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From the Los Angeles Times

Complaint Against Judge Has Broader Ramifications

Judicial panel says it lacks power to sanction L.A. jurist. Bill would create inspector general.

By Henry Weinstein

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A long-running controversy involving a misconduct complaint against veteran Los Angeles federal Judge Manuel L. Real has reached the nation's capital, where it could influence legislation proposed by conservatives seeking to exert greater oversight of the federal judiciary.

Real seized control from another judge of a bankruptcy involving a woman whose probation he was overseeing, permitting Deborah M. Canter to live rent-free for three years in a Highland Avenue house and costing her creditors \$35,000 in rent and thousands more in legal costs, according to court documents.

A sharply divided national federal judicial discipline committee ruled 3 to 2 in late April that it had no power to sanction Real, 81, because the chief judge of the U.S. 9th Circuit Court of Appeals failed to properly investigate the complaint.

Although the panel split over whether it could still sanction Real, all five judges agreed that Mary M. Schroeder, the 9th Circuit's chief judge, erred by failing to convene a special committee to review the allegations leveled against Real.

Ralph K. Winter Jr., a federal appeals court judge from Connecticut, issued a blistering dissent, saying the panel's failure to act would tend to erode public confidence in the federal judiciary's ability to police itself.

Federal judges have been permitted to regulate themselves in a "legitimate effort to preserve judicial independence," Winter said. Such a system "suffers from the weakness that many observers will be suspicious that complainants against judges will be disfavored. The committee's decision in this case can only fuel such suspicions," he wrote.

Several legal ethics experts agreed. New York University law professor Stephen Gillers said the outcome will "seem terribly bizarre" to laypersons.

"Judges ignore the procedures that the law requires with the result that a fellow judge avoids the possibility of discipline, and then a panel of higher judges says that it has no power to review the violation....," he said. "To the public, it may look like a system designed by the Mad Hatter with the rest of us in the role of Alice."

George Mason University law professor Ronald D. Rotunda was even more troubled. "Judges routinely, and correctly, tell us that we are not above the law. Well, judges aren't either. If the reviewing panel" in the Real case "can't or won't do anything," Congress can.

In late April, House of Representatives Judiciary Committee Chairman F. James Sensenbrenner Jr. (R-Wis.) and Sen. Charles Grassley (R-Iowa) introduced legislation that would create an independent inspector general for the judicial branch. If the bill passes, the newly created inspector general could conduct investigations of possible misconduct by federal judges and recommend changes in laws or regulations affecting the federal judiciary. A similar bill failed a decade ago.

Federal judges are appointed for life, and while they can be impeached, the process is cumbersome and rarely used. In 1980, Congress created circuit judicial councils to review misconduct complaints, but those councils have hardly been aggressive.

More than 99% of the complaints filed against federal judges across the country are dismissed. The process is conducted largely in secret. Complaints rarely get the level of review that the one against Real received and proceedings hardly ever become public.

In the federal court term ending Sept. 30, 2005, not one federal judge was subject to a public or private censure or any other disciplinary action, according to figures provided by the Administrative Office of the Courts in Washington.

"Federal judges have more insulation than anyone in American political life," said Northwestern University law professor Steven Lubet. "A judge with life tenure needs less protection, not more, than an ordinary citizen."

He noted that even if Real had been sanctioned he would not have lost his job, but rather could have been reprimanded or removed from cases.

Real, who has been a U.S. district judge in Los Angeles since 1966, has for many years personally supervised numerous probationers, among them Canter, who had pleaded guilty in April 1999 to one count of loan fraud and three counts of making false statements. She was 42 at the time.

Two months before her plea, Canter had separated from her husband, Gary, a member of the family that owned Canter's Deli on Fairfax Avenue. He moved out of the Highland Avenue house, which was owned by a trust established by his parents.

Deborah Canter and her daughter stayed on but fell behind on the rent. In October 1999, Alan Canter, the property's trustee, filed suit, seeking to evict her and collect \$5,000 in back rent.

The following timeline of what happened next was outlined in court records:

Less than half an hour before an eviction hearing was to begin, Deborah Canter filed for bankruptcy, halting proceedings. A few months later, she agreed to move out of the house. But days before the scheduled departure she personally delivered a letter asking Real "for his help in preventing her eviction."

A day or two later, Real seized control of the bankruptcy from a Bankruptcy Court judge. Soon thereafter, Canter told her lawyer's secretary the letter had "worked." Even Canter's own lawyer said he was "shocked" because it was a "complete no-no going to a judge secretly without talking to the other side."

Subsequently, Real twice denied motions that would have permitted the trustee to evict Canter. Asked by the trust's lawyer for an explanation, Real responded: "Because I said it," according to court records.

Venice attorney Stephen Yagman, who specializes in suing the police and is a longtime adversary of Real, filed a misconduct charge in February 2003. The case went initially to Schroeder, chief judge of the 9th Circuit, which has jurisdiction over appeals of federal cases in nine Western states including California. She dismissed it summarily.

In response to Yagman's appeal, the 9th Circuit's 10-member Judicial Council then stepped in. Real acknowledged meeting with Canter, saying that he believed her legal representation in the bankruptcy was inadequate.

The council found Real had acted improperly and sent the case back to Schroeder. "A judge may not use his authority in one case to help a party in an unrelated case," the council said.

In November 2004, Schroeder once again threw out the complaint, saying the council's concern about secret communications between Real and Canter were unwarranted. Yagman appealed again.

In May 2005, the council sent Real a letter asking him to "acknowledge your improper conduct, apologize for it and pledge not to repeat it." Real's lawyer responded the next month that the judge thought he had failed to adequately explain his actions, creating unfortunate "misunderstandings."

"adequate corrective action has been taken" and upheld Schroeder's dismissal of the charge. A month later, Yagman appealed to the Judicial Conference of the United States, the organization that sets policy and speaks for the interests of the federal courts, which referred the matter to a five-judge disciplinary committee.

The majority, led by Dolores Sloviter, a senior federal appeals court judge from Philadelphia, took no position on the merits of the underlying complaint, saying it could not act because of Schroeder's failure to convene a special committee.

"We believe that additional legislation expanding the scope of the [Judicial] Conference's ... jurisdiction is necessary before we may" further review this case, wrote Sloviter, who was appointed by President Carter.

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