

105TH CONGRESS  
1ST SESSION

# H. R. 2739

To amend title 28, United States Code, to create a Judicial Conduct Board and a Court of Judicial Discipline to investigate and make determinations with respect to complaints regarding judicial discipline.

---

## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 24, 1997

Mr. McDADE introduced the following bill; which was referred to the  
Committee on the Judiciary

---

## A BILL

To amend title 28, United States Code, to create a Judicial Conduct Board and a Court of Judicial Discipline to investigate and make determinations with respect to complaints regarding judicial discipline.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Judicial Conduct Re-  
5       form Act of 1997”.

6       **SEC. 2. REFORM OF JUDICIAL DISCIPLINE SYSTEM.**

7       (a) CREATION OF JUDICIAL CONDUCT BOARD AND  
8       COURT OF JUDICIAL DISCIPLINE.—

1           (1) IN GENERAL.—Chapter 17 of title 28, Unit-  
2           ed States Code, is amended by adding at the end the  
3           following:

4    **“§ 378. Judicial Conduct Board**

5           “(a) ESTABLISHMENT AND COMPOSITION.—There is  
6           established in the judicial branch a Judicial Conduct  
7           Board (hereafter in this section referred to as the  
8           ‘Board’).

9           “(b) FUNCTIONS.—The Board shall perform the  
10          functions vested in it under section 372(e).

11          “(c) COMPOSITION AND TERMS.—

12                 “(1) COMPOSITION.—The Board shall be com-  
13                 posed of 12 members as follows:

14                         “(A) 3 judges, other than senior judges, as  
15                         follows:

16                                 “(i) 1 circuit judge, and 1 bankruptcy  
17                                 judge or magistrate judge, each of whom  
18                                 shall be appointed by the Chief Justice.

19                                 “(ii) 1 district judge who shall be ap-  
20                                 pointed by the President.

21                         “(B) 3 members of the bar of the Supreme  
22                         Court, other than justices or judges, 2 of whom  
23                         shall be appointed by the Chief Justice, and 1  
24                         of whom shall be appointed by the President.

1           “(C) 6 persons, other than lawyers, 3 of  
2           whom shall be appointed by the Chief Justice,  
3           and 3 of whom shall be appointed by the Presi-  
4           dent.

5           “(2) TERMS.—The members of the Board shall  
6           serve for terms of 4 years, except that of the mem-  
7           bers first appointed—

8           “(A) 1 member appointed by the Chief  
9           Justice and 2 members appointed by the Presi-  
10          dent shall each be appointed for a term of 1  
11          year,

12          “(B) 2 members appointed by the Chief  
13          Justice and 1 member appointed by the Presi-  
14          dent shall each be appointed for a term of 2  
15          years, and

16          “(C) 1 member appointed by the Chief  
17          Justice and 2 members appointed by the Presi-  
18          dent shall each be appointed for a term of 3  
19          years,

20          as designated at the time of their appointment.

21          “(3) CONDITIONS.—Membership of a judge on  
22          the Board shall terminate if the member ceases to  
23          hold the judicial position that qualified the member  
24          for the appointment. Membership on the Board shall  
25          terminate if the member attains a position that

1 would have rendered the member ineligible for ap-  
2 pointment at the time of appointment. A vacancy on  
3 the Board shall be filled in the manner in which the  
4 original appointment was made. No member of the  
5 Board may serve for more than 4 consecutive years  
6 but may be reappointed after a lapse of 1 year. No  
7 member of the Board may serve on the Court of Ju-  
8 dicial Discipline at the same time.

9 “(d) MEETINGS.—The President shall convene the  
10 first meeting of the Board. At that meeting and annually  
11 thereafter, the Board shall elect a chairperson. The Board  
12 shall act only with the concurrence of a majority of its  
13 members.

14 “(e) COMPENSATION.—

15 “(1) BASIC PAY.—

16 “(A) RATES OF PAY.—Except as provided  
17 in subparagraph (B), members of the Board  
18 shall each be entitled to receive the daily equiv-  
19 alent of the annual rate of basic pay payable for  
20 level IV of the Executive Schedule for each day  
21 (including travel time) during which they are  
22 engaged in the actual performance of duties  
23 vested in the Board.

