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Massachusetts Legislative Research Bureau

Judicial Conduct Proceedings

A Privileged Sanctuary?

Research In Brief
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To the Members of the General Court

In the following pages we are instituting a new document series entitled Research In Brief.

Our objective is to provide the membership with a series of short, timely reports on issues of current interest which capture the principal points of controversy. Some of these reports may be in the nature of an information brief, others in the form of a policy brief, still others will resemble a survey brief.

This document, primarily an information brief, examines the current controversy over the proceedings of the Judicial Conduct Commission. The issue, set forth more formally in the body of the report, is whether or not judicial disciplinary boards should conduct their business in secret or in public. For the most part, what the public has learned about this issue stems from allegations appearing in the press. Hopefully, this report will provide a more balanced view of the dispute.

This report was prepared by Robert England of the Bureau staff.

Sincerely yours,

Daniel J. Foley

Daniel J. Foley, Director
Legislative Research Bureau

DJF/pmob
Enclosure

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Allegations, Accusations, Aspersions

The recent wave of allegations of judicial misconduct threatens to erode public confidence in the integrity and impartiality of the Massachusetts judiciary. Judges, like all of us, have faults and commit errors, but their lordly office often shields them from most criticism. Once donned, the robes that invest the judge with independence may also be used as armor to repel critics and to counter those audacious enough to suggest an abuse of authority. Actually, the Governor's Anti-Crime Council had, in late 1985, reported among its findings a wide variety of incidents of questionable judicial behavior in cases involving matters within the purview of the Abuse Prevention Act (G.L. c. 209A). However, the more recent surge of criticism seems to have begun with the alleged insensitivity of a district court judge in adjudicating a wife abuse case last spring. Since then, other equally damaging accusations against judges have followed.

Controversy surrounding the wife abuse case centered on claims of judicial arrogance. Accusations leveled against the judge in that case included verbal harassment of a domestic violence victim and a disregard for the Abuse Prevention Act. When the wife was subsequently murdered and her husband was charged with the crime, extensive media coverage revived the original allegations leveled against the judge. Similar complaints were lodged against another jurist assigned to the same court.

In the closing weeks of 1986, articles critical of judicial conduct began to appear in the press with greater frequency. A probate court judge's private financial dealings with an attorney who often appeared before him surfaced in a November newspaper account.[1] According to the article, their transactions included land transfers between the two which had not been disclosed to the State Ethics Commission. Also reported was the judge's role in forming a realty trust for a company of which the attorney was president. The latter act was also not reported to the Ethics Commission. Among other claims in the press account were: (1) a $70,000 mortgage loan to the judge from a company of which the lawyer had been the treasurer at the time, and (2) the judge's appointment of that same lawyer as guardian ad litem in 27 cases when, during the same period, other lawyers averaged only 2.2 appointments. The fees received from such appointments were dependent upon the size of the estate.

The judiciary was further stung by publicized accounts of yet another judge allegedly flouting the domestic abuse law. In this case, a report of a special master appointed by the Supreme Judicial Court (SJC) included confirmation of the judge's neglect of the domestic abuse law and also concluded that the jurist violated the Canons of Judicial Conduct through his routine harassment of employees, lawyers and litigants. In addition, the master's report described a case from which the judge failed to withdraw himself in spite of an obvious conflict of interest. The judge was also reported to have failed to heed the directives

of Chief Administrative Justice Samuel E. Zoll of the District Court regarding the administration of the district court.

Further damage was done to the reputation of the courts when it was revealed in late December of 1986 that a probate court judge was drawing a lucrative salary and generous benefits from his position as president of an animal rights group.[2] News accounts reported that the judge's brother, daughter and two assistant registers from his court were on the group's payroll. The reports also alleged a pattern of favoritism whereby lawyers who were associated with the charitable group were appointed to handle probate matters at the court.

