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Judicial Discipline -- The North Carolina Commission System

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If existing jurisdictional procedures prove inadequate, Congress may change the statutes in any of three ways: (1) it could amend section 1983 to include specifically local governments as "persons";[74] (2) it could amend 28 U.S.C. section 1343 to confer original federal jurisdiction in any claim involving a deprivation of civil rights; and (3) it could simply add a new statute to allow jurisdiction over local governmental units to redress civil rights. These alternatives seem superior to the current lower court policy of ignoring the logical *Edelman* approach.

CONCLUSION

The Supreme Court on three occasions has unequivocably declared that Congress did not intend local governmental units to be subject to liability as "persons" under section 1983.[75] Despite this mandate, the Fourth Circuit in *Burt v. Board of Trustees* and *Thomas v. Ward* allowed plaintiffs to recover equitable back pay judgments against defendant school boards simply by naming the members as nominal defendants. In light of recent Supreme Court pronouncements in the analogous state sovereignty context, the reasoning in these cases seems strained and illogical. The division of authority on the issue indicates the need for further Supreme Court definition of "person" in the section 1983 context. The ultimate solution, however, would be a congressional overhaul of the federal civil rights statutes to provide an effective method of redressing constitutional wrongs in a federal forum.

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Judicial Discipline—The North Carolina Commission System

"Courts, be they high or low, should and must be like Caesar's wife, above suspicion. Any other standard is one which undermines the trust and confidence of the average citizen in his government."[1] Recently, North Carolina took steps to ensure that its judiciary exhibit this

74. *See* U.S. COMM'N ON CIVIL RIGHTS, LAW ENFORCEMENT, A REPORT ON EQUAL PROTECTION IN THE SOUTH 179-80 (1965). *See generally* U.S. COMM'N ON CIVIL RIGHTS, 1961 REPORT, BK. 5: JUSTICE, at 73-75 (1961).

75. *See* Moor v. County of Alameda, 411 U.S. at 710 n.27.

1. *In re* Diener, 268 Md. 659, 698, 304 A.2d 587, 607 (1973).

high standard of conduct. In addition to the traditional devices of impeachment[2] and address,[3] North Carolina now has, by virture of a constitutional amendment[4] and enabling legislation,[5] a new method of handling judicial misconduct—the Judicial Standards Commission.[6]

Traditional methods of handling judicial discipline have proven generally cumbersome and ineffective.[7] In recent years many jurisdictions have realized that a better system of judicial discipline is needed, especially when the judicial misconduct does not clearly warrant removal.[8] In response to this need, new discipline machinery has been established in a majority of the states over the past three decades.[9] California created the first judicial qualifications commission in 1960 by constitutional amendment.[10] The California model, in whole or in part, has been copied in many jurisdictions,[11] including North Carolina.

Upon recommendation of the Courts Commission[12] in 1971 a con-

2. Impeachment is a procedure in which the House of Representatives brings charges and the Senate sits as the court. Two-thirds of the senators present can convict. Judgment cannot extend beyond removal from and disqualification to hold office. N.C. CONST. art. IV, § 4.

3. Address is a procedure whereby a judge may be removed for mental or physical incapacity by a joint resolution of two-thirds of the General Assembly. N.C. CONST. art. IV, § 17(1).

4. The amendment changed art. IV, § 17(1), and added art. IV, § 17(2).

5. N.C. GEN. STAT. §§ 7A-375 to -377 (Cum. Supp. 1975).

6. Hereinafter referred to as Commission.

7. W. BRAITHWAITE, WHO JUDGES THE JUDGES? 12-13 (1971); Frankel, *The Case for Judicial Disciplinary Measures*, 49 AM. JUD. SOC'Y J. 218, 218-20 (1966). Address has apparently never been used in North Carolina. Since 1868, only two North Carolina judges have been impeached. Neither was convicted. A third judge had impeachment articles preferred, but they were withdrawn. Prior to 1868, judges were selected by General Assembly vote so it is unlikely that any were impeached. NORTH CAROLINA COURTS COMMISSION, REPORT TO THE NORTH CAROLINA GENERAL ASSEMBLY 19 (1971) [hereinafter cited as COURTS REPORT]. There are no digested cases of the North Carolina Supreme Court removing judges based on its supervisory power.

