# Ethical Stimulus Package

## Proposed by:

## *The Watchdawg*

**Dave Palmer**

***The Dawg***

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# Introduction

Below you'll find the following documents:

1. Letter to Ohio Supreme Court Chief Justice Thomas J. Moyer
2. Letter to Assistant Administrative Director of the Ohio Supreme Court Richard A. Dove
3. Table of Contents re: Ethical Stimulus Package
4. 12-page proposal submitted to Chief Justice Moyer and others regarding the implementation of new and improved procedures for the investigation of judicial misconduct in Ohio.

It is this author's sincerest hope and desire that the proposals contained herein will be adopted by the Ohio Supreme Court and/or the Ohio Legislature if necessary. I am also hopeful that other State Supreme Courts and/or State Legislatures will also find the proposals herein worthy of consideration and implementation. The same is true of Supreme Courts and legislative bodies in Canada, Australia, New Zealand, Scotland, India, the United Kingdom and other foreign venues.

It is of the utmost importance that "we the people" be placed in charge of investigating judicial misconduct and determining what if any punishment is appropriate. The current system of "self-regulation" along with the lack of transparency must come to a screeching halt.

We can ill afford to allow one segment of society to continue to police itself when its record of so acting in the past is dismal to say the least. Because judges are endowed with awesome and in many instances unfettered power over us, their conduct must continuously and effectively be scrutinized. And it must be scrutinized and judged by outsiders who do not have a vested interest in the outcome.

***The Dawg***

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December 21, 2008

Thomas J. Moyer
Chief Justice, Ohio Supreme Court

Re: ***Ethical Stimulus Project***
***Proposed by: the Watchdawg***

Dear Chief Justice:

Find enclosed herein my proposal and comments in regards to the Court's invitation for public comment as to the process and procedures for investigating misconduct complaints involving judges/justices.

I trust or at least I hope that you will find my proposals to be constructive, well thought out and worthy of implementation. I'm sure that you agree with me that instilling the disinfectant of sunshine into the process is essential to assure that the citizenry has the utmost confidence that that the judiciary is being held accountable for its conduct.

As the longest serving State Supreme Court Chief Justice in Ohio's history as well as one who has advocated and lectured extensively on the subject both in Ohio and elsewhere, I'm confident that you are truly concerned about your legacy. In ordering the implementation of most if not all of my proposals you would certainly be lauded by your counterparts throughout the country, not to mention the good citizens of Ohio.

I truly believe that you now have an opportunity to lead the nation if not the world in assuring that judges are in fact "held to a higher standard of conduct" and that transparency becomes the norm and not an anomaly. What better legacy could any State Chief Justice impart to the citizens of Ohio than taking positive and concrete steps to improve the public's perception of the judiciary and more importantly to assure accountability and transparency in the judicial disciplinary process?

Thanks for your time and attention to this matter and I look forward to your response.

Respectfully yours,

_____
Dave Palmer
The Watchdawg

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December 21, 2008

Richard A. Dove
Assistant Administrative Director, Supreme Court of Ohio

Re: **Ethical Stimulus Package**

Dear Mr. Dove:

Below you will find my proposals/comments in regards to the process and procedures for investigating complaints involving judges/justices. To assure that the following is fully and fairly vetted, I will be providing hard copies and/or email attachments to (a) Chief Justice Moyer, (b) members of the Rules Committee, (c) all State Supreme Court Chief Justices, (d) judiciary committee members of all State and Federal Legislatures, (e) all State Governors, (f) selected law professors who have commented on this subject matter, and (g) members of the media who have written on the subject in the past. A copy with appropriate "color fonts" for ease of review will be posted on my website at www.noethics.net.

Although the Court has not invited comments or recommendations on the manner in which retired visiting judges are assigned and compensated, I have taken the liberty to provide same by attaching it hereto. As I suspect you know, I have dedicated a significant amount of time and expense over the past several years in tracking the conduct of retired judges. Given the extreme budgetary problems facing Ohio, I felt both an ethical and moral obligation to do whatever I could to assure that the taxpayer's money was being wisely expended.