Another news account that same week reported the SJC, earlier that summer, chose not to apply any formal disciplinary sanction against a district court judge for verbally harassing a litigant in his court.[3] The SJC had publicly censured the judge for similar behavior three years before. In the more recent incident, the complainant had been in court as a victim of assault. After releasing the assailant on probation, the judge threatened to take the victim's three children from her when, in response to his questioning, she admitted smoking marijuana in her home.

And lastly, the new year began with yet further public allegations of judicial misconduct.[4] In January, a district court judge was accused of refusing to hear evidence and of knowingly incarcerating an innocent man. The judge, who had been investigated for misbehavior on at least one other occasion, was also accused of several other charges of misconduct which included:

verbally abusing mentally-deficient defendants, instructing probation officers to misinform defendants of their rights to a jury trial, and setting excessive bail for defendants who appealed his bench verdicts.

In addition to these allegations which were publicized by the media, further complaints of judicial misconduct may have been filed with the state Commission on Judicial Conduct. Because confidentiality rules bind that body, an exact assessment of additional complaints, if any, cannot be made.

The Judiciary At A Juncture

The recent spate of complaints against Massachusetts judges has triggered a fresh look at the issue of judicial accountability. A long-standing objection of many critics of judicial accountability is the wall of secrecy which surrounds the investigation of alleged judicial misconduct. The Commission on Judicial Conduct which investigates complaints against the judiciary is, for example, bound by law to strict confidentiality at all times (G.L. c. 211C.).

Last fall, however, as legislators were filing their own reform measures for the 1987 session, a press editorial urged the Legislature to revise the Commission's membership to increase public representation on the panel.[5] It also called for an end to secret proceedings and for more accountability in the form of written decisions. Two months later, as adverse judicial publicity escalated, the same newspaper called for the adoption of retention elections for

the state's judges.[6] Under the plan, judges would still be appointed by the Governor but would be subject to the electorate's confirmation at periodic elections.

Similar proposals which advocate changes in the selection and tenure of Massachusetts judges are before the Legislature during the current session. As alluded to above, consideration will also be given to a number of bills filed by legislators calling for changes in the composition and proceedings of the Commission on Judicial Conduct; they include a variety of proposals that would amend the Commission's structure or its procedures. Prominent among these suggested modifications are provisions to alter the rules of confidentiality. All of these measures were heard by the Committee on the Judiciary on April 6th.

An intended Governor's special message on the Commission has been postponed and is now expected to be incorporated into a broader message addressing operational problems of the state courts.[7]

The judicial branch itself has also responded to the controversy. There is genuine concern that the functions of the judicial system would be impaired, if not crippled, without the public's confidence. Chief Justice Zoll has filed legislation that would authorize him to suspend a judge or other court employee for up to thirty days. The Chief Justice of the Supreme Judicial Court of Massachusetts, Edward F. Hennessy, has publicly stated that he would be receptive, with some reservations, to a relaxation of confidentiality rules of the Judicial Conduct Commission. The Chief

Justice points to the need to safeguard judges against unfounded or frivolous complaints; he sponsored a forum on judicial accountability on April 25th. In addition, at the recent Judiciary Committee hearing, several jurists, including leaders of the Massachusetts Judges Conference, testified in favor of opening up the disciplinary process.

Independence Versus Accountability

Judicial independence is crucial to the precept of equal justice under the law. But that same independence can serve as a protective shell, insulating a judge from public scrutiny of questionable behavior or unethical conduct. Thus, the safeguarding of judicial reputations from malicious, frivolous or unfounded complaints must be carried out within the framework of a review procedure that upholds the public trust and retains public confidence.