8. AMERICAN JUDICATURE SOCIETY, JUDICIAL DISABILITY AND REMOVAL COMMISSIONS, COURTS AND PROCEDURES *i* (1972) [hereinafter cited as AJS]; COURTS REPORT at 19-22.

9. AJS at *i*; COURTS REPORT at 22. New York became the first state to establish a modern disciplinary system when, in 1947, it created a court on the judiciary. The court is convened when a complaint is filed by officials specifically authorized by law to do so. N.Y. CONST. art. 6, § 22. Delaware and Oklahoma have similar courts on the judiciary. Compared to a commission system, the judiciary court system is more formal and cumbersome and, therefore, less desirable. It works on an ad hoc basis and handles only the most serious matters. COURTS REPORT at 25.

10. CAL. CONST. art. VI, §§ 8, 18.

11. Jurisdictions adopting a commission plan include: Alaska, Arizona, Colorado, District of Columbia, Florida, Hawaii, Idaho, Illinois, Indiana, Louisiana, Maryland, Michigan, Minnesota, Missouri, Nebraska, New Mexico, Ohio, Oregon, Pennsylvania, Puerto Rico, Tennessee, Texas, Utah, Vermont, Virginia. AJS, *supra* note 8, at *i*.

12. The Courts Commission was originally established as a temporary commission

stitutional amendment was proposed and adopted, adding the following language to the North Carolina Constitution:

> (2) *Additional method of removal of Judges.* The General Assembly shall prescribe a procedure, in addition to impeachment and address set forth in this section, for the removal of a Justice or Judge of the General Court of Justice for mental or physical incapacity interfering with the performance of his duties which is, or is likely to become, permanent, and for the censure and removal of a Justice or Judge of the General Court of Justice for wilful misconduct in office, wilful and persistent failure to perform his duties, habitual intemperance, conviction of a crime involving moral turpitude, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute.[13]

The General Assembly, acting on constitutional mandate, created the North Carolina Judicial Standards Commission effective January 1, 1973.[14]

The Commission has power to recommend to the supreme court the censure or removal of any judge or justice for the reasons given in the constitution.[15] The Commission may institute a preliminary investigation either upon citizen complaint or upon its own motion.[16] If further proceedings are warranted, a formal due process hearing is held on the exclusive basis of which the Commission may recommend discipline to the supreme court.[17] The entire process is confidential except for the recommendation and supporting record sent to the court and the court's subsequent proceedings.[18] Only the supreme court has the actual power of censure or removal.[19] The court, in its descretion, may dismiss the case, follow the Commission's recommendation, or remand for further proceedings.[20]

The commission system offers an excellent means of dealing with judicial impropriety. It is inexpensive, fair, and flexible. Easy access allows members of the public to raise their greviances, while confiden-

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in 1963 to design a modern, efficient court system for North Carolina. Res. of June 11, 1963, No. 73, [1963] N.C. Sess. Laws 1815. The Courts Commission was made permanent in 1969, Law of June 19, 1969, ch. 910, § 1, [1969] N.C. Sess. Laws 1046, but in 1975 was disestablished. Law of June 26, 1975, ch. 956, § 18, [1975] N.C. Sess. Laws 1405.

13. N.C. CONST. art. IV, § 17(2).
14. N.C. GEN. STAT. §§ 7A-375 to -377 (Cum. Supp. 1975).
15. *Id.* § 7A-376.
16. *Id.* § 7A-377(a).
17. *Id.*
18. The accused has a right to have the proceedings open to the public. *Id.*
19. *Id.* § 7A-376.
20. *Id.* § 7A-377(a).

tiality protects judges from unjustified harrassment. Most importantly, the Commission acts as a strong deterrent to the kinds of offenses that are unlikely to result in impeachment but that, nevertheless, lower the public's respect for the justice system.[21] A recent case, *In re Crutchfield*,[22] is a good example of such misconduct.