In an effort at brevity and clarity, the comments/proposals herein will be set forth under separate headings in a format similar to a treatise and/or appellate brief, which will include a brief description of the Court's proposed amendments followed by my comments and/or proposed recommendations. Please note that the first page is an index of contents.

Sincerely,

_____
Dave Palmer
The Watchdawg

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# Preliminary Statement

It is of paramount importance that the methodology going forward in investigating and disciplining judges/justices engenders trust and confidence among the citizens of Ohio. A system that is reluctant or recalcitrant in endorsing significant change to assure that the judiciary is in fact held to a "***higher standard of conduct***" and ***"accountability"*** respected by Ohioans will surely fail in its sworn mission to dispense justice and not dispense with it.

I sincerely believe that Ohio is now faced with an opportunity to set a new standard for transparency, accountability and fairness to the public in the manner in which the judicial disciplinary process operates. If the Supreme Court so acts in accordance with the proposals set forth herein, it will likely be setting into motion a scheme that would or should be followed by the other states and/or foreign venues that are truly interested in improving the public's perception of the judiciary.

## A. Chief Justice Moyer's Published Comments

The following are excerpts of statements made by Chief Justice Moyer over the years in regards to the necessity for ***transparency*** regarding the conduct of judges and the oft-repeated mantra that "***judges are held to a higher standard of conduct***."

These comments seem to indicate the Chief Justice's willingness to assure "transparency" in the judicial disciplinary process.

### 1. State of Judiciary Speech – Sept. 9, 1998

- A burden carried by every judge is the expectation that ***judges are held to a higher standard of conduct*** than the community norm. If we are to ***credibly order consequence for the misconduct of others, our own conduct must be beyond reproach.***
- ***I am open to any and all suggestions*** and I hope you are too
- If we are bestowed with power upon election to the bench, then the scope of judicial authority is what we earn from citizens.

### 2. State of Judiciary Speech – Sept. 10, 1998

- While visiting Carrollton High School, a student asked if **I and other public officials should be held to a higher standard of conduct then other citizens**.
- On its face, it was a perceptive question by an inquisitive student, but it is troubling that the question would even be asked. ***Of course we must be held to higher standards***.
- The highest standard by which we are measured is honesty and truth-fullness. If we are to imagine a court system that engenders trust and confidence, integrity is not an option. It is the essence.

- Thomas Jefferson's concept of democracy suggests that **citizens have a responsibility to stay informed of the workings of all branches of government, including the judiciary**.
- A recent survey by the ABA reveals that **the more knowledge citizens have about state courts the higher their level of confidence in them**.

### 4. State of Judiciary Speech – Sept. 17, 2000

- As judges, we have immense power over the lives of those who come before us.
- ***We are held to a higher standard of conduct*** than most other public officials.
- We determine whether the conduct of others complies with the rules of society.

### 5. Perspective on Public Records/Open Government – Feb. 23, 2008

- "Public records are ***the people's records***. The officials in whose custody they happen to be are mere trustees for the people…" (Cincinnati Superior Court Judge Rufus B. Smith)
- And it is judges who are among those leading the discussion on ***keeping government open and accessible to the people***.

### 6. Speech at Kent State Univ. – Sept. 22, 2005

- "Democratic governments don't function ***unless people are informed***."

I could if necessary allude to numerous comments made by State/U.S. Supreme Court Justices and others that have publicly espoused the need for openness and accountability in the manner in which judicial misconduct is investigated and meted out. However, what would be accomplished by engaging in such repetitive rhetoric? I do not believe that it can be reasonably argued by anyone in the judiciary that the process should remain "secretive" and managed by "insiders." Accountability and openness is not an option! It is the essence and foundation of a democratic society founded on the twin principles of "the rule of law" and that "no one is above the law."

