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Panel votes to censure U.S. judge

■ In a rare move only inadvertently made public, action is urged against Manuel L. Real of L.A. for misconduct.

By Henry Weinstein

A judicial discipline council has voted overwhelmingly to impose sanctions on a veteran Los Angeles federal judge who improperly seized control of a bankruptcy case to protect a probationer he was supervising.

But it is far from clear when, or even whether, the decision of the judicial council of the U.S. 9th Circuit Court of Appeals in San Francisco will become officially public.

On Nov. 16, the council ordered that U.S. District Judge Manuel L. Real, 82, be publicly reprimanded for his intervention in the bankruptcy almost seven years ago, permitting Deborah M. Canter to live rent-free for three years in a Hancock Park house, costing her creditors \$35,000 in rent and thousands more in legal costs, according to court documents.

Real's misconduct "warrants the corrective action of 'censuring or reprimanding' [him] by means of public announcement," because his "misconduct continued over a substantial period of time, was repeated and caused significant harm to a litigant," the council — led by the 9th Circuit's chief judge, Mary Schroeder of Phoenix — concluded. That decision ratified the findings of four judges, led by 9th Circuit Judge Susan Graber of Portland, Ore., who conducted an extensive investigation earlier this year.

It is very rare for federal judges, who are appointed for life, to be disciplined. Aside from Real, only two judges in the 9th Circuit, which covers California and eight other Western states, have been reprimanded in the last 15 years, while hundreds of complaints have been

rejected.

Although the 9th Circuit order was issued more than a month ago, it has not been made public because of a 9th Circuit rule that such orders do not become public if either side appeals to the Judicial Conference of the United States. Real appealed on Dec. 15, and the conference, the chief policymaking body of the federal courts, has no deadline to rule.

However, the council's order was inadvertently posted for more than a week on the Internet by Thomson/West, a legal publishing service.

Four legal scholars who reviewed the judicial council's opinion for The Times said the decision was well-grounded, and they expressed dismay that it had not been made public immediately.

The council's opinion said Real, a federal judge in Los Angeles since 1966, had engaged in misconduct by taking over the case and ordering a stay of Canter's eviction based on information he obtained from Canter alone. Consequently, the council said, Real violated one of the most fundamental tenets of how a federal jurist is obligated to behave: A judge may not exercise judicial power based on communications from one party to a dispute without the knowledge of the other party.

Moreover, the council concluded by a 9-1 vote that Real's testimony was inaccurate and misleading and that his actions had been "prejudicial to the effective administration of ... the courts."

The council said, however, there was no evidence that Real had an improper personal relationship with Canter. When Real's longtime adversary, Venice civil rights lawyer Stephen Yagman, filed the complaint against Real more than three years ago, he said that Real had acted on behalf of a "comely female," though he never asserted that they had a sexual relationship.

The council, consisting of five federal appellate and five federal trial judges, acted on the recommendations of a special committee of four judges that took testimony in a closed hearing in

August from 18 witnesses, including Real, his secretary, several of his former law clerks and another federal judge, David Carter.

The committee called Real's testimony "inaccurate and misleading."

"Judge Real took the judicial actions he took for the purpose of assisting one party in the bankruptcy litigation," Canter, "for whom he had both sympathy and concern by virtue of her being a probationer in his court, to the substantial detriment of the opposing parties in the litigation," the investigating committee said.

The committee emphasized that "the evidence does not show that Judge Real's initial acts of misconduct were motivated by self-interest or malice, but rather were motivated by a desire, however misguided, to help a probationer."

When the council reviewed the committee's findings, Terry Hatter Jr., a veteran U.S. district judge in Los Angeles and longtime colleague of Real, was the sole dissenter. Real "already has been subjected to personal and public humiliation," apologized to the council and should not be subject to further "public reproof," Hatter said.

But the council concluded that potential sanctions "short of a public censure or reprimand," such as private reprimand, "do not sufficiently protect the public interest."

