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Ben F. Overton

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GROUNDS FOR JUDICIAL DISCIPLINE IN THE CONTEXT OF JUDICIAL DISCIPLINARY COMMISSIONS

BEN F. OVERTON* **

To understand circumstances that might constitute grounds for judicial disciplinary commission action requires an understanding of the purpose for such commissions. These commissions were established to protect the public and improve the administration of justice.¹ They were created because the impeachment process was cumbersome, costly, and ineffective. They provide a concurrent constitutional means of discipline for misconduct of judicial officers. These commissions do not just function as an alternative to impeachment. They ordinarily have responsibilities in five specific areas² and oversee conduct which often would not be grounds for impeachment.

The primary function of these commissions is to provide a procedure for enforcement of the code of judicial conduct in force in the jurisdiction. Many violations of the code of judicial conduct would not constitute impeachable offenses³ and would not constitute any impropriety for a legislative or executive officer.⁴ It is important to recognize that disciplinary commissions are not substitutes for an appeal by an aggrieved litigant, nor should they act in such a way that the independence of the judiciary is chilled.⁵ Thus, this article will examine the grounds for discipline by judicial disciplinary commissions and discuss the proper role of such commissions.

RESPONSIBILITIES OF DISCIPLINARY COMMISSIONS

The constitutional words establishing the grounds for commissions to carry out their functions⁶ vary to a limited degree. A few states expressly

* Chief Justice, Supreme Court of Florida.

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1. Judicial disciplinary commissions have been established in more than forty states. *Hearings on S. 1110 Before the Subcomm. on Improvements in Judicial Machinery of the Senate Comm. on the Judiciary*, 94th Cong., 2d Sess. 172-73 (1976).

2. See discussion beginning with text following note 14 *infra*.

3. For a discussion of impeachable offenses see generally Fenton, *Scope of the Impeachment Power*, 65 NW. U. L. REV. 719, 747 (1970).

4. See notes 34-36 *infra* and accompanying text.

5. See notes 54-65 *infra* and accompanying text.

6. The grounds for judicial discipline commission action given in the California Constitution are typical:

provide that "conviction of a felony"⁷ is a ground for removal. Most state constitutions make "willful misconduct in office"⁸ the major ground for discipline. Some include the words "willful and persistent failure to perform his duties."⁹ Others specify that "habitual intemperance"¹⁰ is a ground for discipline. In addition to these specific grounds, most constitutional provisions include a general ground which is based upon the adverse

Sec. 18. (a) A judge is disqualified from acting as a judge, without loss of salary, while there is pending (1) an indictment or an information charging the judge in the United States with a crime punishable as a felony under California or federal law, or (2) a recommendation to the Supreme Court by the Commission on Judicial Performance for removal or retirement of the judge.

(b) On recommendation of the Commission on Judicial Performance or on its own motion, the Supreme Court may suspend a judge from office without salary when in the United States the judge pleads guilty or no contest or is found guilty of a crime punishable as a felony under California or federal law or of any other crime that involves moral turpitude under that law. If the conviction is reversed suspension terminates, and the judge shall be paid the salary for the judicial office held by the judge for the period of suspension. If the judge is suspended and the conviction becomes final the Supreme Court shall remove the judge from office.

(c) On recommendation of the Commission on Judicial Performance the Supreme Court may (1) retire a judge for disability that seriously interferes with the performance of the judge's duties and is or is likely to become permanent, and (2) censure or remove a judge for action occurring not more than 6 years prior to the commencement of the judge's current term that constitutes wilful misconduct in office, persistent failure or inability to perform the judge's duties, habitual intemperance in the use of intoxicants or drugs, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute. The commission may privately admonish a judge found to have engaged in an improper action or a dereliction of duty, subject to review in the Supreme Court in the manner provided for review of causes decided by a court of appeal.

(d) A judge retired by the Supreme Court shall be considered to have retired voluntarily. A judge removed by the Supreme Court is ineligible for judicial office and pending further order of the court is suspended from practicing law in this State.

(e) A recommendation of the Commission on Judicial Performance for the censure, removal or retirement of a judge of the Supreme Court shall be determined by a tribunal of 7 court of appeal judges selected by lot.