Crutchfield provided the supreme court with its first recommendation from the Commission. The court, following the Commission's recommendation, censured Judge Crutchfield for "conduct prejudicial to the administration of justice that brings the judicial office into disrepute"[23] when he signed orders allowing limited driving privileges to defendants who were not entitled to such privileges.[24] The orders were signed upon mere *ex parte* applications of the defendants' attorneys, violating the North Carolina Code of Judicial Conduct.[25] More serious, however, was the judge's total failure to determine the facts or controlling law.[26] The court found the judge's good faith defenses unavailing.[27]

Curiously, the defendant, Judge Crutchfield, never questioned the constitutionality of the untried Commission process in his brief. However, in a vigorous dissent, Justice Lake raised due process and equal protection issues on his own motion[28] and found that Commission procedure violative of both the United States and North Carolina Con-

21. COURTS REPORT, *supra* note 7, at 25-26.

22. No. 97 (N.C. Sup. Ct., Dec. 17, 1975) (unreported).

23. Majority Opinion at 7, *quoting* N.C. CONST. art. IV, § 17(2).

24. Persons arrested for driving under the influence are disallowed limited driving privileges by statute if they refuse to take a breathalyzer test. N.C. GEN. STAT. §§ 20-16.2, -179 (Cum. Supp. 1975).

25. "A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider *ex parte* or other communications concerning a pending or impending proceeding." N.C. CODE OF JUDICIAL CONDUCT Canon 3(A)(4). Two Florida supreme court judges were similarly reprimanded for their mishandling or misuse of an *ex parte* memorandum. *In re* Boyd, 308 So. 2d 13 (Fla. 1975); *In re* Dekle, 308 So.2d 5 (Fla. 1975).

26. Majority Opinion at 6.

27. *Id.* at 5-6. Crutchfield raised three basic defenses: (1) justifiable reliance on an attorney to draw a proper order, (2) no bad faith, and (3) no financial gain. Brief for Petitioner at 1.

Two Maryland judges were *removed* for "conduct prejudicial," due to irregularities in disposing of traffic cases, although they received no financial benefit, and followed practices of predecessor courts. *In re* Diener, 268 Md. 659, 304 A.2d 587 (1973), *cert. denied*, 415 U.S. 989 (1974).

28. The dissent raises the constitutional issues on its own motion under the principle that jurisdiction is always a proper inquiry. The statute contains jurisdictional, procedural, and substantive provisions. The dissent reasons that because the substantive and procedural provisions violate the constitution, the statute is void, and the court lacks jurisdiction. Dissenting Opinion at 1-2.

stitutions.[29] Because the supreme court may act "only upon the recommendation of the Commission,"[30] and because the Commission has broad discretion in determining the sanction it will recommend, Justice Lake argued that there is an "invitation to gross favoritism" that violates equal protection.[31] The dissent also found due process violations in the procedural aspects of the Commission proceeding. The fact that the hearing is closed,[32] that the Commission is judge, jury, and prosecutor,[33] and that the Commission can write its own rules[34] all bear on Justice Lake's conclusion. Justice Lake would also hold void for vagueness the disciplinary ground of "conduct prejudicial to the administration of justice."[35]

The majority opinion is noticeably unresponsive to the dissent's concerns. Whether the majority felt that the issues were improperly raised or well settled is unclear; however, the latter is a sound conclusion based upon an examination of other cases.[36] This note will identify the responses of other courts to Justice Lake's arguments, and then examine some North Carolina constitutional issues not raised in *Crutchfield.*

The weight of authority at the federal level holds that wide discretion vested in an administrative body, in and of itself, does not violate the Constitution.[37] Stricter doctrines of non-delegation are justifiably found at the state level since "state legislatures much more than Congress tend to delegate [responsibility] to petty officials who are authorized to act without adequate safeguards."[38] Such concerns are inappropriate in the Commission setting where, not only is the Commis-

29. *Id.* at 1.