24 “(B) PROHIBITION OF COMPENSATION OF  
25 FEDERAL EMPLOYEES.—Members of the Board

1           who are full-time officers or employees of the  
2           United States may not receive additional pay,  
3           allowances, or benefits by reason of their service  
4           on the Board.

5           “(2) TRAVEL EXPENSES.—Each member shall  
6           receive travel expenses, including per diem in lieu of  
7           subsistence, in accordance with sections 5702 and  
8           5703 of title 5.

9           “(f) PERSONNEL.—The Board may appoint such per-  
10          sonnel as may be necessary to carry out its functions.

11          “(g) ADMINISTRATIVE SERVICES.—The Director of  
12          the Administrative Office of the United States Courts  
13          shall provide to the Board such administrative services as  
14          the Board requires to carry out its functions.

15          **“§ 379. Court of Judicial Discipline**

16          “(a) ESTABLISHMENT AND COMPOSITION.—There is  
17          established a Court of Judicial Discipline (hereafter in this  
18          section referred to as the ‘Court’).

19          “(b) FUNCTIONS.—The Court shall perform the func-  
20          tions vested in it under section 372(c). The Court shall  
21          prescribe rules for the conduct of its proceedings.

22          “(c) COMPOSITION AND TERMS.—

23                  “(1) COMPOSITION.—The Court shall be com-  
24          posed of 8 members as follows:

1           “(A) 4 judges, other than senior judges, as  
2 follows:

3           “(i) 1 circuit judge and 1 bankruptcy  
4 judge, each of whom shall be appointed by  
5 the Chief Justice.

6           “(ii) 1 district judge and 1 magistrate  
7 judge, each of whom shall be appointed by  
8 the President.

9           “(B) 2 members of the bar of the Supreme  
10 Court, other than justices or judges, 1 of whom  
11 shall be appointed by the Chief Justice, and 1  
12 of whom shall be appointed by the President.

13           “(C) 2 persons, other than lawyers, 1 of  
14 whom shall be appointed by the Chief Justice,  
15 and 1 of whom shall be appointed by the Presi-  
16 dent.

17           “(2) TERMS.—The members of the Court shall  
18 serve for terms of 4 years, except that of the mem-  
19 bers first appointed—

20           “(A) 1 member appointed by the Chief  
21 Justice and 1 member appointed by the Presi-  
22 dent shall be appointed for a term of 1 year,

23           “(B) 1 member appointed by the Chief  
24 Justice and 1 member appointed by the Presi-

1           dent shall be appointed for a term of 2 years,  
2           and

3                   “(C) 1 member appointed by the Chief  
4           Justice and 1 member appointed by the Presi-  
5           dent shall be appointed for a term of 3 years,  
6           as designated at the time of their appointment.

7                   “(3) CONDITIONS.—Membership of a judge on  
8           the Court shall terminate if the member ceases to  
9           hold the judicial position that qualified the member  
10          for the appointment. Membership on the Court shall  
11          terminate if the member attains a position that  
12          would have rendered the member ineligible for ap-  
13          pointment at the time of appointment. A vacancy on  
14          the Court shall be filled in the manner in which the  
15          original appointment was made. No member of the  
16          Court may serve for more than 4 consecutive years  
17          but may be reappointed after a lapse of 1 year. No  
18          member of the Court may serve on the Judicial Con-  
19          duct Board at the same time.

20          “(d) COMPENSATION.—

21                   “(1) BASIC PAY.—

22                           “(A) RATES OF PAY.—Except as provided  
23           in subparagraph (B), members of the Court  
24           shall each be entitled to receive the daily equiv-  
25           alent of the annual rate of basic pay payable for

1 level IV of the Executive Schedule for each day  
2 (including travel time) during which they are  
3 engaged in the actual performance of duties  
4 vested in the Court.

5 “(B) PROHIBITION OF COMPENSATION OF  
6 FEDERAL EMPLOYEES.—Members of the Court  
7 who are full-time officers or employees of the  
8 United States may not receive additional pay,  
9 allowances, or benefits by reason of their service  
10 on the Court.

11 “(2) TRAVEL EXPENSES.—Each member shall  
12 receive travel expenses, including per diem in lieu of  
13 subsistence, in accordance with sections 5702 and  
14 5703 of title 5.

