

Mr. GINNANE. As a practical matter, sir, he could do this. He could ask the Commission to postpone the effective date of its order until he had an opportunity to confer with another judge, and it would be a very rare situation indeed, if any, when the Commission would not honor such a reasonable request.

Mr. DINGELL. Would the gentleman yield for a question here?

The CHAIRMAN. Yes, the gentleman yields.

Mr. DINGELL. I am much troubled by this. I would like to have an orderly procedure and have the procedure to be the same for all Government agencies, but I confess I find there is precedent for a single judge of a court acting in a stay in the case of an appeal.

This is true in the case of the Supreme Court. A single judge may during certain times stay the effect of a lower court's ruling. Is that not a fact?

Mr. GINNANE. That is correct.

Mr. DINGELL. It is not infrequently done even in cases of appeals from the Federal regulatory agencies; am I correct?

Mr. GINNANE. Under the existing statutory provisions—

Mr. DINGELL. I am talking about a single Justice of the Supreme Court staying the effect of a lower court order.

Mr. GINNANE. Yes, I know of a recent example.

Mr. DINGELL. So this is not a unique thing. It does make sense that this kind of order should take place by a single judge where there is need for expeditious consideration and where there is a clear case of irreparable harm that could be done.

Am I correct?

Mr. GINNANE. May I answer your question in this way: When members of the Judicial Conference raised the question with us whether we would oppose empowering a single judge to grant a temporary restraining order, we said we did not particularly oppose it, that whatever they thought as a matter of practical judicial administration would be best, that the Commission would go along with that and that would be our position today.

Mr. DINGELL. A temporary restraining order requires the showing of irreparable harm, it requires the showing that there would be no other relief.

Mr. GINNANE. That is basically correct, the showing of irreparable damage.

Mr. DINGELL. It is issued usually after effective notice to the parties.

It requires generally a brief hearing before the court and it is subject to review at the earliest possible time through a more extensive hearing to establish again whether or not a temporary injunction should lie based upon again the showing of irreparable harm and based upon again a showing that there is no other way to prevent the harm.

Am I correct?

Mr. GINNANE. You can always appeal from an order of one judge to a three-judge panel.

Mr. DINGELL. This particular review I am talking about in connection with irreparable harm is something that follows immediately, as a matter of fact, usually within a matter of 3 days, as I recall, from my association with Federal courts, to determine whether or not it should continue in force or whether it should be broadened into a temporary injunction?