30. *Id.* at 4. The word "only" is inserted by the dissent. The statute reads: "[u]pon recommendation of the Commission, the Supreme Court may . . . ." N.C. GEN. STAT. § 7A-376 (Cum. Supp. 1975). Thus, the court retains whatever authority it previously had, unless the court itself reads a negative implication into the statute.

31. Dissenting Opinion at 5.

32. *Id.* at 6.

33. *Id.*

34. *Id.*

35. *Id.* at 8.

36. *See, e.g.*, Keiser v. Bell, 332 F. Supp. 608 (E.D. Pa. 1971); *In re* Hanson, 532 P.2d 303 (Alaska 1975); *In re* Kelley, 238 So. 2d 565 (Fla. 1970), *cert. denied,* 401 U.S. 962 (1971); *In re* Haggerty, 257 La. 1, 241 So. 2d 469 (1970); *In re* Diener, 268 Md. 659, 304 A.2d 587 (1973), *cert. denied,* 415 U.S. 989 (1974).

37. *See* 1 K. DAVIS, ADMINISTRATIVE LAW TREATISE § 2.01 (1958) [hereinafter cited as DAVIS]. Equal protection does not assure uniformity of decisions, only freedom from intentional and purposeful discrimination. Snowden v. Hughes, 321 U.S. 1, 8 (1944). It is significant that there were no allegations in *Crutchfield* that intentional or purposeful discrimination had actually occurred. *See* Keiser v. Bell, 332 F. Supp. 608, 615-16 (E.D. Pa. 1971).

38. 1 DAVIS § 2.07, at 101.

sion a distinguished body of officials,[39] but the Commission's power is limited to recommending, and court review of Commission recommendations is mandatory.[40]

In those cases that have found an unconstitutional delegation of authority to an administrative body, the opportunity for arbitrary exercise of power went well beyond what was reasonably necessary for proper administration of the program involved.[41] The discretion granted the North Carolina Judicial Standards Commission is an integral and necessary part of the program.[42] The wide range of possible charges, fact situations, and substantiation, requires that the Commission have flexibility to respond to both major and minor cases.[43] Not suprisingly, it was the rigidity of the traditional methods of policing the judiciary that made them ineffective deterrents.[44]

Due process does not preclude delegation of decisions involving penalties to administrative agencies, so long as those penalties are not criminal.[45] The line between civil and criminal penalties is difficult to draw, but monetary penalties can clearly be civil.[46] Nor is there a distinction based on the severity of the penalty. Securities Exchange Commission (SEC) orders depriving persons of their professions as brokers have been upheld, even when the SEC determined not only that a penalty should be imposed, but also its extent.[47]

Commission systems in other jurisdictions have been upheld against many of the same due process attacks leveled in *Crutchfield*.[48] Unless some distinguishing feature of the North Carolina system is fatal, it too should pass constitutional muster. It is well settled law that an administrative body can be judge, jury, and prosecutor.[49] The full

39. The Commission consists of one court of appeals judge, one superior court judge, one district court judge, two senior members of the state bar, and two lay citizens. The judges are appointed by the Chief Justice, the citizens by the Governor, and the attorneys are elected by the State Bar Council. N.C. GEN. STAT. § 7A-375(a) (Cum. Supp. 1975).

40. *See* N.C. GEN. STAT. §§ 7A-376, 7A-377(a) (Cum. Supp. 1975). It is not clear precisely what standard of review the court is using, but other jurisdictions have adopted one in which the court reviews the transcript and makes its own independent findings of fact and law. *In re* Hanson, 352 P.2d 303, 308-09 (Alaska 1975).

41. 1 DAVIS § 2.10, at 114.

42. COURTS REPORT, *supra* note 7, at 24.

43. *Id.* at 21.

44. *Id.* at 19-20.

45. *See* 1 DAVIS § 2.13, at 133-34.

46. *Id.* at 135.

47. *Id.* at 134.

48. *See, e.g.*, Keiser v. Bell, 332 F. Supp. 608 (E.D. Pa. 1971).