(f) The Judicial Council shall make rules implementing this section and providing for confidentiality of proceedings.

CAL. CONST. art. VI, § 18 (1879, amended 1976).

7. See, e.g., CAL. CONST. art. VI, § 18 (1879, amended 1976); COLO. CONST. art. VI, § 23(3)(b); MICH. CONST. of 1964, art. VI, § 30(2).

8. E.g., ARIZ. CONST. art. VI.1, § 4; CAL. CONST. art. VI, § 18(c) (1879, amended 1976); COLO. CONST. art. VI, § 23(3)(b); DEL. CONST. art. IV, § 37; GA. CONST. of 1976, tit. 2, § 2-4203(b); ILL. CONST. of 1970, art. VI, § 15(e)(1); IND. CONST. of 1851, art. 7, § 11; LA. CONST. art. V, § 25(C); MONT. CONST. of 1972, art. VII, § 11(3)(b); NEB. CONST. art. V, § 30(1)(a) (1875, amended 1966); N.M. CONST. art. VI, § 32 (1912, amended 1967); S.D. CONST. art. V, § 9 (1889, amended 1972); WYO. CONST. art. V, § 6(e)(2) (1890, amended 1972).

9. E.g., ARIZ. CONST. art. VI.1, § 4; COLO. CONST. art. VI, § 23(3)(b); DEL. CONST. art. IV, § 37; FLA. CONST. of 1968, art. V, § 12(f); GA. CONST. of 1976, tit. 2, § 2-4203(b); ILL. CONST. of 1970, art. VI, § 15(e)(1); IND. CONST. of 1851, art. 7, § 11; MONT. CONST. of 1972, art. VII, § 11(3)(b); N.M. CONST. art. VI, § 32 (1912, amended 1967); N.C. CONST. of 1971, art. IV, § 17(2); ORE. CONST. art. VII, § 8(1)(c) (1859, amended 1968); S.D. CONST. art. V, § 9 (1889, amended 1972); WYO. CONST. art. V, § 6(e)(2) (1890, amended 1972).

10. E.g., ARIZ. CONST. art. VI.1, § 4; CAL. CONST. art. VI, § 18(c) (1879, amended 1976); GA. CONST. of 1976, tit. 2, § 2-4203(b); IND. CONST. of 1851, art. 7, § 11; MICH. CONST. of 1964, art. VI, § 30(2); MONT. CONST. of 1972, art. VII, § 11(3)(b); NEB. CONST. art. V, § 30(1)(c) (1875, amended 1966); N.M. CONST. art. VI, § 32 (1912, amended 1967); WYO. CONST. art. V, § 6(e)(2) (1890, amended 1972).

effect the conduct has on the integrity of the judicial system.¹¹ This general ground may be phrased as "conduct prejudicial to the administration of justice that brings the judicial office into disrepute,"¹² or may be put in other similar language.¹³ In addition to these disciplinary grounds, almost all commissions also have the responsibility to inquire into disability problems. This provision ordinarily grants authority to "retire a judge for disability that seriously interferes with the performance of his duties."¹⁴

In practice, a judicial disciplinary commission has five basic responsibilities. These responsibilities arise when a judicial officer: (1) is charged with or convicted of a specific criminal offense; (2) willfully violates statutes, rules, or ethical standards in carrying out his judicial duties; (3) is guilty of conduct unrelated to his judicial duties which prejudices the judicial system; (4) needs correction of conduct which relates to deficiencies in the performance of his judicial duties; or (5) has a physical or mental disability that prevents him from carrying out his responsibilities.

First Responsibility: Criminal Charges and Conviction

When a judge who has been formally charged with a criminal offense continues in office, the credibility of the judicial system is substantially affected. The ineffectiveness of the impeachment process when it concerns a judicial officer charged with and convicted of a criminal offense is illustrated by the Otto Kerner case.¹⁵ Kerner, a former governor of Illinois and judge on the United States Court of Appeals for the Seventh Circuit, and Theodore J. Isaacs, former director of the Illinois Department of Revenue, were convicted of a variety of offenses. These arose out of their activities on behalf of racing interests in Illinois in return for bribes of more than \$150,000 each.¹⁶ In the federal system there is no means to suspend or remove a judicial officer¹⁷ and Kerner did not resign from his judicial position until he had exhausted his right to appeal, a process that took nearly two years.

