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Critics want to bench Judge Manuel L. Real

He is 85 and has sat on the U.S. District Court bench in L.A. since 1966. He wields his gavel despite complaints about his imperious behavior and frequent reversals by appellate courts.

By Carol J. Williams

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Attorney Gary Dubin was in a Honolulu hospital, sedated and suffering from depression after the death of his son, when U.S. District Judge Manuel L. Real had him handcuffed and taken to court -- still in his hospital gown -- to answer charges of failing to file tax returns.

Real allowed him to send for clothes but refused to postpone the hearing, recalled Dubin, who had to defend himself in a medicated fog without his case files. Judged guilty by Real after a two-day bench trial, Dubin spent 19 1/2 months in federal prison, while his home went into foreclosure and his credit was ruined by identity thieves.

He achieved a measure of vindication years later when the IRS sent him a letter saying he had not violated any tax-filing laws. But he said his encounter with Real caused him professional and economic suffering from which he is still recovering.

Dubin filed a complaint with judicial authorities, one of dozens in which the 85-year-old judge's behavior has been brought to the attention of judicial disciplinary panels.

The Judicial Council of the U.S. 9th Circuit Court of Appeals examined 89 cases in which Real's conduct was challenged, though it is not clear if Dubin's was among them because the panel does not disclose details of its investigations. In December, the panel said the judge's behavior was problematic but lacked the "willfulness" required for disciplinary sanctions, adding that in the future, Real should be "especially vigilant concerning the subject matter of these complaints."

Some judicial analysts predicted then that the Los Angeles-based Real would take the face-saving step of opting for senior status, going into a semi-retirement for which he has been eligible since 1985. But he remains an active judge with a full caseload, stirring fresh complaints of imperious behavior as well as a high number of reversals by appellate courts.

On July 17, the 9th Circuit overturned Real's acquittal of a state corrections officer who had been convicted by a jury of assaulting two prisoners. The appeals court reinstated the jury verdict and sent the case back for sentencing, ordering that a different judge handle the proceedings. That was at least the 10th time Real has



endured that rare form of appeals court reproach.

Still pending is an effort to remove Real from a case involving a trust fund containing seized assets of the late Philippines dictator Ferdinand Marcos.

Real has provided no accounting of how \$5 million from the fund was disbursed while it was under his control or of what happened to an additional \$20 million in investment proceeds. Real issued a half-page accounting of the fund's remaining \$34.7 million, saying, "That takes care of the matter."

Groups laying claim to the money have appealed to the 9th Circuit seeking reassignment of the case to another judge, said Jay Ziegler of the Los Angeles firm of Buchalter Nemer, among those representing the claimants.

The claimants' arguments for reassignment are explained in a sealed brief filed with the appeals court in mid-July and include concern over "the failures in accounting," Ziegler said. But he declined to say more about why his firm wants Real off its case.

Some former colleagues come to the judge's defense, saying he is the victim of disgruntled attorneys.

"I think he's done everything he can do to try to be fair to defendants. I've seen him go out of his way to try to make sure people don't fall back into the same problems they had before," said attorney John Resich, a former law clerk for Real. "I think he's being unfairly judged by a few people who had negative results and feel he is not being fair to them."

But some of his most persistent critics are harsh in their assessments.

Beverly Hills attorney Ronald Richards, in arguing unsuccessfully to have Real removed from one of his cases, said the judge's repeated threats to hold lawyers in contempt for disagreeing with him has induced "a generalized pattern of cowering by attorneys who appear in this district court."

Harland Braun, a Los Angeles attorney who has sparred with Real for decades, said that "going into a case, he picks the side he wants to win and then does everything he can to destroy the other side. He is notorious for ripping defendants apart."

Braun recently tried an end run around the 9th Circuit Judicial Council, which normally handles misconduct complaints, filing a petition that will go directly to a three-judge 9th Circuit panel instead of the disciplinary body. Braun claims Real prejudiced a jury by calling his client a liar and suppressing exculpatory evidence.

His client, a Japanese exchange student who Braun says was unwittingly enmeshed in a fraud scheme by her boyfriend, was wrongly convicted, briefly imprisoned and scarred for life as a released criminal now that she's back in her homeland, Braun said.