## B. Confidentiality of Judge/Justice's Reply to Ethics Complaint

Sec. 11(E) of the Supreme Court Rules for the Government of the Bar states:

> "If the respondent [judge/justice] specifically requests, in writing, to the Disciplinary Counsel or Certified Grievance Committee that the reply not be furnished to the grievant [complainant], the Disciplinary Counsel or Certified Grievance Committee **shall not furnish the reply to the grievant."**

The option to allow a judge or attorney to "hide the ball" is inconsistent with the ideals of openness, fairness, accountability and equity if one is truly concerned with the "**search for the truth.**"

My research to date indicates that Indiana, New Mexico and Vermont are the only other states that have a policy of allowing a judge or attorney to "hide the ball" in regards to providing the complainant with a copy of a judge's (attorney's) response to an ethics complaint. Allowing such conduct invites the judge/attorney to provide false

answers (fabricate a defense) and/or to defame the complainant without ever providing the complainant an opportunity to respond.

In response to my request on whether a complainant receives a copy of an attorney (judges) reply, the Wyoming State Bar Counsel and the State Bar of Georgia Grievance Counsel respectively responded as follows:

- "You will receive a copy of the attorney's [judge's] response **and will be requested to reply to it**."
- "Once you file a grievance with our office and the attorney [judge] responds **you will have an opportunity to rebut anything the attorney [judge] writes**."

I propose that the Rules for the Government of the Bar specifically mandate that upon receipt of a judge or justice's reply to a grievance (same for attorneys) that a copy is provided to the grievant.

## C. Makeup of Disciplinary Commission and Panels

At present, the Supreme Court appoints a 28-member commission to investigate and issue final recommendations on filing of formal disciplinary charges against a judge. The 28-member commission consists of 17 attorneys, 7 active or retired judges, and four non-attorneys. The Commission goes on to make the following claims:

- It serves as a facilitator and resource for upholding the **highest principles of the legal profession**.
- It is dedicated to furthering the goals of "***self-regulation***" of the judiciary.
- It is dedicated to **enhancing the public's** access to information and **participation in the** Supreme Court's **regulation of the judiciary**.

Although the goals stated above seem lofty, they unfortunately do not render just, fair and equitable results. There are approximately 850 judges in Ohio (ca: 2004-2008), which includes retired visiting judges. The number of complaints filed and judges disciplined from 2004-2005 are as follows:

- 2004 = 550 complaints filed against judges
- 2004 = 3 complaints lead to discipline = 1 bad judge per 165
- 2005 = 608 complaints filed against judges
- 2005 = 3 complaints lead to discipline = 1 bad judge per 165

To suggest that one could only find 3 unethical and/or incompetent judges in Ohio in any given year is per se not worthy of belief. In fact, it doesn't pass the involuntary laugh test. The information and records in my possession indicate that of the 850 judges in Ohio at least 200 have engaged in various forms of misconduct. Put simply, if their misconduct was reviewed by a ***truly impartial panel*** of observers, each and every one of them would likely have been disciplined and/or removed from the bench.

## 7. Watchdawg's Proposals on Makeup of Panels

Over the years, the judiciary has consistently lauded the judgments rendered by jurors in a myriad of complicated cases involving (a) medical malpractice, (b) patent and copyright infringement, (c) product liability, and (d) capitol murder cases involving circumstantial evidence cases. In fact, appellate courts, including the U. S. Supreme Court are loath to reverse jury decisions.

Since the judiciary holds jury verdicts sacrosanct in most instances, it would be frivolous for anyone to argue that the fair and impartial rendering of decisions regarding judicial misconduct can ***only*** be determined by members of the legal establishment. If this were true, which it clearly is not, then one could reasonably argue that juries sitting on cases involving child molestation should be limited to convicted pedophiles. The lack of convictions by such jurors would likely mirror the results we now see from panels dominated by attorneys and judges.