Federal judges have lifetime appointments, subject to good behavior. They can be impeached, but the process is cumbersome and rarely used. Circuit judicial councils were created in 1980 in an effort to improve the federal judiciary's disciplinary ability while not trampling on judicial independence. But those councils have hardly been aggressive. Moreover, investigations of federal judges by the councils are normally cloaked in secrecy. The probe of Real was disclosed in a January 2004 Times article.

Schroeder, the 9th Circuit's chief judge, twice dismissed the complaint against Real, most recently in October 2005. The council said at the time that it was satisfied with "corrective action"

that had been taken, including a statement from Real's lawyer that the judge "does not believe" that a similar situation will recur. Three judges dissented, including Alex Kozinski of Pasadena.

"I sincerely doubt that many of my colleagues would be persuaded that a criminal defendant has accepted responsibility for his misconduct based on a statement from his lawyer that the defendant does not believe such a situation will arise again in the future. It does not inspire confidence in the federal judiciary when we treat our own so much better than we treat everyone else," Kozinski wrote.

In April, a sharply divided panel of the U.S. Judicial Conference said that because of the way Schroeder had handled the matter initially, it was powerless to act. Ralph K. Winter Jr., a federal appeals court judge from Connecticut, issued a blistering dissent, saying the panel's failure to act could erode the public's confidence in the federal judiciary's ability to police itself.

Yagman filed a new complaint and Schroeder launched a detailed probe of Real's actions, something she had declined to do earlier.

Nonetheless, House Judiciary Committee Chairman F. James Sensenbrenner (R-Wis.) said in July that "due to a breakdown in the judicial branch's enforcement of the judicial discipline statute Congress enacted in 1980," he would conduct a hearing on whether Real should be impeached.

Moreover, in September, a special commission on federal judicial discipline procedures headed by Justice Stephen G. Breyer of the U.S. Supreme Court concluded that the 9th Circuit had bungled the Real investigation.

Real defended himself Sept. 21 at a congressional hearing, insisting that he was the victim of "a personal vendetta" by Yagman — a charge Yagman denied. Real has been supervising probationers for 25 years and has won plaudits for his efforts.

He told the House Judiciary Subcommittee on Courts, the Internet and Intellectual Property that he took over the bankruptcy case of Canter, a fraud defendant whom he was supervising during her probation, because the bankruptcy judge had received a confidential probation report that might have affected his judgment.

Real also offered that explanation to the 9th Circuit committee in August at

the closed hearing in Pasadena. In its Nov. 16 ruling, the 9th Circuit council called Real's statement "not believable."

Legal scholars who reviewed the decision concurred.

The detailed ruling made it clear that Judge Real "acted on the basis of ex parte [confidential] information," and therefore committed misconduct, said Arthur Hellman, a University of Pittsburgh law professor who has written a book on the 9th Circuit.

"The committee's opinion ... is thorough, the basis for the discipline is clear and the sanction of public reprimand is measured," said New York University law professor Stephen Gillers, a specialist in legal ethics. "It may well be ... that the judge's motives were to protect Ms. Canter. But that's not his job. In exceeding his authority, Judge Real hurt other litigants, the justice system and the reputation of his court."

Several legal scholars said there was no justification for keeping a veil over the decision at this point because Congress already had held a public hearing and the 9th Circuit had made detailed findings.

Duke University law professor Erwin Chemerinsky said that at this stage, secrecy harmed the reputation of the federal bench.

"If anything, I think making this decision public would enhance the credibility of the judiciary by showing that it does take seriously complaints of judicial conduct."

In addition, Chemerinsky said he could think of no other situation in which the subject of a judicial ruling would be kept secret at this point.

And Gillers added, "Remember," Judge Real "is a public servant and this is a public institution."

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Photo:

MANUEL REAL The jurist improperly intervened in bankruptcy case, panel said.

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