49. 2 DAVIS § 13.02, at 181. The judge-jury-prosecutor due process objection has

extent of due process is not required in a disciplinary proceeding because it is not criminal in nature.[50] The standard normally applied in this situation is "minimum due process" with the emphasis on notice and an opportunity to be heard.[51] Minimal due process protection is provided by the Judicial Standards Commission Rules.[52] Furthermore, the independent court review of facts and law upon any recommendation would seem adequate to insure that the system is not abused.[53]

Statutes are generally said to enjoy a presumption of constitutionality. Consequently, if a statute can be exercised in a constitutional manner it should be given that chance and not struck down on its face.[54] Thus, the fact that the statute does not outline specific due process safeguards to be followed, but instead instructs the Commission to develop procedures "affording due process of law,"[55] should not be fatal.

The *Crutchfield* dissent also charged that the confidentiality of the commission process up to the supreme court level is inconsistent with due process.[56] By contrast, the advocates of the system herald the confidentiality of the system as one of its greatest assets, and consider it vital.[57] Allegations of misconduct may be groundless and thus the faultless judge is protected from the publicity of an unsupported charge. Public confidence in the integrity of the court system is likewise protected from diminution by unfounded allegations. In addition, complainants and witnesses need not be reluctant to complain or testify for fear of publicity or reprisal.[58] Once the Commission recommends discipline,

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been rejected in every jurisdiction in which the issue was raised in a judicial commission context. *In re* Hanson, 532 P.2d 303, 306 (Alaska 1975).

50. Keiser v. Bell, 332 F. Supp. 608 (E.D. Pa. 1971). In the judicial discipline context, all jurisdictions which have considered the question have rejected the criminal standard of proof. Most have also rejected a preponderance standard in favor of a clear and convincing test. *In re* Hanson, 532 P.2d 303, 307-08 (Alaska 1975). In *Crutchfield*, both majority and dissent agree the proceeding is not criminal. Majority Opinion at 5. Dissenting Opinion at 3.

51. *See, e.g.*, Allen v. City of Greensboro, 452 F.2d 489, 490 (4th Cir. 1971).

52. JUDICIAL STANDARDS COMM'N R. 8 provides for notice. R. 13 provides for opportunity to be heard.

53. *See In re* Hanson, 532 P.2d 303, 307 (Alaska 1975).

54. Smith v. Keator, 285 N.C. 530, 206 S.E.2d 203, *appeal dismissed*, 419 U.S. 1043 (1974). In *Smith* the court upheld a regulatory ordinance by inferring a hearing would be held and that decisions would be made on reasonable grounds. *Id.* at 537, 206 S.E.2d at 207.

55. The Commission is authorized to write its own rules, but must do so within an express due process limitation. N.C. GEN. STAT. § 7A-377(a) (Cum. Supp. 1975).

56. Dissenting Opinion at 6.

57. Confidentiality provisions are found in nearly all the commission systems of other jurisdictions. COURTS REPORT, *supra* note 7, at 25.

58. *Id.* at 24-25.

the purpose of confidentiality disappears and subsequent proceedings are, by law, public.[59] In sum, there seems to be a valid exercise of legitimate state interests, interests closely related to those served by the use of a grand jury in criminal proceedings. Again there is an ultimate check on abuse—the right of the accused to request public proceedings *at any time*.[60]

The void for vagueness attack on the power to discipline for "conduct prejudicial to the administration of Justice" has been rejected elsewhere.[61] The North Carolina General Assembly intended the Code of Judicial Conduct to be read into the phrase to give it meaning.[62] Indeed, if the Code is to have any real meaning such a provision is essential.[63] "Conduct prejudicial" is no more vague than many other valid concepts of law.[64] It should be noted that, not merely would the statute be void if this attack were sustained, but the constitutional amendment as well, since the grounds for discipline are enumerated therein.

One problem, not raised in *Crutchfield* and peculiar to North Carolina, poses a serious question of the constitutionality of the commission system as it is presently structured. The words of the commission statute, "[u]pon recommendation of the Commission, the Supreme Court may censure or remove,"[65] clearly either assume, or attempt to grant, supreme court jurisdiction. In North Carolina, supreme court jurisdiction is conferred by the state constitution and not by the General Assembly.[66] Supreme court jurisdiction to remove judges is not appar-

59. *See* N.C. GEN. STAT. § 7A-377(a) (Cum. Supp. 1975).