11. See, e.g., MICH. CONST. of 1964, art. VI, § 30(2); PA. CONST. of 1968, art. V, § 18(d); VA. CONST. of 1971, art. VI, § 10.

12. E.g., ARIZ. CONST. art. VI.1, § 4; CAL. CONST. art VI, § 18(c) (1879, amended 1976); GA. CONST. of 1976, tit. 2, § 2-4203(b); ILL. CONST. of 1970, art. VI, § 15(e)(1); IND. CONST. of 1851, art. 7, § 11; LA. CONST. of 1975, art. V, § 25(C); WYO. CONST. art. V, § 6(e)(2) (1890, amended 1972).

13. E.g., FLA. CONST. of 1968, art. V, § 12(f).

14. E.g., ARIZ. CONST. art. VI.1, § 4.

15. See generally *United States v. Isaacs*, 493 F.2d 1124 (7th Cir. 1974), cert. denied sub. nom. *Kerner v. United States*, 417 U.S. 976 (1975).

16. 493 F.2d at 1131.

17. The United States Congress is considering the creation of a Council on Judicial Tenure, which would have the power to investigate complaints that the conduct of a federal justice or judge has been inconsistent with the good behavior requirement of article III, section 1 of the United States Constitution. The Council would make its recommendation to the Judicial

Most disciplinary commissions in the state system have the constitutional authority to take immediate action whenever a judicial officer is indicted or charged with a felony or a serious misdemeanor. Usually, some summary process to suspend the judge pending the final disposition of criminal charges, including appeal, is authorized.¹⁸ The suspension is ordinarily with pay,¹⁹ although some states have the authority to suspend without pay.²⁰

Once the serious criminal charges are established by a final conviction, a commission has authority to immediately recommend the removal of the judge.²¹ Actually, there are few reported removal cases on the basis of criminal convictions because, with the commission removal process available, the judge usually resigns after the conviction has become final.²² Where the improper conduct constitutes a criminal violation, a judicial disciplinary commission may act on the basis of a criminal conviction or may act separately on the facts that constitute the charge. The fact that there is an acquittal of the criminal offense does not prohibit a judicial disciplinary commission from acting.²³

Second Responsibility: Misconduct in Office

“Willful misconduct in office” normally refers to cases where a judge has acted in bad faith while acting in his judicial capacity. “Conduct prejudicial to the administration of justice” refers to conduct that detracts from the public esteem in which the judicial office is held by reason of misconduct not related to the judge’s official duties.²⁴ Ordinarily, the ground which constitutes conduct “prejudicial to the administration of

Conference of the United States, which would have the power to order the reprimand, censure, removal or retirement of the justice or judge. The Supreme Court of the United States would be authorized to review the order of the Judicial Conference. The Judicial Tenure Act, S. 1423, 95th Cong., 1st Sess., 123 CONG. REC. 6778 (1977); H.R. 1850, 95th Cong., 1st Sess., 123 CONG. REC. 375 (1977).

18. *E.g.*, CAL. CONST. art. VI, § 18(a) (1879, amended 1976).

19. *E.g.*, CAL. CONST. art. VI, § 18 (a & b) (1879, amended 1976) (disqualification of a judge without loss of salary upon the filing of an indictment or information, but suspension without pay upon conviction); COLO. CONST. art. VI, § 23(2) (suspension with loss of salary upon conviction).

20. *E.g.*, FLA. CONST. of 1968, art. V, § 12(d & f) (commission may request the supreme court to suspend a judge without pay, pending a final determination of the inquiry, once it has filed formal charges against the judge with the supreme court); LA. CONST. of 1975, art. V, § 25(c) (supreme court may suspend without pay on recommendation of commission).

21. *E.g.*, CAL. CONST. art. VI, § 18(b) (1879, amended 1976).

22. *But see In re Greenberg*, 442 Pa. 411, 280 A.2d 370 (1971), *suspension vacated*, 457 Pa. 33, 318 A.2d 740 (1974) (suspension vacated after Presidential pardon).

