The Regulation of Judicial Ethics in the Federal System:
A Peek Behind Closed Doors*

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Abstract

Ethical issues involving federal judges have been much in the news recently. Among other developments, the House Judiciary Committee held a hearing to consider impeaching a federal district judge; the Judicial Conference of the United States announced two major policy initiatives; and a committee chaired by Justice Stephen Breyer issued an in-depth report on the operation of the judicial misconduct statutes.

This article addresses two aspects of federal judicial ethics. The first involves conflict of interest and disqualification. Under the law, a federal judge is disqualified from hearing a case if (among other circumstances) the judge's impartiality "might reasonably be questioned," or if he or she has "a financial interest ... in a party to the proceeding." The first-quoted prohibition has generated a large body of case law. The second has proved to be a fertile ground for muckraking by investigative reporters, in part because judges can easily fail to remember or recognize that they own shares in corporations that are parties to cases on their dockets. In September 2006 the Judicial Conference of the United States directed all federal courts to institute "automatic conflict screening" using standardized hardware and software. This is a substantial step forward, but a purely internal screening program does not serve the interest in transparency.

The second set of issues involves the operation of the misconduct statutes. A 1980 statute, now codified as Chapter 16 of Title 28, creates a detailed set of procedures for handling complaints against judges and taking appropriate action in instances of judicial misconduct. The Breyer Committee found that in handling

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the vast bulk of complaints, the judiciary has properly implemented the 1980 Act, but that in high-visibility cases, the rate of error is "far too high." The committee's report and other recent developments point to several aspects of the system that deserve scrutiny. Primary among these is the lack of visibility; neither the availability of the process nor the outcomes of proceedings are sufficiently publicized.

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