60. *See id.*; JUDICIAL STANDARDS COMM'N R. 4.

61. *See* Keiser v. Bell, 332 F. Supp. 608, 614-15 (E.D. Pa. 1971). *See also In re* Diener, 268 Md. 659, 671, 304 A.2d 587, 594 (1973), where the court says that "conduct prejudicial to the proper administration of justice" is incapable of precise definition "but it is unlikely we shall ever have much trouble recognizing and identifying such conduct."

62. COURTS REPORT, *supra* note 7, at 28. The majority approves of such a use of the Code. Majority Opinion at 7, *citing with approval* Spruance v. Commission on Judicial Qualifications, 13 Cal. 3d 778, 796, 532 P.2d 1209, 1221, 119 Cal. Rptr. 841, 853 (1975).

63. The Code of Judicial Conduct, unlike the Code of Professional Responsibility, does not have mandatory disciplinary rules. The Judicial Code is phrased in terms of "should" like the ethical considerations of the Code of Professional Responsibility. While the Code may be used to give meaning to the constitutional provision, discipline may be based only on a violation that rises to the level of a constitutional violation. *In re* Haggerty, 257 La. 2, 17, 241 So. 2d 469, 474 (1970).

64. *See generally In re* Foster, 271 Md. 449, 476-77, 318 A.2d 523, 537-38 (1974). *See also* Parker v. Levy, 417 U.S. 733 (1974) (upholding discipline of a military officer for conduct "unbecoming an officer and a gentleman" against a vagueness attack); Allen v. City of Greensboro, 452 F.2d 489 (4th Cir. 1971) (policeman).

65. N.C. GEN. STAT. § 7A-376 (Cum. Supp. 1975).

66. State *ex rel.* N.C. Util. Comm'n v. Old Fort Finishing Plant, 264 N.C. 416, 422, 142 S.E.2d 8, 12 (1965).

ent on the face of the constitution. In fact, supreme court jurisdiction seems limited solely to appeals from "the courts below."[67]

The new discipline section in the North Carolina Constitution provides that "[t]he General Assembly shall prescribe a procedure, in addition to impeachment and address . . . for the removal of [judges] . . . ."[68] The import of that language would seem to be that the Assembly can exercise its removal power through a procedure other than impeachment or address. However, the same constitutional amendment altered another section to read: "[r]emoval from office *by the General Assembly* for any other cause [other than address] shall be by impeachment."[69] The two sections read together mandate that the Assembly prescribe a procedure for the removal of judges by a body other than the General Assembly.

The issue then becomes whether the Assembly can grant the power of removal to another body, or whether it is limited to merely prescribing a procedure for a body that already possesses the removal power. If the Assembly can vest the power of removal in another body, it may be restricted in the body it can choose. If the power of removal is characterized as a "judicial power," then the Assembly would seem limited by article IV, § 1 of the constitution to vesting the power of removal in the judiciary.[70] If the power of removal is non-judicial, or if the new discipline section[71] overrides the judicial power section[72] of the constitution, the Assembly may be able to give the power of removal to any body—executive, judicial, legislative (except itself).[73] There are of course many policy reasons why the Assembly might not want to vest the power in anyone other than the judiciary,[74] but that result is not necessarily mandated by the constitution. If the power were given to a non-judicial body, the scope of judicial review, if any, would be an unavoidable issue.

67. N.C. CONST. art. IV, § 12(1); State *ex rel.* N.C. Util. Comm'n v. Old Fort Finishing Plant, 264 N.C. 416, 422, 142 S.E.2d 8, 12-13 (1965).

68. N.C. CONST. art. IV, § 17(2).

69. N.C. CONST. art. IV, § 17(1) (emphasis added to words affixed by amendment).

70. Art. IV, § 1 requires that the "judicial power of the State" be vested in a court. Some judicial powers can be given to administrative agencies, but ultimate power remains in the courts via appeal. *Id.* § 3.