23. *In re Haggerty*, 257 La. 1, 241 So. 2d 469 (1970). *See In re Bates*, 555 S.W.2d 420 (Tex. 1977).

24. *Geiler v. Commission on Judicial Qualifications*, 10 Cal. 3d 270, 284-85, 515 P.2d 1, 9, 110 Cal. Rptr. 201, 209 (1973), *cert. denied*, 417 U.S. 932 (1974); *In re Carrillo*, 542 S.W.2d 105 (Tex. 1976). *But see In re Haggerty*, 257 La. 1, 241 So. 2d 469 (1970).

justice’’²⁵ or conduct “that brings the judicial office into disrepute’’²⁶ is considered to be a lesser offense than the charge of “willful misconduct in office.’’²⁷ Illustrations of disciplinary commission action based on charges of willful misconduct in office include cases in which the judge signed bail release orders in blank;²⁸ sat on the bench under the influence of an intoxicant;²⁹ received money for dismissal of traffic charges;³⁰ signed a false statement relative to the residence of an applicant for a hunting license, failed to keep records in a safe place, and allowed others to sign his name;³¹ dismissed drunk driving and related charges against a defendant without a hearing or lawful cause;³² and charged to the state numerous personal air travel expenses on a state travel card.³³

There are numerous examples of conduct which would constitute misconduct in office if committed by a judge which would not be considered proper subjects for disciplinary action if committed by legislative or executive officers. For example, commissions have censured or reprimanded a judicial officer for inflammatory and ethnic slurs to parties in a juvenile proceeding,³⁴ for rudeness to a witness,³⁵ and for participation in ex parte communications concerning matters before the court.³⁶

The standard of proof which is used by most commissions in finding judicial misconduct, and by state supreme courts in their independent review of the evidence before the commission,³⁷ is that the evidence of misconduct must be “clear and convincing.’’³⁸ Other courts, however, have concluded that the findings of the commission need be established only by a preponderance of the evidence.³⁹

25. *E.g.*, CAL. CONST. art. VI, § 18(c) (1879, amended 1976).

26. *Id.*

27. *Geiler v. Commission on Judicial Qualifications*, 10 Cal. 3d 270, 278, 515 P.2d 1, 9, 110 Cal. Rptr. 201, 209 (1973), *cert. denied*, 417 U.S. 932 (1974).

28. *In re Chavez*, 9 Cal. 3d 846, 512 P.2d 303, 109 Cal. Rptr. 79 (1973).

29. *In re Somers*, 384 Mich. 320, 182 N.W.2d 341 (1971).

30. *In re Sollie*, 292 Ala. 606, 298 So. 2d 601 (1974).

31. *Inquiry Concerning a Judge (Elder)*, No. 10 (N.M., Nov. 5, 1973).

32. *Martinez v. Members of Judicial Standards Comm’n*, 386 F. Supp. 169 (D.N.M. 1974).

33. *In re LaMotte*, 341 So. 2d 513, 514 (Fla. 1977).

34. *In re Chargin*, 2 Cal. 3d 617, 471 P.2d 29, 87 Cal. Rptr. 709 (1970).

35. *In re Glickfeld*, 3 Cal. 3d 891, 479 P.2d 638, 92 Cal. Rptr. 278 (1971).

36. *In re Emmet*, 293 Ala. 143, 300 So. 2d 435 (1974); *In re Dekle*, 308 So. 2d 11 (Fla. 1975).

37. *E.g.*, *In re Hanson*, 532 P.2d 303 (Alas. 1975); *Geiler v. Commission on Judicial Qualifications*, 10 Cal. 3d 270, 515 P.2d 1, 110 Cal. Rptr. 201 (1973), *cert. denied*, 417 U.S. 932 (1974); *In re Heuermann*, 240 N.W.2d 603 (S.D. 1976). *See In re LaMotte*, 341 So. 2d 513, 518 (Fla. 1977) (England, J., concurring).