I would replace the 28-member disciplinary commission in regards to investigating judicial misconduct with the following:

- A pool of 20 prospective panel members culled from voter registration records in Akron, Cincinnati, Cleveland, Columbus, Dayton, and Toledo
- Panels to be made up of 5 members selected from the pool of 20
- One (1) tenured law professor from each district to be appointed to each 5-member panel to provide legal advice

Prior to selecting the panel members, I would propose that each prospect be required to fill out a questionnaire to discover if he/she has been involved (a) in filing a grievance against a judge/lawyer, (b) disclosure of any prior misdemeanor/felony convictions, (c) educational background, and (d) employment history.

I propose that any prospect that answers in the affirmative as to (a) or (b) be automatically disqualified. Furthermore, anyone associated directly and/or indirectly with the legal establishment would also be disqualified. As to (c), I would recommend that anyone that does not possess a high school degree be disqualified. And of course it goes without saying that unlike jury duty, a prospective member would have the right to decline the offer to sit on a panel. Put simply, it would be voluntary.

## 8. Receipt and Distribution of Ethics Complaint

I propose the following process in regards to the receipt of and distribution of any ethics complaint.

- Copy of complaint to be initially provided to Disciplinary Counsel
- Disciplinary Counsel would then redact the name of the judge, the court where the judge worked and the name and address of the complainant
- If complaint involves a judge from Toledo, it would be sent to a panel in Cincinnati and vice versa to eliminate the possibility that a panel member has any prior knowledge of the facts in the case

- Disciplinary Counsel would then provide copies of the complaint and any attachments to (a) the judge, (b) the appointed panel members, and (c) the appointed law professor
- Upon receipt of the judge's reply, copies would be provided to the panel members, the tenured law professor and the complainant who would be invited to respond
- Upon receipt of the judge's reply and relevant evidence, the panel would determine whether probable cause exists

The reason for redacting the name of the judge and the court, and submission to distant panel members is to assure that the panel members are actually involved in weighing evidence of misconduct based on the facts and not on who the judge is. ***Put simply, it is the claimed misconduct that is of concern and not who the actor is***.

## 9. Investigative Process by Panel Members

I would propose that the investigative process be conducted as follows:

- Panel finding probable cause would be authorized to compel testimony from the judge, complainant and/or any viable witness with personal knowledge of the alleged misconduct
- Panel would be authorized to issue subpoenas for production of relevant evidence
- Panel members would be provided with copies of any prior ethics complaints filed against the judge along with any supporting evidence of alleged misconduct
- Panel members would primarily communicate via electronic mail with secure email accounts provided by the State or Supreme Court
- After a thorough review of all relevant evidence, the panel would meet and render its decision, which would then be reduced to writing by the assigned law professor
- Upon completion of the ruling by the assigned law professor, he/she would then provide copies via electronic mail to all panel members for review and approval
- Panel would then decide on an appropriate sanction of (a) public reprimand, (b) definite or indefinite suspension, or (c) disbarment
- Panel would then provide a copy of its ruling to the press via notice on the Supreme Court's web site, which would include a verbatim copy of said decision
- The ***entire*** record of the process would become a public record

A judge who is found guilty of misconduct by the panel would of course have the absolute right to appeal the panel's decision to the Ohio Supreme Court. If such an appeal is taken, the panel would be represented by the assigned law professor and/or his/her designated assignee and compensated accordingly.