71. *Id.* § 17(2).

72. *Id.* § 1.

73. *Id.* § 17(1).

74. A primary reason for giving the discipline power only to the judiciary is to retain a measure of judicial independence, an idea basic to our system of justice. *See* Chandler v. Judicial Council of the Tenth Circuit of the United States, 398 U.S. 74, 136-37 (1970) (Douglas, J., dissenting).

If the General Assembly cannot vest the power of removal in another body but may merely *prescribe a procedure* for a body that already has the power, it apparently must rely on the supreme court's supervisory power over the other courts, found in article IV, § 12(1) of the constitution or at common law.[75] If the scope of the court's supervisory power under either theory extends to removal, the Assembly can comply with its constitutional mandate to "prescribe a procedure."[76] There are no disciplinary decisions as such in North Carolina, so the possibility that the supervisory power includes removal is at least not foreclosed.

In England the supervisory power of the common-law courts clearly extended to removal.[77] The writs used were *scire facias* and *quo warranto*.[78] The *scire facias* writ is especially analogous to removal under article IV, § 17(2). *Scire facias* was applied against judges who held office "during good behavior." The causes for which a writ would issue were similar to those listed in the constitutional provisions of article IV, § 17(2).[79] Some authorities argue that the judicial power of forfeiture in England was abolished by statute as early as 1700. Others consider removal by *scire facias* still available.[80] There appear to be no modern cases which rely on these early writs.[81]

Whether the common-law removal doctrines are good law in the United States is open to some question. The author can find no cases in which a court has *directly* removed a judge from office based on either its inherent common-law or constitutional supervisory powers.[82] Some courts have relied on their supervisory power to discipline members of the bar in an indirect attempt to deter judicial midconduct.[83] Some

75. It is difficult to say how the constitutional supervisory power relates to the common law power, but it would seem safe to assume the common law power is still viable either as an independent power or as a way to interpret the constitution.

76. If the legality of the Commission is based on this theory, one wonders why a constitutional amendment was necessary.

77. Berger, *Impeachment of Judges and "Good Behavior" Tenure*, 79 YALE L.J. 1475, 1479-82 (1970) [hereinafter cited as Berger]; Shartel, *Federal Judges—Appointment, Supervision, and Removal—Some Possibilities Under the Constitution*, 28 MICH. L. REV. 870, 882-83 (1930) [hereinafter cited as Shartel]; Annot. 53 A.L.R.3d 882, § 3 (1973).

78. Shartel, *supra* note 77, at 882-83.

79. *Id.* at 883.

80. Berger, *supra* note 77, at 1482, 1500.

81. *Id* at 1482 n.38.

82. For a good review of the cases on supervisory power and discipline see *In re* Diener, 268 Md. 659, 699-715, 304 A.2d 587, 608-16 (1973) (Smith, J., dissenting).

83. *In re* Troy, 306 N.E.2d 203 (Mass. 1973) and *In re* DeSaulnier, 360 Mass. 787, 279 N.E.2d 296 (1972) appear to be such cases. *In re* Diener, 268 Md. 659, 688, 304 A.2d 587, 602 (1973).

courts find a direct power to suspend a judge in their supervisory jurisdiction, but exclude more severe penalties.[84] Others go no further than censure.[85] There are no North Carolina decisions on point. It may be said that courts are uniformly reticent about using their supervisory power for direct removal.[86]

Even if the supreme court is constitutionally authorized to remove judges, procedural problems remain. If the power is based on the court's supervisory jurisdiction over lower courts, it may be inapplicable to supreme court justices.[87] Regardless of the source of the authority, its exercise would seem governed by article IV, § 12(1) of the constitution which provides that the supreme court is strictly an appellate court with jurisdiction to hear cases solely from "the courts below."[88] This jurisdiction does not include direct appeals from agencies even though they may be quasi-judicial.[89] In spite of article IV, § 12(1), the direct commission to supreme court route might be justified. Under the statutory grant of power theory, the authorizing section of the constitution (article IV, § 17(2)) might be found to override article IV, § 12 (1). Under a supervisory power theory it might be held that the supervisory jurisdiction is separate and independant from other jurisdiction, and therefore, the "appellate only" limitation does not apply.[90]