38. *E.g.*, *In re Hanson*, 532 P.2d 303 (Alas. 1975); *Geiler v. Commission on Judicial Qualifications*, 10 Cal. 3d 270, 515 P.2d 1, 110 Cal. Rptr. 201 (1973), *cert. denied*, 417 U.S. 932 (1974); *In re LaMotte*, 341 So. 2d 513, 516 (Fla. 1977); *In re Rome*, 218 Kan. 198, 542 P.2d 676 (1975); *In re Haggerty*, 257 La. 1, 241 So. 2d 469 (1970); *In re Diener*, 268 Md. 659, 304 A.2d 587 (1973); *In re Heuermann*, 240 N.W.2d 603 (S.D. 1976).

39. *E.g.*, *In re Terry*, 262 Ind. 667, 323 N.E.2d 192, *cert. denied* 423 U.S. 867 (1975); *In re Carrillo*, 542 S.W.2d 105 (Tex. 1976).

Third Responsibility: Misconduct Unrelated to Judicial Duties

Minor criminal violations outside the scope of judicial duties are ordinarily charged as "conduct prejudicial to the administration of justice" despite the fact that proving that the conduct was actually prejudicial is often more difficult than proving the actual misconduct. The charge of "conduct prejudicial to the administration of justice" was applied in censuring a judge for driving while intoxicated⁴⁰ and in publicly reprimanding a judge for the commission of lewd and lascivious acts in public in violation of a municipal ordinance.⁴¹ In *In re Durr*⁴² an Illinois judge was disciplined for operating an abstract company and practicing law while sitting on the bench. A judicial candidate in Kansas was disciplined for making inaccurate statements in his political campaign for office in *In re Baker*.⁴³ In *In re Foster*,⁴⁴ a Maryland judge was disciplined for using the influence and prestige of his office to promote an extensive real estate development.⁴⁵

There are also cases where a judicial disciplinary commission has charged a judge with willful misconduct "relating to his official duty"⁴⁶ for offenses committed outside the scope of his judicial duties. For example, in *In re Haggerty*⁴⁷ the Judiciary Commission of Louisiana recommended that a judge be removed from office for organizing a stag party at which pornographic movies were shown and at which there were live performances of lewd acts and for participating in illegal gambling activities. The Supreme Court of Louisiana, in reviewing these charges, removed the judge from office despite his prior acquittal on criminal charges arising from the incident. The court reasoned that in condemning judicial misconduct "relating to his official duty"⁴⁸ the state constitution denounced not only the misconduct of a judge while performing his judicial duties, but also misconduct in activities relevant to the performance of those duties. The court concluded that the conduct charged and proved had a logical connection with the duties of the judge as an officer of criminal court, and could only have been regarded as prejudicial to the administration of justice.⁴⁹

Fourth Responsibility: Judicial Deficiencies

A judicial disciplinary commission has the ability to deal with many judicial and administrative difficulties before they become major miscon-

40. *In re Law*, No. 73-CC-6 (Ill. Cts. Comm'n, filed Feb. 1974).

41. *In re Lee*, 336 So. 2d 1175 (Fla. 1976).

42. No. 72-CC-1 (Ill. Cts. Comm'n, filed Aug. 1973).

43. 218 Kan. 209, 542 P.2d 701 (1975).

44. 271 Md. 449, 318 A.2d 523 (1974).

45. *Id.* at 464, 318 A.2d at 538.

46. LA. CONST. of 1975, art. V, § 25(C).

47. 257 La. 1, 241 So. 2d 469 (1970).

48. *Id.* at 10, 241 So. 2d at 478.

49. *Id.*

duct problems. This is probably the most important and least known of the commission responsibilities. The commission by its action corrects deficiencies in the system and improves substantially its administrative operation. Illustrations of the types of situations in which a commission may act often concern the manner in which a judicial officer carries out his duties, *i.e.*, where a judge intentionally fails to follow a rule or statutory procedural requirement, holds cases under advisement for extended periods of time, fails to spend sufficient time on judicial duties, or uses alcohol to excess while away from his judicial duties. These problems are solved in most instances informally by a commission member or a staff person discussing the matter with the judge.

Fifth Responsibility: Physical Disability

The fifth responsibility does not concern the disciplining of a judge. Most judicial disciplinary commissions have authority to retire a judge for any disability that seriously interferes with the performance of his duties.⁵⁰ Although this commission responsibility does not concern judicial misconduct and requires a somewhat different procedure, disability cases may be as controversial as those involving misconduct.