15 “(f) PERSONNEL.—The Court may appoint such per-  
16 sonnel as may be necessary to carry out its functions.

17 “(g) ADMINISTRATIVE SERVICES.—The Director of  
18 the Administrative Office of the United States Courts  
19 shall provide to the Court such administrative services as  
20 the Court requires to carry out its functions.”.

21 (2) CONFORMING AMENDMENT.—The table of  
22 sections for chapter 17 of title 28, United States  
23 Code, is amended by adding at the end the following  
24 new items:

“378. Judicial Conduct Board.

“379. Court of Judicial Discipline.”.

1 (b) JUDICIAL DISCIPLINE PROCEDURE.—(1) Sub-  
2 section (c) of section 372 of title 28, United States Code,  
3 is amended to read as follows:

4 “(c)(1) Any person alleging that a circuit, district,  
5 bankruptcy, or magistrate judge, or a judge of the Court  
6 of Federal Claims or of the Court of International Trade  
7 has engaged in conduct prejudicial to the effective and ef-  
8 ficient administration of the business of the courts, or al-  
9 leging that such a judge is unable to discharge all the du-  
10 ties of the office by reason of mental or physical disability,  
11 may file with the Judicial Conduct Board established in  
12 section 378 (hereafter in this subsection referred to as the  
13 ‘Board’) a written complaint containing a brief statement  
14 of the facts constituting such conduct. The Board may,  
15 on the basis of information available to the Board, initiate  
16 a complaint for purposes of this subsection. The Board  
17 shall promptly transmit a copy of the complaint to the  
18 judge whose conduct is the subject of the complaint.

19 “(2) The Board shall conduct an investigation of the  
20 charges in each complaint and determine whether there  
21 is probable cause to file formal charges against the judge  
22 whose conduct is the subject of the complaint. If the  
23 Board finds probable cause, the Board shall present the  
24 case in support of the charges with the Court of Judicial  
25 Discipline established in section 379 (hereafter in this sub-

1 section referred to as the ‘Court’). If the Board does not  
2 find probable cause, the Board shall dismiss the com-  
3 plaint. The Board shall promptly notify the judge whose  
4 conduct is the subject of the complaint of the Board’s ac-  
5 tion on the complaint.

6 “(3) In carrying out its functions, the Board may  
7 issue subpoenas to compel testimony under oath of wit-  
8 nesses, including the judge who is the subject of the inves-  
9 tigation, and to compel the production of documents,  
10 books, accounts, and other records relevant to the inves-  
11 tigation.

12 “(4) Complaints filed with the Board or initiated by  
13 the Board shall be confidential. Statements, testimony,  
14 documents, records, or other information or evidence ac-  
15 quired by the Board shall be confidential. The Board shall  
16 apprise the judge whose conduct is the subject of a com-  
17 plaint of the nature and content of the complaint.

18 “(5) The Board shall prescribe rules for the conduct  
19 of proceedings under this subsection as it considers appro-  
20 priate, including the processing of petitions for review.  
21 Such rules shall contain provisions requiring that—

22 “(A) the judge whose conduct is the subject of  
23 the complaint be afforded an opportunity to appear  
24 (in person or by counsel) at proceedings conducted  
25 by the Board, to present oral and documentary evi-

1        dence, to compel the attendance of witnesses or the  
2        production of documents, to cross-examine witnesses,  
3        and to present argument orally or in writing; and

4            “(B) the complainant be afforded an oppor-  
5        tunity to appear at proceedings conducted by the  
6        Board, if the Board concludes that the complainant  
7        could offer substantial information.

8            “(6) The Board shall issue a report on its determina-  
9        tion on each complaint under this subsection, together  
10       with a description of its investigation.

11           “(7) Upon the filing with the Court by the Board of  
12       formal charges against a judge, the Court shall promptly  
13       schedule a hearing or hearings to determine whether a  
14       sanction should be imposed on the judge under this sub-  
15       section. Formal charges filed with the Court shall be avail-  
16       able to the public. All hearings conducted by the Court  
17       shall be public proceedings conducted pursuant to the  
18       rules adopted by the Court and in accordance with the  
19       principles of due process and the rules of evidence. Parties  
20       appearing before the Court shall have a right to discovery  
21       pursuant to the rules adopted by the Court and shall have  
22       the right to subpoena witnesses and to compel the produc-  
23       tion of documents, accounts, records, and other records  
24       that are relevant to the proceedings. The Board shall have  
25       the burden of proving the charges by clear and convincing

1 evidence. All decisions of the Court shall be in writing and  
2 shall contain findings of fact and conclusions of law.