Adopting the elective method of judicial selection and tenure may appeal to some segments of the public; but such a change would run afoul of tradition and could conflict with constitutional language. In any event, in this matter, time is of the essence. Responding to the threat of a public loss of confidence in the judiciary is a matter sufficiently compelling to warrant at this time an earnest re-evaluation of the current absolute rule of confidentiality which governs the Judicial Conduct Commission. The General Court has before it several bills that propose changes in the Commission's secret proceedings:

> House, No. 151, which has been filed by the Commission itself, proposes that all proceedings be open to the public once formal charges against a judge have been filed by the panel with the SJC.

House, No. 3907, filed by Representative Thomas F. Brownell, is similar but provides that the proceedings remain confidential upon the agreement of the judge, the complainant and the Commission.

House, No. 4110, filed by Representative Susan D. Schur, includes the same provisions but further stipulates that the Commission's formal charges and final recommendations to the SJC become matters of public record.

Senate, No. 880 and House, No. 4262, filed by Senator William Q. MacLean, Jr. and Representative Michael C. Creedon, respectively, would authorize the Commission and an accused judge to simultaneously release statements to the press and public at a time set by the Commission Chair. The Commission's statement would have to be hand delivered to the judge within seven days of its preparation. The judge would then be allowed seven days to deliver to the Commission a response to its own statement.

House, No. 2568, filed by Representative Michael F. Flaherty, would allow the Commission to make a public statement upon referral of its final recommendation to the SJC. The statement would be limited to an acknowledgement that a particular judge has been investigated and that a recommendation has been forwarded to the state's high court.

The Massachusetts Commission on Judicial Conduct

The Massachusetts Commission on Judicial Conduct was established by the Court Reorganization Act of 1978 to complement the traditional methods of dealing with judicial misbehavior through impeachment and address.[8] This review board succeeded the Committee on Judicial Responsibility which had been created only the previous year by the Supreme Judicial Court. The Commission was modeled on the California plan implemented in 1960

that has since been adopted by every state, along with Puerto Rico and the District of Columbia. While its policy of strict confidentiality has, over the years, aroused occasional public debate and prompted the filing of several bills to alter it, the secrecy issue is just now emerging in the forefront of public discussion.

The Debate Over Confidentiality

Although proponents of confidentiality offer several reasons for its necessity, opponents of that policy question the degree to which it is needed and doubt its ability to achieve the purposes intended. More importantly, opponents of strict confidentiality stress that such rules are in conflict with the public's interest in, and right of access to, information concerning officials and operations. As acknowledged by the courts in several rulings, the public has a strong interest in the activities of judges and the organizations that regulate them. To meet this concern, the American Bar Association (ABA) has developed standards which affirm that upon the determination of probable cause and the filing of formal charges the emphasis of policy shifts from confidentiality to the public's right to know.[9]

Twenty-one states have adopted such a policy. Twenty others lift the veil of confidentiality upon the completion of a formal hearing and the filing of the Commission's recommendation of discipline with the state supreme court. Massachusetts, eight other states, and the District of Columbia require confidentiality to

remain unbreached until a sanction has been imposed by the state supreme court.[10] An Appendix to this document tabulates these policies among the states.

Given this background, it is evident that the issue now in focus is the role the Commission on Judicial Conduct should assume in maintaining a balance between the conflicting interests of judicial independence and accountability to the public.

The Issue

Whether the integrity of the judiciary is better served by a disciplinary review panel that meets in conclave to examine allegations of judicial misconduct and render its decision, or by such a panel that is required at an appropriate point to open its proceedings to the public and to provide a suitable explanation of its decision.

The Main Objectives of the Case for Secrecy

Until 1960, states that encountered instances of judicial misconduct were forced to rely on the traditional removal procedures of impeachment, address or, in jurisdictions employing electoral methods of judicial selection, recall. Because these methods of judicial discipline require the harsh penalty of removal, states were burdened with an inability to deal effectively with certain instances of judicial misconduct. Such a severe sanction was inappropriate in cases involving relatively minor transgressions. The plan pioneered by California, in 1960, provided a remedy for this dilemma.