Commissions have required the retirement of judges because of alcoholism,⁵¹ age,⁵² and incurable cancer.⁵³ This type of action may present problems where the judge involved has served well and diligently for many years. There may also be a problem of incompetency at the time of the proceeding. Nonetheless, commission authority in this area is clearly necessary to ensure an adequately functioning judicial system.

NO SUBSTITUTE FOR APPEAL

It is essential to the independence of the judiciary that complaints to commissions not be a substitute or alternative for an appeal. In the absence of fraud or a corrupt motive,⁵⁴ a commission must avoid taking action against a judge for reaching an erroneous legal conclusion or misapplying

50. See, e.g., ARIZ. CONST. art. VI.1, § 4; CAL. CONST. art. VI, § 18(c) (1879, amended 1976); COLO. CONST. art. VI, § 23(3)(b); DEL. CONST. art. IV, § 37; FLA. CONST. of 1968, art. V, § 12(f); GA. CONST. of 1976, tit. 2, § 2-4203; IND. CONST. of 1851, art. 7, § 11; LA. CONST. of 1975, art. V, § 25(C); MICH. CONST. of 1964, art. VI, § 30(2); MONT. CONST. of 1972, art. VII, § 11; NEB. CONST. art. V, § 30 (1875, amended 1966); N.M. CONST. art. VI, § 32 (1912, amended 1967); S.D. CONST. art. V, § 9 (1889, amended 1972); VA. CONST. of 1971, art. VI, § 10; WYO. CONST. art. V, § 6 (1890, amended 1972).

51. *In re Alexander*, 323 So. 2d 448 (La. 1975).

52. *McComb v. Comm'n on Judicial Performance*, 19 Cal. 3d Spec. Trib. Supp. 1, 564 P.2d 1, 138 Cal. Rptr. 459 (1977).

53. *In re Falk*, 323 So. 2d 571 (Fla. 1976).

54. See note 65 *infra* and accompanying text.

the law. An erroneous decision by a judge must be left to the regular appellate process. It was to this point that Chief Justice Burger spoke in *Chandler v. Judicial Council*⁵⁵ when he stated: "There can, of course, be no disagreement among us as to the imperative need for total and absolute independence of judges in deciding cases or in any phase of the decisional function."⁵⁶ To allow disciplinary proceedings to evaluate judicial decisions could force judges to walk an ill-defined and standardless line between propriety and impropriety. Clearly, such a sword over a judge's head would have a tendency to chill his independence. A judge would have to be as concerned with what is proper in the eyes of the disciplinary commission as with what is the just decision. Many of our present practices and procedures are the result of an innovative judge trying to reach a just result as to all the parties concerned and to improve the administration of justice. If disciplinary commissions had the power to review the rightness of legal decisions, the aggrieved party would be granted an avenue of appeal not in any way contemplated when these disciplinary commissions were established.

The Illinois Courts Commission appeared to violate this principle in *In re Harrod*.⁵⁷ *Harrod* involved a trial judge who had required some probationers to get haircuts and others to turn in their drivers' licenses. The Courts Commission found the judge guilty of "gross abuse of judicial power" and suspended him for thirty days without pay, which was, in effect, a fine of \$3,000.⁵⁸ There was no specific statutory authority either allowing or prohibiting these probation conditions. In *Harrod*, the Courts Commission interpreted and construed a probation statute that had not previously been considered by an appellate court. Further, an appeal on the issue was pending in an Illinois appellate court at the time the initial disciplinary inquiry was made.⁵⁹

There was considerable concern in the legal profession about the Illinois Courts Commission's decision in *Harrod* and its effect on the judiciary. Fortunately, the Illinois Supreme Court subsequently ordered a writ of mandamus against members of the Courts Commission directing them to expunge the suspension order from their records.⁶⁰ Appellate jurisdiction was based on a constitutional issue⁶¹ because, under the Illinois

55. 398 U.S. 74 (1970).

56. *Id.* at 84.

57. No. 76-CC-3 (Ill. Cts. Comm'n, filed Dec. 3, 1976).

58. *Id.* at 8.

59. *People v. Dunn*, 43 Ill. App. 3d 94, 356 N.E.2d 1137 (1976).