In a rare response to a complaint, Real told the Los Angeles Daily Journal that Braun was "delusional" in his perceptions of the judge's handling of the case.

The judge didn't respond to requests for comment from The Times.

In 2006, a committee headed by Supreme Court Justice Stephen G. Breyer cited cases involving Real -- by identifying facts, not by name -- as an example of the federal judiciary's failure to discipline a few judges involved in "high-visibility cases."

The Breyer committee report cited, in particular, Real's decision to take control of a bankruptcy case to protect a young woman probationer under his supervision. That case drew national attention and a 9th Circuit reprimand and was seen as contributing to a push for greater accountability recommended by Breyer.

After an exhaustive two-year study of how the federal judiciary conducted disciplinary proceedings during nearly a quarter of a century, the committee called for more transparency in misconduct decisions. It also warned that an unacceptably high error rate in the prominent cases threatened to lead the public "to form a view of the judiciary's handling of all cases upon the basis of these few."

Charles Gardner Geyh, an Indiana University law professor and scholar of judicial misconduct, says it remains too early to assess whether the Breyer Committee policies seeking greater judicial transparency in misconduct allegations are bringing more errant judges to task. The federal judiciary remains reliant on informal, behind-the-scenes threats of public discipline "as a kind of shotgun behind the door," Geyh said.

The long history of complaints against Real made him something of a test case for whether the new judicial disciplinary procedures would be more effective in vetting bad judges -- a test that judiciary scholar and University of Pittsburgh law professor Arthur Hellman suggested has failed.

"If Judge Real did not meet that standard, then probably no federal judge ever will," Hellman said of the 9th Circuit ruling in December that Real's behavior didn't rise to the level of willful misconduct. "I don't know of any judge sitting today who has been taken off more cases."

Real has been immersed in controversy for much of the time since his 1966 appointment by President Lyndon B. Johnson.

In some cases, as with his 1970 order that ended school segregation in Pasadena, history has judged him kindly. Often, though, his demeanor and decisions have spurred complaints of bias or high-handed behavior.

In 1969, Real jailed five antiwar spectators for failing to stand as he left the courtroom. Six years later, he jailed an NBC attorney for failing to give him a copy of a docudrama. In 1985, Real sentenced Hustler magazine publisher Larry Flynt to 15 months' detention for a profane taunting. In all three instances, 9th Circuit judges intervened to free those Real had ordered jailed.

Many of the complaints against Real accuse him of refusing to explain perplexing rulings. Judiciary analysts have calculated that Real's reversal rate in some years has been as high as 10 times the average for federal district judges.

"The trial court's biased evidentiary rulings, disparaging remarks and lengthy interrogations of witnesses created an atmosphere in which an objectively fair trial could not be conducted," a 9th Circuit panel ruled in March 2008, reversing Real in a securities fraud case and assigning the retrial to another judge.

At least nine other cases have been removed from Real after being overturned, a form of reprimand seldom imposed even once in a judge's career.

He has answered lawyers' requests for explaining his rulings with "because I said so" and has shut down arguments with the observation: "This isn't Burger King. We don't do it your way here."

Even some critics attribute Real's professional survival to an engaging manner outside the courtroom and a reputation for social contributions as well as contrarian edicts.

But Real's presence on the bench is a bitter reminder of what Dubin sees as the judiciary's reluctance to purge

its ranks of rogues and tyrants.

"Real is not the problem, the problem is the 9th Circuit and the regulatory system for the judiciary," Dubin said.

In the dozen years since his release from prison with tennis shoes and \$162, Dubin has received vindication from the IRS, earned reinstatement without penalty to the Hawaii and California bars and rebuilt his clientele and financial security.

Dubin sarcastically observed that he has Real to thank for his economic recovery, having become acquainted with foreclosure laws in rescuing his own home -- a practice area that has proved lucrative in a distressed law market.

"If you look at me, at my bank account, my law practice -- I survived, with scars," Dubin said.

"But you have to remember that behind all these words and platitudes, real human beings are absolutely devastated by Real."

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