## 10. Compensation of Lay Panel Members

Even though panel members would be performing a public service, I believe they should be compensated as follows:

- Daily Per Diem of $125 per ($75 for ½ day) for time spent personally attending any meetings and/or evidentiary hearings, etc.
- Hourly rate of $20 for actual time spent reviewing evidence and/or for commiserating with other board members
- Actual travel expenses such as mileage and meals when attending meetings, etc.
- Actual costs for faxes, long distance calls and/or copying expenses

### 11. Compensation of Law Professor Panel Member

- Per Diem of $250 per day ($125 for ½ day) for time spent personally attending any meetings and/or evidentiary hearings, etc.
- Hourly rate of $40 for actual time spent reviewing evidence and/or for commiserating with other board members
- Actual travel expenses such as mileage and meals when attending meetings, etc.
- Actual costs for faxes, long distance calls and/or copying expenses
- Costs for providing secure high-speed internet access to all panel members would be borne by the Court and/or State.

## D. Appointing Sitting Judges to Investigate Justices' Misconduct

The Court proposes that the Chief Justice of the Court of Appeals be empowered to appoint fulltime trial court (Common Pleas or Municipal Court) judges to conduct hearings on allegations of judicial misconduct.

As stated above, limiting investigations of judicial misconduct to be conducted by judges ***only*** will surely fail to engender public confidence and trust in regards to the outcomes. In fact, it is more likely than not that one or more members of an investigatory panel made up of judges would have some personal knowledge or relationship with the targeted judge. The public can ill afford to continue to allow judges to judge judges! Put simply, there is absolutely no rational reason for the Court to propose that judges should be the sole arbiters in determining judicial misconduct.

## E. Sec. 4 – Grievances against Supreme Court Justices

The Court proposes that grievances against a justice of the Supreme Court be conducted as follows:

- Grievance provided to the Chief Justice of the Courts of Appeals
- Chief Appeals Judge submits grievance to panel of 3 appellate justices for review
- Appellate panel determines whether probable cause exists
- If probable cause is found, grievance is submitted to Disciplinary Counsel
- Another panel of appellate judges appointed to determine innocence or guilt
- Another panel of judges is appointed to determine the punishment to be meted out
- Unless justice agrees matter remains private formal complaint has been filed

I would propose that the same procedures as discussed above regarding the appointment of a five-member panel be utilized in investigating the alleged misconduct of a justice of the Supreme Court. I would further propose the following:

## F. Taking the Politics out of Ethics Complaints

The process by which ethics complaints against justices of the Supreme Court are now conducted clearly invites abuse given the fact that justices are state wide office holders. Moreover, the present investigative process limits participation to appellate judges only, all of whom are also politicians who represent multiple counties and/or single heavily populated counties like Cuyahoga, Franklin and/or Hamilton.

It would be difficult to imagine that an appellate judge sitting on a disciplinary panel that would not have a bias one way or the other in regards to the complained of justice. Clearly, most if not all appellate judges would have developed some type of relationship either good or bad with the justice who is the target of the grievance. Of course it goes without saying that the same principles apply to investigating misconduct complaints filed against lesser judicial officers.

It is imperative that all decisions in regards to misconduct involving a justice and/or any other judge for that matter be devoid of any partiality based on political persuasion and/or on personal relationships. This can only be assured by having outsiders who do not have a "dog in the fight" so to speak investigate and determine whether or not misconduct has been proven by a preponderance of the evidence.

## G. Affidavits of Disqualification for Bias

Presently, affidavits of bias against a judge are filed with the Supreme Court and submitted to the Chief Justice for determination. It would appear that the Chief Justice denies somewhere around 98% or more of requests for removal of a judge alleged to be biased against a party and/or the party's attorney.

Once the Chief Justice refuses to remove a judge for bias, the complainant has no avenue to appeal said decision. This process is clearly contrary to the principles of fairness and equity. No one person should be endowed with the awesome power of making such important decisions without the affected party having a right to some kind of independent review.

In many instances, the complained of judge was appointed to active status upon application to the Chief Justice. Under such circumstances, the Chief Justice is being asked to remove a judge for bias and/or other complained of conduct that the Chief Justice personally selected and assigned to a particular case. This is somewhat analogous to seeking relief from Albert "The Mad Hatter" Anastasia in regards to the aggressive collection techniques employed by Aladena "Jimmy the Weasel" Fratianno.

