court have not done so and have no provision in their rules for filing with the Federal Judicial Center the orders terminating their complaint proceedings. Having reviewed his files afresh immediately prior to our discussion, Mr. Klein informed me that this review showed eight out of the 13 obligated councils and courts to have been faithfully discharging their filing responsibility with the Center. These eight responsive filers are the First, Fourth, Sixth, Seventh, Ninth, Tenth, District of Columbia and Federal Circuits. They seem to have consistently channeled complaint-dispositive materials to the Center, and their files are current.

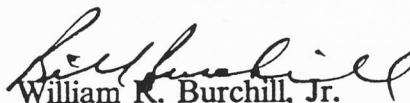
Prior to our conversation Mr. Klein had taken the initiative to contact staff of the remaining five courts and councils to ascertain the status of their complaint resolution mechanisms and remind them of the requirement in their rules to file orders with the Center. He learned from these contacts that the Eighth Circuit and the Court of International Trade claim to have had no complaints disposed of in a manner that would generate a public order for filing with the Center in the period since the

Honorable Levin H. Campbell
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Illustrative Rules were adopted. The Clerk of the Eighth Circuit stated that he would check with his judges to ascertain their intent to be guided by Rule 17(b) in the future. The other three councils, which are the Second, Third, and Eleventh Circuits, were likewise reminded of their reporting responsibility to the Center, and their staffs apparently indicated that such materials would be forthcoming to complete files that now reflect only sporadic compliance in the past.

I hope that the foregoing information is fully responsive to the inquiry which you asked me to make. If you wish me to pose any further questions on this matter, please advise. I look forward to seeing you next month and to discussing this and other matters relevant to our agenda. With kindest personal regards,

Sincerely,


William R. Burchill, Jr.
General Counsel

cc: Honorable Charles W. Joiner
Honorable Paul H. Roney

 cc: Leonard Klein

THE FEDERAL JUDICIAL CENTER

DOLLEY MADISON HOUSE
1520 H STREET, N.W.
WASHINGTON, D.C. 20005

INFORMATION SERVICES

Writer's Direct Dial Number:
FTS/202 633-6012

February 25, 1991

Elaine B. Goldsmith, Clerk
U.S. Court of Appeals
U.S. Courthouse
Foley Square
New York, NY 10007

Dear Ms. Goldsmith:

Pursuant to judicial misconduct rules in twelve circuits [Rule 17(b) in the Second Circuit], this office maintains a file of orders available for public inspection. The last order received from your circuit is dated January 25, 1988, and is a memorandum and order in 87-8518. We also have one order from 1985 (84-8527) and two from 1982 (81-8500 and 82-8504).

If you have copies of additional public orders relating to complaints of judicial misconduct and would be willing send them, we would like to have them for our public files. Please send the documents to my attention. Should you have any questions, please call me at FTS 633-6012.

Sincerely yours,

Leonard E. Klein
Manager of Information Services

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT
UNITED STATES COURTHOUSE
FOLEY SQUARE
NEW YORK 10007

ELAINE B. GOLDSMITH
CLERK

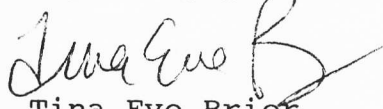
March 4, 1991

Mr. Leonard E. Klein
Manager of Information Services
The Federal Judicial Center
Dolley Madison House
1520 H Street N.W.
Washington, D.C. 20005

Dear Mr. Klein:

This letter is in response to your letter dated February 25, 1991 requesting additional public orders relating to complaints of judicial misconduct. Enclosed please find the only public order that you do not have. It was entered on November 9, 1990. In the future, I will make sure all public orders are sent to your attention as soon as they are filed.

Very truly yours,


Tina Eve Brier
Chief Deputy Clerk