Since the inception of judicial conduct organizations, provisions for the confidentiality of their proceedings have been an integral feature of their structure. Proponents maintain that confidentiality is essential to a commission's operations and assert that a number of functions are served by such policy, including:

(a) encouraging complainants and witnesses to participate in the disciplinary process by shielding them from the threat of recrimination or retribution and premature and undesired publicity;

(b) protecting the reputation of innocent judges from frivolous or malicious complaints;

(c) maintaining confidence in the judiciary as an institution by avoiding premature disclosure of potentially groundless accusations;

(d) encouraging the voluntary retirement of an accused judge when the complaint is with merit and a costly and potentially embarrassing proceeding looms as an alternative;

(e) facilitating informal corrective action in instances where the magnitude of a transgression would not warrant public censure or more severe sanctions; and

(f) protecting commission members from external influence or pressure.[11]

The point at which a commission ceases confidentiality, however, will influence whether all of these objectives can be met.

The Objectives of Open Proceedings

Opponents contend that the effectiveness of confidentiality in achieving these goals is open to question. In addition to doubting such claims, opponents of confidentiality dispute whether such

goals are necessarily desirable. While conceding that a limited degree of secrecy is beneficial to the disciplinary process, it is argued that the judiciary should be subject to the same public scrutiny applied to the other branches of government. To opponents of confidentiality, the words of British statesman and political writer Edmund Burke ring true, "Where mystery begins, justice ends."[12]

Perhaps the diverging views on the issue can be traced to how one sees the role of judicial conduct organizations. Is their objective simply to facilitate the removal of unfit or disabled jurists from the bench? Or should the purpose of misconduct commissions be more broadly construed so that the scope of their mission is not only to rid the courts of unfit judges but also to deter misbehavior by their colleagues on the bench? With regard to the latter interpretation, this maxim from Justice Brandeis is instructive: "Sunlight is said to be the best of disinfectants; electric light the most efficient policeman."[13]

A Closer Examination

As indicated above, proponents contend that at least six functions are served by the policy of confidentiality of proceedings. A closer examination of these claims may help to assess their validity.

Encouraging Participants

Proponents assert that without confidentiality, individuals would be reluctant to come forward with a complaint or testimony.

With their identities shielded, complainants and witnesses are protected from pressures of a judge or others to withdraw their claims. Attorneys, court employees and others who have frequent contacts with a judge would be naturally reticent to make formal complaints of a judge's behavior.

Opponents challenge the cogency of this argument; they contend that even where disciplinary boards are bound by rules of confidentiality so absolute that they may not even confirm or deny that a complaint has been received, there is no guarantee that, eventually, disclosures will not be made. In a number of states, the highest court, upon its review of the board's proceedings and recommendations may, at its discretion, reveal identities and matters of substance if it believes that justice may be served only by pursuing such a course.

In addition, in 27 jurisdictions, the disciplinary commission itself is authorized to reveal the identities of complainants and witnesses during the investigatory stage of its proceedings.[14] Even without such authority, it may be misleading to offer the protection of confidentiality when the judge's rights to discovery and due process may override any such guarantee.[15] Further, the nature of participants' statements could well disclose their identities to the judge, or conversely, the judge may mistakenly attribute the source of a complaint to the wrong party. Finally, if a judge is found guilty of misconduct, the names of complainants and witnesses may eventually become matters of public record.[16] Of

course, there are individuals who will take the initiative to participate in disciplinary proceedings regardless of confidentiality provisions; a desire for anonymity may be overridden by stronger motivations such as civic duty, moral indignation or revenge.[17]

Upon reflection, the reader may wish to treat these points of contention with some reserve; the criticism appears strained, the logic is sometimes twisted. The general impression is that the substance of the criticism, in part, reinforces the proponents' case. For example, notwithstanding the rule of absolute secrecy, it should be comforting to learn that the rule must fall when justice so commands. It is also reassuring to learn that in not all jurisdictions are judges' due process rights ignored.