The legal threshold for removing a judge for bias is a finding of "the mere appearance of bias" that a reasonable person reviewing the facts would conclude to be the case. Unfortunately, the Chief Justice has ruled that any of the following provable conduct does not rise to the level of the "mere appearance of bias."

- Judge reports to law enforcement he fears litigant will assault his wife
- Judge reports to law enforcement litigant is stalking him

- Judge refers to litigant as a "Son-of-a-Bitch"
- Judge engages in unlawful ex parte communications and does so in writing
- Judge asks on record "Where is that Goddamn Son-of-a-Bitch

It would be difficult to imagine that any unbiased observer would or could conclude that any of the above conduct did not rise to the "mere appearance of bias."

## 12. Watchdawg's Proposals re: Affidavits of Bias

To guarantee every litigant his/her constitutional right to be judged by an unbiased jurist, the taint of bias must be nonexistent. In *Liteky v U.S.*, 114 S.Ct, 1162, the United States Supreme Court stated:

> "Disqualification is required if an **objective observer** would entertain **reasonable questions about the judge's impartiality**. If a judge's impartiality **leads a detached observer** to conclude that a fair and impartial hearing is unlikely, the judge must be disqualified." *Liteky v U.S.*, 114 S.Ct, 1162

As the U.S. Supreme Court ruled in the *Liteky* case, the emphasis is on what an "**objective and/or detached observer**" would conclude after a review of the facts wherein judicial bias is alleged.

In numerous instances, the Chief Justice is asked to disqualify retired visiting judges that he himself approved for reactivation as visiting judges and/or specifically assigned to cases wherein a litigant has filed an affidavit of bias. Human nature being what it is it would be difficult for anyone, including a Chief Justice to totally ignore the implications of ruling that his own appointees were in fact biased and/or acting in an unethical manner.

For all of the foregoing reasons, I would offer the following proposals.

- That a panel of three culled from the 20-member panels to review affidavits of bias and render a decision as to whether the appearance of bias exists
- That a tenured law professor be assigned to the 3-member panel to answer and/or address any legal issues
- All affidavits of bias to be posted on the Court's web site for public viewing

Additionally, I would propose that every litigant be afforded the right to one (1) peremptory challenge in removing a judge from his/her case. California Code of Civil Procedure Sec. 170.6 allows for one peremptory-challenge per party that is supported by an affidavit asserting the judge is prejudiced against said party. Alaska has also adopted the peremptory challenge rule (Alaska Statutes §22.20.020).

Since attorneys on both sides of a case are granted multiple peremptory challenges in civil and criminal cases without establishing any valid cause for so acting, I firmly believe that parties in Ohio should be afforded the same rights as are afforded to the citizens of California, Alaska and other jurisdictions. (Citations omitted)

Because affidavits of bias are public records, the posting of them on the Court's web site would afford the public the opportunity to determine on their own whether or not the system is actually assuring that all litigants in Ohio are having their cases determined by unbiased judges.

## H. Publication of Appellate Reversals

When a trial court's rulings are reversed by an appellate court, the judge's name is not disclosed in the appellate court's opinion and order. It is well known that some trial judges are overturned more frequently by an appellate court than a pancake at the local Bob Evans Restaurant on West Broad Street in Columbus.

One who is well-schooled in performing legal research would be able to discover who the trial judge was; however, the normal lay person is ill-equipped to so act. Since Ohio judges are elected, I believe that the electorate has an absolute right to obtain easily accessible information as it relates to trial court reversals. After all, the costs to the public of an appeal can easily run into the tens of thousands of dollars. I would therefore offer the following proposals:

- Each and every appellate reversal for all 12 Appellate Districts would be posted on the Supreme Court's web site
- Posting of slip opinions by Appellate Courts (non-published opinions) would also be posted on the Court's web site
- The name of each trial court judge along with each reversal would be listed alphabetically for ease of reference to the researcher and/or viewer

The posting of this public information would afford Ohio voters to intelligently determine whether a trial judge who has been repeatedly reversed by the appellate courts deserves to be reelected. Don't the voters and taxpayers of Ohio deserve at least this much information prior to casting a vote for or against a judicial candidate?