3 “(8) A decision of the Court may order such action  
4 to be taken with respect to the judge whose conduct is  
5 the subject of the Court proceedings as is appropriate to  
6 assure the effective and expeditious administration of the  
7 business of the courts, including, but not limited to, the  
8 following:

9 “(A) In the case of a magistrate judge, direct-  
10 ing the chief judge of the district of the magistrate  
11 judge to take such action as the Court considers ap-  
12 propriate.

13 “(B) In the case of a judge appointed to hold  
14 office during good behavior, certifying disability of  
15 the judge pursuant to the procedures and standards  
16 provided under subsection (b) of this section.

17 “(C) Requesting that any such judge appointed  
18 to hold office during good behavior voluntarily retire,  
19 with the provision that the length of service require-  
20 ments under section 371 do not apply.

21 “(D) In the case of a judge other than a judge  
22 appointed to hold office during good behavior, order-  
23 ing that, on a temporary basis for a time certain, no  
24 further cases be assigned to that judge.

1           “(E) Censuring or reprimanding the judge by  
2           means of private communication or public pro-  
3           nouncement.

4           “(F) Ordering such other action as the Court  
5           considers appropriate under the circumstances, ex-  
6           cept that under no circumstances may the Court  
7           order the removal of a judge appointed to hold office  
8           during good behavior.

9           Each decision of the Court shall be made available to the  
10          public.

11          “(9) A judge who is the subject of proceedings under  
12          this subsection who is adversely affected by an order of  
13          the Court shall have the right to appeal that order to the  
14          Supreme Court of the United States. On appeal, the Su-  
15          preme Court may set aside the order of the Court only  
16          if—

17                  “(A) the order is not in accordance with law;

18                  “(B) the findings of fact are clearly erroneous;

19          or

20                  “(C) any sanction imposed by the order is un-  
21          lawful.

22          “(10) An order of the Court that dismisses a com-  
23          plaint against a judge may be appealed by the Board to  
24          the Supreme Court, but the appeal shall be limited to  
25          questions of law.

1       “(11) In any case in which the Court determines, on  
2 the basis of a complaint and any investigation under this  
3 subsection, or on the basis of information otherwise avail-  
4 able to the Court, that a judge appointed to hold office  
5 during good behavior may have engaged in conduct which  
6 might constitute 1 or more grounds for impeachment, the  
7 Court shall so certify and transmit the determination and  
8 the record of proceedings to the House of Representatives  
9 for whatever action the House of Representatives consid-  
10 ers to be necessary. Upon receipt of the determination in  
11 the House of Representatives, the Clerk of the House of  
12 Representatives shall make the determination available to  
13 the public.

14       “(12) No judge whose conduct is the subject of an  
15 investigation or proceeding under this subsection shall  
16 serve on the Board, on the Court, on a judicial council,  
17 or on the Judicial Conference established under section  
18 331 of this title, until all related proceedings under this  
19 subsection have been finally terminated.

20       “(13) No person shall be granted the right to inter-  
21 vene as amicus curiae in any proceeding before the Board  
22 or the Court under this subsection.

23       “(14) Upon the request of a judge whose conduct is  
24 the subject of a complaint under this subsection, the  
25 Board may, if it dismisses the complaint, recommend that

1 the Director of the Administrative Office of the United  
2 States Courts award reimbursement, from the funds ap-  
3 propriated to the Federal Judiciary, for those reasonable  
4 expenses, including attorneys' fees, incurred by that judge  
5 during the investigation which would not have been in-  
6 curred but for the requirements of this subsection.”.

7 **SEC. 3. CONFORMING AMENDMENT.**

8 Section 331 of title 28, United States Code, is  
9 amended in the fourth paragraph by striking “The Con-  
10 ference is authorized to exercise the authority provided in  
11 section 372(c)” and all that follows through the end of  
12 the paragraph.

○