Protecting Innocent Judges

Confidentiality provisions, proponents insist, are necessary in order to protect the reputations of innocent judges from being unfairly tarnished. Seventy-five per cent of the complaints filed with commissions, according to one source, are eventually found to be without merit or not appropriate for commission consideration.[18] The nature of a judge's duties are such that it guarantees "a fifty percent consumer dissatisfaction rate."[19] Complaints may be based more on an unfavorable or unpopular decision than on any actual judicial misconduct. Allegations may be malicious, frivolous or far-fetched in nature but the media attention given to exoneration may be minute compared to the publicity given the charges.

Even in those jurisdictions where confidentiality ceases after the investigatory stage of disciplinary proceedings, it remains in effect until formal charges are filed. Similar in this regard to the operation of a grand jury, charges are not made public until probable cause has been determined. Thus, protection is afforded against unwarranted damage to a judge's reputation.

On the other hand, it is arguable whether the protection of a judge's reputation should prevail over the public's interest in the judiciary and the disciplinary board that regulates it. Even the courts have allowed that "there is no principle at work which entitles judges to total exemption from the slings and arrows which others in the public arena must live with as part of the job."[20] The nation's high court has observed that judges are not "anointed priests set apart from the community and spared the criticism to which in a democracy other public servants are exposed."[21]

With regard to complaints of misconduct that are characterized as "frivolous," it has been argued that there are really no trivial cases of judicial misconduct.[22] An eminent Italian legal philosopher reasoned:

> ...for injustice is not one of those poisons which, though harmful when taken in large doses, yet when taken in small doses may produce a salutary effect. Injustice is a dangerous poison even in doses of homeopathic proportions.[23]

Maintaining Public Confidence in The Judiciary as An Institution

According to advocates of confidentiality, this policy helps sustain public confidence in the judiciary. Faith in the

judicial branch would otherwise be threatened by premature disclosure of alleged misconduct - the majority of which is subsequently deemed unfounded. Complaints of misbehavior that are precipitantly made public, it is said, would inflict unnecessary injury to the judiciary's institutional integrity. That a commission is known to be considering an accusation could lead to conclusions that it has merit.

Such protection, however, may come at the expense of the public's concern not only with the courts but with the manner in which a conduct commission operates. "The public has a strong interest," according to one source, "in assessing the standards of judicial conduct applied by the commission, as well as in evaluating the precision and consistency with which it applies those standards."[24] Standards are formed when a commission dismisses a complaint as well as when it upholds one.[25]

Moreover, confidentiality may just as easily breed public distrust of the judiciary as bolstering confidence in it. The assumption that insulating judges from public criticism will develop greater respect for the judiciary is false according to former U. S. Supreme Court Justice Hugo L. Black. Enforcing even a limited silence in the interest of maintaining the dignity of the bench "would probably engender resentment, suspicion, and contempt much more than it would enhance respect."[26]

Encouraging Voluntary Retirement

Secret proceedings may offer the option of inducing an errant jurist to discreetly resign or retire as an alternative to a

formal hearing but such expediency risks public suspicion of the commission's integrity. With commissions comprised largely of judges and attorneys this policy makes the process vulnerable to charges of favoritism. Even if commissioners do not consciously favor friends and associates over others, the mere fact that such flexibility is available to them may foster a public perception of abuse.[27]

Facilitating Informal Corrective Action

The ability to informally, and secretively, resolve a relatively minor complaint is considered by many proponents of confidentiality to be one of its most appealing features. In this manner, a commission can exert its influence over a judge found to have committed a minor and perhaps unintentional transgression while avoiding the tarnishing of a reputation. Otherwise, a judge may be reluctant to alter his behavior and have that change be seen as an admission of prior guilt.[28]

Critics say that such a policy may facilitate the educational process of individual judges but its value is consequently limited to those specific judges. A better approach, it is argued, would be a case method of interpreting the ABA Code of Judicial Conduct, or the codes adopted in various states, which would emerge from public commission responses to the complaints it receives. Precedents and a body of doctrine in judicial ethics shaped on a case-by-case basis would evolve from successive publicized applications of the governing code. Thus, a heightened awareness of the consequences of violating accepted norms, an educational function, and a deterrence value are promoted by such a visible disciplinary

process.[29] The legitimacy and credibility of a disciplinary plan are also enhanced by a suitable level of visibility. In short, justice must be seen as well as done.