## I. Incompetence Constitutes Judicial Misconduct

Incompetence on the bench under the current Code of Judicial Conduct is not cause for discipline. This is true even when a judge knowingly violates a litigants "due process" rights in a civil or criminal matter. It would be frivolous to the nth degree for anyone to argue that a judge could unknowingly or accidentally violate a litigant's "due process" rights.

In every instance wherein a party complains that a trial judge violated his/her "due process" rights and/or engaged in conduct that is contrary to well-established law, Disciplinary Counsel has dismissed said complaints by ruling that it lacks the power to investigate this type of behavior. They even go as far as asserting that such conduct constitutes a trial judge's utilization of his/her "discretion," and therefore such acts do not constitute misconduct.

To suggest that a trial judge is empowered with "discretion" to violate a parties constitutional "due process" rights is not only misplaced but borders on the absurd. Every judge takes an oath of office and avers that he/she will uphold the Ohio and U. S. Constitutions. The term "due process" is one of the most recognizable rights known to the citizenry of this country.

Judges spend four years obtaining a bachelor's degree and three years in law school. They then spend 10 or more years practicing law in a firm and/or working for the government. Therefore, there can be no valid excuse when such a person engages in conduct that violates a parties constitutional and/or statutory rights.

In the case of Judge Agapito L. Hontanosas, Jr. of Cebu, Philippines, the Philippine High Court removed him from the bench in 2004 when it found him guilty of "gross ignorance of the law." (See page 262, "Judicial Misfits). Will judges in Ohio and elsewhere demand that they be held to a "lower standard of conduct" than their counterparts in the Philippines? I certainly would hope not!

For the most part, a judge engaged in violating a litigant's constitutional rights does so knowingly and without any concern for the resulting injury to the effected party. Put simply, such a judge can most charitably be described as arrogant, omnipotent and ethically impoverished.

And lastly, I certainly do not consider a ruling by a judge based on his or her valid and honest interpretation of the law and the circumstances of the matter he or she is presented with as constituting incompetence. Clearly, a judge must be allowed to use his or her best judgment (discretion) in fashioning fair and equitable rulings in accordance with stated law in a particular case. It is only when a judge knowingly goes outside the stated law in rendering unfair and/or unlawful rulings that he or she should be held accountable.

### 13. Watchdawg's Proposals re: Judicial Incompetence

I would propose that when a judge's rulings and/or conduct clearly violate a litigant's constitutional and/or statutory rights that, such judge be subjected to the disciplinary process as outlined above. In my opinion we can ill afford to have judges sitting on the bench who lack the competence, integrity and/or skills to faithfully comport their conduct in accordance with their oath of office. Should we expect anything less?

## J. Fairness to Judiciary re: Initial Review of Complaint

In addition to assuring transparency and judicial accountability, I am also of the firm belief that the disciplinary process must be excruciatingly fair to the complained of judge or justice. Any proposal that failed to consider the rights of the targeted judge in this process could only be construed as biased.

There can be no dispute that many complaints filed against judges do not constitute actionable misconduct. In every instance wherein a judge renders a just and equitable ruling there is a winner and a loser. Clearly, most losers in litigation are not happy about their loss; however, if the loss was based on a sound and fair judgment, then a complaint of misconduct emanating from such a person must be dismissed

### 14. Watchdawg's Proposals re: Initial Review of Complaint

I would propose the following procedures upon initial receipt of an ethics complaint filed against a judge or justice.