CONCLUSION

The North Carolina Judicial Standards Commission is a significant improvement over traditional methods of judicial discipline. The Commission offers great promise in deterring activities such as those for which Judge Crutchfield was censured, activities which previously were virtually immune from control, but which jeopardize the citizen's confi-

84. *See* Ransford v. Graham, 374 Mich. 104, 131 N.W.2d 201 (1964); *In re* Graham, 366 Mich. 268, 114 N.W.2d 333 (1962).

85. *In re* Municipal Court, 188 N.W.2d 354 (Iowa 1971).

86. *See In re* Diener, 268 Md. 659, 699-715, 304 A.2d 587, 608-16 (1973) (Smith, J., dissenting).

87. *But cf.* McDonald v. Morrow, 119 N.C. 666, 672, 26 S.E. 132, 134 (1896), where the supreme court held individual justices could be treated as lower courts by the General Assembly in at least some contexts.

88. The Commission could arguably be considered a court, but this is an unlikely result since it would raise other problems. The constitution defines the court system in detail and does not provide for a court like the Commission. N.C. CONST. art. IV, §§ 2-10. Neither would the constitution allow delegation of rule making power to the Commission if classified as a court. N.C. CONST. art. IV, § 13(2).

89. *See* State *ex rel.* N.C. Util. Comm'n v. Old Fort Finishing Plant, 264 N.C. 416, 420, 422, 142 S.E.2d 811, 812 (1965).

90. *See In re* Huff, 352 Mich. 402, 418, 91 N.W.2d 613, 620 (1958).

dence in his judicial system. The Commission system also adds some needed bite to the Code of Judicial Conduct. In light of the judicial commission cases from other jurisdictions, the North Carolina system seems unlikely to run afoul of the due process and equal protection challenges raised by the *Crutchfield* dissent. There are, nevertheless, some jurisdictional problems posed by the judicial article of the North Carolina Constitution. Hopefully, the General Assembly will remedy these problems, or the court will find a way to reconcile them, so that the Commission can fulfill its promise in North Carolina.

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Property Law—The Beneficiary's Rights to the Proceeds of an Insurance Policy When He Takes the Life of the Insured

Enacted in 1961, Chapter 31A of the North Carolina General Statutes precludes one who is convicted of a wilful and unlawful homicide from acquiring a proprietary benefit because of the death of his victim.[1] In *Quick v. United Benefit Life Insurance Company*[2] the North Carolina Supreme Court had its first opportunity to interpret the life insurance provisions of this chapter.[3] Faced with the issue whether

1. Bolich, *Acts Barring Property Rights*, 40 N.C.L. REV. 175, 193 (1962).
2. 287 N.C. 47, 213 S.E.2d 563 (1975).
3. For the purposes of this note the relevant sections of N.C. GEN. STAT. § 31A (1966) are:

> **§ 31A-3. Definitions.**—As used in this article, unless the context otherwise requires, the term—
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> . . . .
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> (3) "Slayer" means
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> a. Any person who by a court of competent jurisdiction shall have been convicted as a principal or accessory before the fact of the wilful and unlawful killing of another person; . . . .
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> . . . .
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> **§ 31A-11. Insurance benefits.**—(a) Insurance and annuity proceeds payable to the slayer:
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> (1) As the beneficiary or assignee of any policy or certificate of insurance on the life of the decedent, or
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> (2) In any other manner payable to the slayer by virtue of his surviving the decedent, shall be paid to the person or persons who would have been entitled thereto as if the slayer had predeceased the decedent.
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> . . . .
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> **§ 31A-13.—Record determining slayer admissible in evidence.**—The record of the judicial proceeding in which the slayer was determined to be such, pursuant to § 31A-3 of this chapter, shall be admissible in evidence for or against a claimant of property in any civil action arising under this chapter.