Protecting Commission Members

Confidentiality proponents maintain that it protects commission members from external pressures that may be applied by the public, participants in a case, or other interested parties.

Critics respond that this position assumes that commissioners are more vulnerable to outside influences than others in government. This point is arguable but, regardless, improper contact with commission members can be regulated the same way it is done in judicial and administrative proceedings. Rules could be adopted prohibiting such contact, along with sanctions and fines.[30]

Legal Doctrine

Constraints on the length of this report preclude any analysis of case law on the confidentiality of judicial conduct proceedings. A recent law review article by the director and staff attorney for the Center for Judicial Conduct Organizations[31] examines the legal doctrine that has been applied in a variety of cases in which the legitimacy of confidentiality provisions was challenged. The focal points of several of the cases discussed are the First Amendment right of the freedom of the press to publish information and the separate issue of the right of access to that information.

Plaintiffs in cases that have been litigated have argued that the right to publish information includes the right of access to that information. There have been strong legal arguments to support that view. However, there are equally persuasive arguments that the right to publish and the right to access are distinct rights. In First Amendment Coalition v. Judicial Inquiry and Review Board,[32] the United States Court of Appeals, citing the U. S. Supreme Court in a celebrated 1971 decision, stated:

> The (plaintiff) Coalition's claims are based on an alleged right of access, not a right of publication. Although both have their roots in the First Amendment, these principles are doctrinally discrete, and precedents in one area may not be indiscriminately applied to the other. In general, the right of publication is the broader of the two, and in most instances, publication may not be constitutionally prohibited even though access to the particular information may properly be denied.[33]

In decisions outside the context of judicial disciplinary proceedings, the Supreme Court has recognized "a qualified constitutional right of public access to information concerning governmental activities."[34] Although the precise scope of that right remains undefined, a federal district court in Pennsylvania extended it to the records of a judicial conduct panel.[35] The federal district court had struck down confidentiality after formal charges were filed. That ruling, however, was reversed on appeal.[36]

The lower court had applied a "least restrictive means" test developed in prior cases and found no sufficient reason to

maintain confidentiality once formal charges were filed. The Court of Appeals, in reversing, upheld the Pennsylvania constitutional provision permitting public access to the disciplinary board's records only if it recommends sanctions to the State Supreme Court. This provision, the Court stated, did not violate the First Amendment.

Quoting Chief Justice Warren from a 1965 decision, the Court stated, "The right to speak and publish does not carry with it the unrestrained right to gather information."[37] The Court of Appeals stressed that the right to know must be invoked with discrimination and temperance. Pointing out that the Board's recommendation has the effect of an indictment, not a conviction, it added that the traditional notion of protection for a non-indicted target applies equally well in the disciplinary setting. It is quite uncertain, the Court continued, that Pennyslvania would have chosen a disciplinary program or have been able to implement one in the absence of the confidentiality provision.

Both the majority and dissenting opinions in the First Amendment Coalition appellate decision are valuable for the scope and content of discussion of applicable law; for those interested in pursuing the issue in more detail, there are references to the records of the Pennsylvania Constitutional Convention which debated the confidentiality issue in 1968.

