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John P. MacKenzie

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Still Opposes Having Jurists Reveal Income

By John P. MacKenzie
Washington Post Staff Writer

A select committee of the American Bar Association has reaffirmed its stand against disclosure of a judge's private investments as a cure for the judicial scandals and controversies of recent years.

"A judge has the rights of an ordinary citizen except to the extent required to safeguard the proper performance of his duties," the committee says in a proposed new code of judicial ethics released yesterday.

The committee, appointed two years ago to revise the ABA ethical code issued in 1924 under the chairmanship of Chief Justice William Howard Taft, distributed 14,000 copies of its tentative draft to lawyers and judges across the country for comment.

A target date of August, 1972, has been set for final ABA approval of a revised code as a model for state and federal courts, state legislatures and, perhaps, Congress.

In contrast to a bill introduced by Sen. Birch Bayh (D-Ind.), the ABA draft firmly rejects a system of income disclosure except for services rendered off the bench, such as speeches, lecturing and writing, and it specifically rejects a public listing of a judge's debts.

Some critics of the state and federal judiciary have argued that in the wake of such controversies as the $20,000 foundation fee for former Justice Abe Fortas and the foundation employment of Justice William O. Douglas, only fuller disclosure would restore confidence in the independence of the nation's judges.

See ETHICS, A14, Col. 1

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Ethics Code Proposed For Judges

ETHICS, From A1

But the committee, which is headed by retired California Chief Justice Roger J Traynor and includes U.S. Supreme Court Associate Justice Potter Stewart, maintains that "no sufficient justification exists for denying a judge the rights of an ordinary citizen to maintain the privacy of the financial circumstances of himself and his family."

Stock ownership and income, the committee says, do not in themselves affect a judge's performance on the bench "and should not be permitted to be the occasion for groundless attacks on his integrity."

The proposed new canons—seven broad principles to replace the 36 canons currently endorsed by the organized bar—admonish judges that they must "avoid all impropriety and appearance of impropriety," the same general standard embodied in the 1924 canons.

They warn also that a judge "must expect to be the subject of constant public scrutiny. He must therefore accept restrictions on his conduct that might be viewed as burdensome by the ordinary citizen, and he should do so freely and willingly."

Among those burdens the committee lists a ban on appearances in court as a character witness on grounds that it "may be misunderstood as an official testimonial."

The committee also says judges in the future should avoid serving on outside bodies other than those furthering "the administration of justice."

By implication the committee disapproves such nonjudicial service as former Chief Justice Earl Warren's role as chairman of the commission investigating the assassination of President Kennedy—service that Warren performed reluctantly when pressed by President Johnson.

The proposed new code permits a judge to perform legal and financial services only for family members and prohibits services as a corporate director or business officer Despite pressure from state and county judges complaining they couldn't make ends meet without such moonlighting, the committee says the answer to that problem "is to secure adequate judicial salaries."

A grandfather clause in the code would permit a judge now in service to continue some off-the-bench work "if the demands on his time and the possibility of conflicts of interest are not substantial."

Although the committee was appointed in 1969 partly as a reaction to then-current controversies, its tentative code is in part a counter-reaction to remedies, such as those initiated by Earl Warren for federal judges, which some judges and bar leaders considered too sweeping.

At Warren's behest the U.S. Judicial Conference ruled that judges must obtain permission from their colleagues for extra-judicial services and were to file confidential reports of investment earnings Under Chief Justice Warren E. Burger, the Judicial Conference quickly suspended the Warren rules, substituted interim rules and formed a committee to interpret existing ABA canons, and withheld further action to await the outcome of the Traynor committee study.

"Separation of a judge from extra-judicial activities is neither possible nor wise," the committee reported yesterday.

The committee has reaffirmed its stand of a year ago that a single share of stock in a company is enough to disqualify a judge from sitting in a case involving that company But it also establishes novel rules for letting lawyers and their clients waive the disqualification.

Under the rules a judge whose holdings are "insubstantial" could disclose them to each side and return to sit in the case if both sides requested it in writing.

By contrast, the Bayh bill in the Senate would prohibit any such waiver on the theory that the judge's willingness to sit can't help influencing the litigants and coercing lawyers into overlooking the judge's interest in the case.

A year ago the ABA committee called for full disclosure of a judge's financial holdings in a company every time he disqualified himself from a case, but the committee decided to reduce the disclosure requirement to a minimum.

Besides chairman Traynor and Justice Stewart, the 13-member committee includes federal judges Irving R. Kaufman of New York, Edward T. Gignoux of Portland, Maine, and Ivan Lee Holt of St. Louis, attorneys Whitney North Seymour of New York and William L. Marbury of Baltimore, several state judges and organized bar officials.