

Summary of Rep. Fitzgerald's JC&D Reform Act

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1. The Judicial Conduct and Disability Act of 1980 (JCDA or Act) is now more than 45 years old. It has been amended only twice, most recently in 2002. Although the Act has generally worked well, high-profile proceedings have revealed gaps and flaws that warrant Congressional attention. This bill makes modest but important changes that address the concerns raised by these proceedings.

2. Both the original Act and its two sets of amendments had strong bipartisan support. This bill, which is primarily procedural, deserves bipartisan support also.

3. Although the bill responds particularly to the concerns raised by what has been called the “stealth impeachment” of Judge Pauline Newman of the Federal Circuit, the provisions are broadly applicable and will serve the interests of judges and complainants alike.

4. Three provisions fall into this category. First, there is a robust provision for transferring proceedings to another circuit; in particular, all complaints against circuit judges that survive an initial review must be sent to the Chief Justice, who then has the option to transfer the complaint to another circuit. This departs from current practice, under which the chief judge of a circuit has complete discretion whether to transmit a complaint to the Chief Justice for potential transfer.

Second, the bill establishes an independent oversight role for the Judicial Conference's Committee on Judicial Conduct and Disability (JC&D Committee) when reviewing orders issued by the regional Judicial Councils after an investigation by a Special Committee. Currently, much of the Committee's review is for abuse of discretion. The Committee does not exercise an independent judgment with respect to the existence of misconduct or performance-impairing disability or about the appropriateness of any remedial action a Judicial Council has taken. *De novo* review protects the interests of judges and complainants; it also helps to establish uniformity in the application of the Act.

Finally, the bill establishes an objective standard for recusal. Under current Rules, judges apply a subjective standard.

5. These three provisions address different aspects of the process under the Act, but they will work in tandem to strengthen the fairness of the proceedings and, no less important, the appearance of fairness.

6. Another provision gives more protections to judges who have been suspended from hearing cases by Judicial Councils. In particular, it limits the length of a suspension to two years: an initial year at most from a Judicial Council and a subsequent year from the Council or JC&D Committee, but only if the extension would serve to effectuate the remedial purposes of the law.

That same provision also safeguards the roles that the Constitution assigns to the two Houses of Congress – to the House, the “sole power of impeachment;” to the Senate, the sole power to remove Article III judges from office.

7. The bill departs from the 1980 model in one respect: it allows for judicial review in the court of appeals of an extremely limited category of Judicial Council orders suspending Article III judges. The premise is that Article III judges should not be denied the opportunity to present constitutional challenges to their suspension in a judicial proceeding that is both public and adversary

8. It is also important to emphasize what the bill does not do. It does not change the standard of misconduct or disability, nor does it expand or contract the coverage of the statute. These are important matters, but they may be controversial, and we think it is desirable to limit this bill to primarily procedural improvements whose substance should not be controversial.