Three other court actions referred to in the law review article cited above sustained confidentiality in situations in which challenges were brought before formal charges were filed.[38]

With the relatively brief history of judicial conduct organizations and the few cases of record where disputes arising over the rule of confidentiality have been litigated, the body of case law is obviously limited and still evolving. There are, as pointed out earlier, varying approaches to confidentiality of proceedings among the states. However, it should not go unnoticed that the U.S. Court of Appeals in the First Amendment Coalition case found the "the presumption of validity attaching to state legislatures and constitutional provisions weighs heavy."[39] While the Court allowed "This presumption does not relieve the courts of their obligations to make an independent inquiry when First Amendment rights are at stake...it does require that the state's determination be upheld unless it is found to transgress a clear constitutional constitutional prohibition."[40]

FOOTNOTES

[1]Dick Lehr and M.E. Malone, Boston Globe, Nov. 11, 1986, p. 1.

[2]Brian Mooney, Boston Herald American, Dec. 24, 1986, p. 1.

[3]Eileen McNamara, Boston Sunday Globe, Dec. 21, 1986, p. 1.

[4]Eileen McNamara, Boston Sunday Globe, Jan. 18, 1987, p. 1.

[5]Boston Herald, Oct. 6, 1986, p. 22.

[6]Boston Herald, Dec. 8, 1986, p. 24.

[7]Eileen McNamara, Boston Sunday Globe, Mar. 29, 1987, p. 36.

[8]Chapter 478 of the Acts of 1978. Section 114 amended the General Laws by adding Chapter 211C. The commission consists of nine members. Three judges are appointed by the justices of the SJC, none of whom shall be justices of that court. Three members from the bar, none of whom shall be judges are appointed by the chief administrative justice of the trial court. Three lay members are appointed by the governor.

[9]Standards Relating To Judicial Discipline and Disability Retirement. See ABA Committee on Professional Discipline, Professional Discipline for Lawyers and Judges (1979).

[10]See Appendix.

[11]Jeffrey M. Shaman and Yvette Begue, "Silence Isn't Always Golden: Reassessing Confidentiality in The Judicial Disciplinary Process," 58 Temple Law Quarterly 755, 1985; Cydney Ann Hurowitz, "Peeking Behind Judicial Robes: A First Amendment Analysis of Confidential Investigations of the Judiciary," 2 Comm/Ent 707 (Hasting Law School, 1980); and Landmark Communications, Inc. v. Virginia, 98 S. Ct. 1535, 39 (1978).

[12]Quoted in Frank Greenberg, "The Task of Judging the Judges," 59 Judicature 463 (May, 1976).

[13]Quoted in Greenberg, op. cit. at 466.

[14]Shaman and Begue, op. cit., p. 760.

[15]Id. at 761.

[16]Id.

[17]Id.

[18]Shaman and Begue, op. cit., p. 762, based on American Judicature Society statistics.

[19]Hon. Hiller B. Zobel, "The Search for Judicial Accountability," Boston Globe, Mar. 6, 1987, p. 15.

[20]First Amendment Coalition v. Judicial Inquiry and Review Board, 579 F. Supp. 192, 214 (E.D. Pa. 1984), cited in Shaman and Begue, Id. at 763.

[21]Landmark Communications, Inc. v. Virginia, 435 U.S. at 829, quoting Bridges v. California, 314 U.S. 252, 291-92 (1941) (Frankfurter, J., dissenting) cited in Shaman and Begue, Id. at 763.

[22]Greenberg, Id. at 464.

[23]Pierro Calamandrei, quoted in Greenberg, op. cit., p. 64.

[24]Shaman and Begue, op. cit., p. 763.

[25]Id.; See First Amendment Coalition, supra note 20 at 215.

[26]Writing for the court in Bridges v. California, 314 U.S. 252 (1941), cited in Shaman and Begue, op. cit., p. 764.

[27]Shaman and Begue, op. cit. at 765.

[28]Richard S. Buckley, "The Commission on Judicial Qaulifications: An Attempt to Deal with Judicial Misconduct," 3 U.S.F.L. Rev. 244 (1969).

