



**PUBLICATIONS
& VIDEO
CATALOG**

[About the Catalog](#)

[Search](#)

[Browse by Subject](#)

[Browse by Title](#)

[Recent Materials](#)

[How to Order](#)

Report of the National Commission on Judicial Discipline and Removal

Robert W. Kastenmeier (Chair)

1993, 210 pages

(Out of Print: Archival Copy on File)

In 1990, Congress created the National Commission on Judicial Discipline and Removal, who's charge included investigation of problems related to the discipline and removal of life-tenured federal judges, and evaluation of alternatives to current arrangements for judicial discipline and removal, including statutory and constitutional amendments. The Commission was instructed to submit its findings and recommendations to the President, Congress, and the Chief Justice of the United States. The Commission held six public hearings during 1992 and 1993, and submitted its final report on August 2, 1993.

The Federal Judicial Center serves as repository for the Commission's published materials. Although paper copies of the Commission's final report are no longer available, the report is reprinted at 152 Federal Rules Decisions 265 (1994).

[Minimize table of contents](#)

To find a specific word below, use the **Find** or **Find (on This Page)** command in your browser. (This is usually under the Edit menu.)

Table of Contents

Preface, i

Chapter I: Background, 1

Chapter II: Constitutional Issues, 9

 Current Constitutional Structure, 9

 Constitutional Concerns, 12

 Criminal Prosecution of Federal Judges, 12

 The Judicial Councils Reform and Judicial Conduct and Disability Act of 1980, 14

 Possible Statutory Reforms, 17

 Removal Other Than Through Impeachment, 17

 Automatic Suspension of Pay Upon Conviction, 21

 Automatic Suspension of Duties Upon Conviction, 21

 Possible Constitutional Amendments, 22

 Life Tenure, 22

 Significant Reforms in the Impeachment Mechanism, 22

Chapter III: Legislative Branch, 27

- Constitutional Authority, 28
- Historical Experience, 29
- Proposals For Reform, 31
- Role Of The House Of Representatives, 32
 - Rules of Procedure, 33
 - Committee on the Judiciary, 34
- Evaluation Of The House's Role, 37
 - Complaints of Judicial Misconduct, 37
 - Impeachment Investigations, 38
 - Sequencing of Impeachment and Criminal Prosecution, 39
 - Access to Executive and Judicial Branch Materials, 40
 - Commencement of Impeachment Proceedings After Convictions, 43
 - Articles of Impeachment, 44
 - Article III in the Claiborne Proceeding, 45
 - The Issue of Relief, 47
 - House Managers' Role in the Senate Trial, 47
- Role Of The Senate, 49
 - Rules of Proceeding, 49
 - Initiation of the Senate Trial, 50
 - Rule XI Trial Committees, 50
 - Senate Trials, 52
 - Supreme Court Decision on Trial Procedure, 52
- Evaluation Of The Senate's Role, 53
 - Continued Use of Rule XI Trial Committees, 54
 - Delegation to Others to Handle Pretrial Matters, 55
 - Relationship of Trial Committee Vote to Senate Vote, 56
 - Other Procedural and Evidentiary Reforms, 57
 - Issue Preclusion, 57
 - Standards of Proof, 59
 - Source Materials on Impeachment Proceedings, 60
- Legislative Oversight, 61
 - Oversight by the House, 61
 - Oversight by the Senate, 62
- House--Senate Issues, 64
- Interbranch Communications, 65
 - New Institutions, 66
 - Informal Contacts Among the Branches, 66
 - House Committee on the Judiciary, 66
- General Observations, 67

Chapter IV: Executive Branch, 69

- The Role Of The Department Of Justice, 70
- Criminal Prosecution Of Judges, 72
 - Corruption Within the Federal Judiciary, 75
 - Pre-Impeachment Prosecution, 75
 - Constitutionality, 75
 - Judging the Judges, 75
 - Sentencing Policy, 76
 - Prosecutorial Abuse, 77

Cooperation In The Impeachment Process, 79
Judicial Appointment Process, 81

Chapter V: Judicial Branch, 83

Formal Mechanisms, 84

The 1980 Act, 84

Substantive Standards, 86

Disciplinary and Corrective Actions, 87

Dismissals, 92

Merits-relatedness, 92

Delay, 93

Not in Conformity With the Act, 96

Frivolousness, 97

Other Issues, 98

Problems in Implementation and Administration, 99

Lack of Information and Disincentives to Filing, 99

Powers of Chief Judges in Complaint Disposition, 102

Limited Factual Inquiry, 102

Assistance in Complaint Review and Disposition, 103

Corrective Action, 104

Judicial Council and Special Committee Issues, 104

Council Review of Chief Judge Orders, 104

Special Committee Investigations, 105

Public Accountability, 105

Confidentiality, 106

Chief Judge Orders, 108

Publication of Orders, 109

Statistical Reporting, 110

Section 332, Title 28, United States Code, 110

Appellate Review, 112

Informal Mechanisms, 113

Employment Benefits, 114

Judicial Evaluation and Education, 118

Self Reporting, 119

The Supreme Court, 121

General Observations, 123

Afterword, 129

Separate Views of Senator Howell T. Heflin, 131

Chapter Notes, 137

List of Conclusions and Recommendations, 147

Appendix I--Statutory Proposals and Proposed Constitutional Amendments on Judicial Discipline and Removal, 157

Appendix II--Relevant Provisions of the Constitution and Statutes, 163

Constitutional Provisions, 163

Commission Enabling Act, 163

Section 332, Title 28, U.S. Code, 170

Section 371, Title 28, U.S. Code, 173

Section 372, Title 28, U.S. Code, 175

Appendix III--State and Foreign Systems for Removing or Disciplining Judges, 183

Glossary, 187

Commission Biographies, 191

Acknowledgments, 203

----- End -----

More on the Subject(s):

[Constitutional Law](#)

[Judicial Conduct and Disability](#)

[Judicial Ethics](#)