- That upon receipt of the grievance by the aforementioned 5-member panel that the complaint first be reviewed by the designated law professor
- If the tenured law professor determines that the complaint involves a party that is airing his/her dissatisfaction with a judge's well-reasoned ruling, then the law professor will recommend to the other panel members that the complaint be dismissed

- Upon dismissal of the complaint, the law professor will fashion a response to the complainant fully explaining that the judge's conduct does not under the stated circumstances constitute misconduct
- The designated law professor will offer to provide further explanation to the complainant if it is deemed necessary to assure that he/she is confident that the decision to dismiss the complaint was a fair adjudication of the matter.

The average complainant is not sophisticated and/or educated on what does or does not constitute judicial misconduct. Therefore, to assuage any fears wherein a complainant believes he or she is being treated unfairly by the disciplinary process, it is imperative that they be treated with respect and afforded a full and thorough explanation as to the merits of their complaint.

Of course it goes without saying that every complainant upon receipt of a dismissal that incorporates a full explanation will not cheerfully accept said findings. However, I truly believe that if all complainants are treated in this manner that it will go a long way in remedying any thoughts by a complainant that the system is unfair and/or tilted to assure favorable outcomes to the complained of judge.

## K. Watchdawg's Closing Argument

Over the past fifteen or more years, I have personally dedicated an enormous amount of my time and incurred great expense in attempting to improve the process by which judges are held accountable to the public they are sworn to serve. That effort continues as we speak as I and many, many others attempt to give true meaning to the term "judicial accountability."

I have also dedicated a great deal of time in the pursuit of appropriate improvements in the manner in which attorneys are held accountable for their conduct. Towards that end I appeared and gave testimony before the Bell Commission in Columbus, Ohio in 1995. I subsequently submitted a 13-page, single-spaced letter to the Commission that put forth numerous recommendations on improving the system. Upon receipt of my written recommendations then Cleveland-Marshall College of Law Professor Jack A. Guttenberg, presently Dean of Capitol Law School in Columbus, sent me a letter on Nov. 21, 1995 (See Ex. A attached hereto) that stated:

> **"Thank you for taking the time to draft your Recommendations for Improving Ohio's Disciplinary Procedures. I thought that your recommendations were well thought out and many of them worth implementing. I am sorry that it took such bad experiences for you to make these recommendations.**
>
> **I hope that the Committee will consider much of what you have said and implement many of your recommendations. Again thank you for you time, effort and insight."**

The proposals and/or comments contained herein are certainly not aimed at attempting to portray the judiciary as being bereft of ethics and/or competence. Anyone who would suggest that all judges are unethical and/or incompetent would of course be devoid of any credibility. A cursory review of the acknowledgement section in my

recently published book titled “Judicial Misfits” would discover that such is not the case in regards to my depictions of the judiciary.

My sole and primary purpose in submitting these proposals is to assure that the public’s perception of the judiciary is enhanced and to further assure that accountability for judicial misconduct and/or misfeasance is properly and fairly judged.

We the people surely deserve a judiciary that conducts itself in accordance with the principles espoused in the oaths each and every judge is required to take. We the people also deserve a judiciary that is willing to have the oft-repeated “disinfectant of sunshine” reign down upon it.

When and if the public loses all confidence that the judiciary is truly conducting itself in the public’s best interest and is in fact treating all of us fairly regardless of our ethnicity, gender, religious beliefs and/or sexual preferences, we will no longer be the beacon of liberty and freedom to the rest of the world that we have been in the past.

And lastly, due to the enormous amount of email that I have and continue to receive on a daily basis involving judicial abuses both here and abroad, it is in my humble opinion, of paramount importance that my proposals be properly vetted and given due consideration so that working together we can improve on the public’s perception that justice is in fact being dispensed impartially and fairly in Ohio.

Thanks for your time and consideration of my proposals and comments.

Dave Palmer
The Watchdawg
Folsom, California