[29]Greenberg, op. cit., at 465; Stanley Anderson, "A Call for More Openness in the California Commission on Judicial Performance," 63 Judicature 226.

[30]Shaman and Begue, Id. at 765.

[31]See note 11, supra.

[32]First Amendment Coalition v. Judicial Inquiry and Review Board, 784 F. 2d. 467 (3rd Cir. 1986).

[33]Citing New York Times Co., v. United States, 403 U.S. 713, 91 S. Ct. 2140, 29 L. Ed. 2d 822 (1971).

[34]Quoting Shaman and Begue (note 11 supra); See also Hurowitz at same note.

[35]First Amendment Coalition, (United States District Court) cited at note 20, supra.

[36]First Amendment Coalition, (United States Court of Appeals) cited at note 32, supra.

[37]Id. at 474 quoting from Zemel v. Rusk, 381 U.S. 1, at 16-17.

[38]Stern v. Morgenthau, 62 N.Y. 2d 331, 476 N.Y. S. 2d 810, 465 N.E. 2d 349 (1984); In re Subpoena Served by Pa. Crime Commission, 79 Pa. Commw. 375, 470 A. 2d 1048 (1983); People ex rel. Illinois Judicial Inquiry Board v. Hartel, 72 Ill 2d 225, 380 N.E. 2d 801 (1978), cert. denied, 440 U.S. 915 (1979).

[39]First Amendment Coalition, cited at note 32, at 475.

[40]Id.

APPENDIX

State	Confidentiality Ceases When: The commission files formal charges against the judge (post-investigation)	The commission files recommendation for discipline with the state supreme court (post-hearing)	Discipline is ordered
Alabama	X		
Alaska	X		
Arizona		X	
Arkansas	X		
California		X	
Colorado		X	
Connecticut	X		
Delaware			X
D.C.			X[1]
Florida	X		
Georgia	X[2]		
Hawaii			X
Idaho		X	
Illinois	X[3]		
Indiana	X		
Iowa		X	
Kansas	X		
Kentucky			X
Louisiana		X	
Maine		X	
Maryland		X	
Massachusetts			X
Michigan	X		
Minnesota	X		
Mississippi		X	
Missouri		X[4]	
Montana		X	
Nebraska	X		
Nevada			X
New Hampshire			X
New Jersey		X[5]	
New Mexico		X	
New York		X	
North Carolina		X	
North Dakota	X		

State	Confidentiality Ceases When: The commission files formal charges against the judge (post-investigation)	The commission files recommendation for discipline with the state supreme court (post-hearing)	Discipline is ordered
Ohio	X		
Oklahoma	X		
Oregon	X		
Pennsylvania		X	
Rhode Island			X
South Carolina			X
South Dakota		X	
Tennessee	X		
Texas		X	
Utah			X
Vermont	X		
Virginia		X	
Washington	X		
West Virginia	X		
Wisconsin	X		
Wyoming		X	
	21	20	10

*Update of appendix which appeared in Jeffrey M. Shaman and Yvette Begue, "Silence Isn't Always Golden: Reassessing Confidentiality In The Judicial Disciplinary Process," 58 Temple Quarterly 755 (1985).

[1]District of Columbia - Confidentiality ceases on filing of notice of appeal of Commission decision with D.C. Court of Appeals.

[2]Georgia - Confidentiality requirement does not apply to the notice of formal hearing, commission decision not to proffer recommendation of discipline, or commission recommendation of discipline to the Georgia Supreme Court.

[3]Illinois - Judicial Inquiry Board may disclose to public results of investigation.

[4]Missouri - Commission records of investigations or formal hearings not resulting in recommendation for discipline may be inspected only by court order.

[5]New Jersey - Commission is not authorized to hold formal hearings; rather, it may only recommend to the state supreme court that a complaint be issued. If the complaint is issued, all further proceedings take place before the supreme court and are not confidential.