60. *People ex rel. Harrod v. Illinois Courts Comm'n*, No. 49118 (Ill. Nov. 30, 1977).

61. ILL. CONST. of 1970, art. VI, § 4. One issue raised, for example, is whether the Illinois Courts Commission is exceeding its constitutional authority where it investigates instances of judicial discretionary action which are ordinarily reviewed by an appellate court. See *Amicus Curiae Brief of Illinois Judges Association, People ex rel. Harrod v. Illinois Courts Comm'n*, No. 49118 (Ill. Nov. 30, 1977).

disciplinary procedure, the supreme court ordinarily does not review the Courts Commission's actions.⁶² The statements by the Courts Commission in *Harrod* that "[t]he right of appeal is not an effective remedy"⁶³ and that "appeals are costly and they consume time and energy"⁶⁴ did not justify the commission action that was taken. A decision like *Harrod* jeopardizes the necessary independence of the judiciary where fraud or bad faith is not present.

It is this writer's concern that disciplinary commission decisions like the one in *Harrod* might result in restrictive legislation and constitutional prohibitions concerning commission authority. This would make difficult an appropriate action by a commission for bad faith or fraudulent conduct by a judge. Clearly the commission must have authority to discipline a judge when his judicial ruling is made in bad faith. An illustration is the case of the judge in California who summarily sentenced public defenders to jail for contempt without any evidentiary justification whatever.⁶⁵

PROPOSED ABA STANDARDS

The American Bar Association's Proposed Standards Relating to Judicial Discipline and Disability⁶⁶ categorize the grounds for judicial discipline by commissions in the way that the practical applications of the grounds have developed under existing constitutional provisions over the past seventeen years. They specify that the commissions must not be used as a substitute for appeal.⁶⁷ The grounds for discipline set forth in the Proposed Standards relate to actual types of conduct that have resulted in disciplinary commission action. These Proposed Standards are, however, more specific than most constitutional provisions.

62. ILL. CONST. of 1970, art. VI, § 15(e) (providing that the Illinois Courts Commission, and not the state supreme court, has the authority to remove, censure, reprimand, and suspend judges).

63. No. 76-CC-3 (Ill. Cts. Comm'n, filed Dec. 3, 1976) at 8.

64. *Id.* The pertinent section of the Commission's order reads as follows:

The members of the Courts Commission have long been conscious of the fact, emphasized by the Respondent and the *amicus curiae*, that the Commission lies outside of the normal chain of judicial review, and that under the Constitution its determinations are final. There is thus a danger, whenever the Commission acts with respect to any conduct that might be subject to review in the normal course of judicial proceedings, that the appellate or supreme court might reach a different conclusion. On the other hand, as the proceedings in this case as well as in other cases before the Commission have shown, many serious injustices may occur for which the right of appeal is not an effective remedy. Appeals are costly and they consume time and energy. Moreover, as the present case indicates, it is possible for a trial judge to impede the possibility of effective review. For this reason the Commission has concluded that it is only in the clearest cases in which a gross abuse of judicial power has been demonstrated that the Commission will undertake to impose discipline based upon the conduct of judges which is subject to review in ordinary judicial proceedings.

65. *Cannon v. Commission on Judicial Qualifications*, 14 Cal. 3d 678, 537 P.2d 898, 122 Cal. Rptr. 778 (1975).

66. Hereinafter referred to in the text as PROPOSED STANDARDS. The PROPOSED STANDARDS are printed in the appendix.

67. PROPOSED STANDARDS 3.4. See appendix.

The judicial disciplinary commission constitutes a new agency in the judicial process. Such commissions are still in a developmental stage. The Proposed Standards should be helpful to some of the commissions as a framework to be used in amending state constitutions to include all necessary grounds for commission action.

CONCLUSION

The purpose of disciplinary commissions is to improve the administration of justice, not to be a substitute for traditional procedures. If judicial misconduct is criminal, it should be punished as such. Commissions are not a substitute for either the criminal courts or the appellate process.

Acting within the framework of their responsibilities, judicial disciplinary commissions have, in the few short years they have been in existence, substantially improved the administrative efficiency and operation of the judicial branch in many states. The same improvement can be achieved in the remaining states by the adoption of this type of commission.