

**Outline of Comments on
The Draft Rules Governing Judicial Conduct and Disability Proceedings
Released for Public Comment by
the Judicial Conference Committee on Judicial Conduct and Disability**
Delivered at the Hearing in the U.S. Courthouse at 225 Cadman Street, Brooklyn, NY,
on September 27, 2007

1. The draft rules are almost identical to the current rules and will not prevent judges from dismissing more than 99% of all complaints against their peers.
2. They protect a complaint system irreconcilable with traditional notions of fair play and substantial justice through due process of law:
No change in the players or the procedure
No public filing of complaints or access to the procedure applied to handle them
No requirement that the complained-about judge respond to the complaint
No adversarial confrontation between complainant and complained-about judge
No requirement that a special investigating committee be appointed
No public access to any investigating report
No greater rights of appeal for complainants
No compelling reason to protect judges with "the confidentiality of the complaint process"
No system of checks and balances on the exercise by judges of absolute judicial power
- 3 Secret proceedings upon complaints kept from the public privatizes the justice that judges administer to themselves and renders it not equal under law.
4. Only one new relevant provision: Rule 8(b): clerk must copy the Committee on complaints.
5. The example of filing insurance claims, not before the courts, but before the regional CEO of the most powerful insurance company; appeals lie to the regional council of insurers; which decides whether to refer claims to the national insurance conference of successful insurers.
- 6 The Committee announced this hearing only on one website and is holding only one hearing.
7. In the 218 years since the 1789 Constitution, only 7 federal judges have been impeached and removed from the bench.
8. In the 27 years since the Judicial Conduct and Disability Act of 1980, the Judicial Conference of the U.S. has issued only 15 decisions.
9. Judges that are unimpeachable in practice are above the law, for they fear no adverse consequences from abusing their judicial power. Such power becomes absolute and corrupts them absolutely.
10. Constitutional challenge to 28 U.S.C. §§351-364 on grounds, among others, of equal protection (see http://Judicial-Discipline-Reform.org/docs/no_judicial_immunity.pdf).
11. Need for a **board of citizens** unrelated and unanswerable to the judiciary; otherwise, panels of three retired judges from circuits other than that of the complainant and the complained-about judge; empowered to publicly censure him, withdraw from him any and all cases, and recommend his impeachment.
12. Call for the Committee to recuse itself and recommend to the Chief Justice to appoint people unrelated to the Judiciary to draft the rules... after such people have reviewed the complaints filed in the last 10 years.
13. Let the Committee write the equivalent of Emile Zola's "I Accuse" in the Dreyfus Affair.
14. Call for bloggers and journalists to engage in a **Watergate-like Follow the money! investigation** to determine whether a federal judgeship has become a safe haven for judicial coordinated wrongdoing.

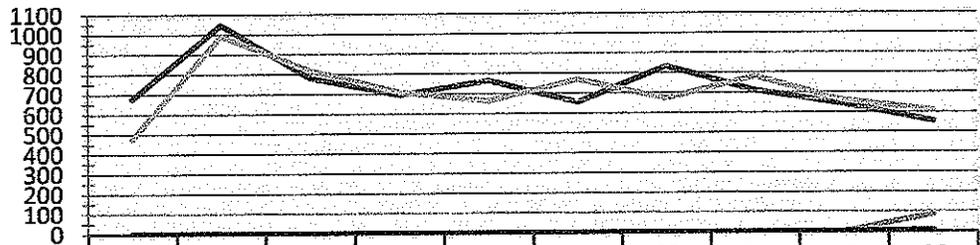
Summary of Dr. Cordero's Comments on the Draft Rules

keyed to its ¶¶ in http://Judicial-Discipline-Reform.org/judicial_complaints/press_release_26sep7.pdf

2. The Rules' "largely based...administrative perspective" allows no confrontation or compensation.
3. Complicit toleration of the wrongdoing that judges see other peers practice taints them too.
4. Only do something that is "best able to influence a judge's future behavior in constructive ways".
5. Under Rule 2, a chief circuit judge can suspend the new Rules if he only "finds expressly that exceptional circumstances render the application of a Rule in a particular proceeding manifestly unjust or manifestly contrary to the purposes of 28 U.S.C. §§351-364 or these Rules".
11. The final sentence of Rule 2 turns the Rules into suggestions that the chief circuit judge can disregard whenever pressure from his peers or conflict of interests makes it expedient to do so.
12. "Rule 5(2) A chief judge:... (B) need not identify a complaint if it is clear on the basis of the total mix of information available to [him] that the review provided in Rule 11 will result in a dismissal under Rule 11(c), (d), or (e). However, a chief circuit judge may identify a complaint in such circumstances in order to assure the public that highly visible allegations have been investigated. In such a case, appointment of a special committee under Rule 11(f) may not be necessary"...thus misleading the public with a complaint bound to be dismissed.
20. Rule 6 aims to prevent the public from even knowing the complained-about judge's name.
24. Under Rule 16(e), the possibility of receiving the report of the special committee is a carrot dangled in front of the complainant. She may be allowed to eat it depending on "the degree of the complainant's cooperation in preserving the confidentiality of the proceedings, including the identity of the complained-about judge".
30. "Many complaints are clear candidates for dismissal even if their allegations are accepted as true, and there is no need for the complained-about judge to devote time to a defense".
31. Rule 8 does not require the judge to take cognizance of the complaint and put in writing his or her response. So he can go on behaving as if no complaint had ever been filed.
33. Absence in Rule 8(b) of any required action by either the judge or the chief judge of his court upon receipt of a copy of the complaint allows them not to bother even reading it.
42. Rule 10 allows all complainants regardless of their number, except "only one or more", to be deprived of their right to complain against a judge simply because to his peers it just "appears" that their complaints are "part of an orchestrated campaign". The thousands of complaints against ENRON could not have been dismissed on those grounds. Unequal justice.
49. The chief circuit judge must also dismiss the complaint if he concludes that it "(5) is otherwise not appropriate for consideration under the Act". This is a vague and standardless catch-all that allows the chief circuit judge to dismiss a complaint for any reason and no reason.
53. Rule 11 provides no standard for determining what "appropriate corrective action" already taken allows the dismissal of the complaint. A judge may volunteer "action" that has nothing to do with the remedy requested by the complainant, thus exempting himself from liability.
60. The Rules have been drafted to ensure self-preservation, not to establish checks and balances between "We the People Under Law" and the class of federal judges above the law, let alone to provide "Equal Justice" for both.
66. Rule 11(e) allows the chief circuit judge to dismiss a complaint by claiming that "remedial action [is] impossible", without stating what action is impossible and why, or giving the complainant the opportunity to challenge that claim and propose alternative 'possible' action.

Number of Complaints Filed by Complainants and Systematically Dismissed by Chief Judges and Judicial Councils Between '97 and '06

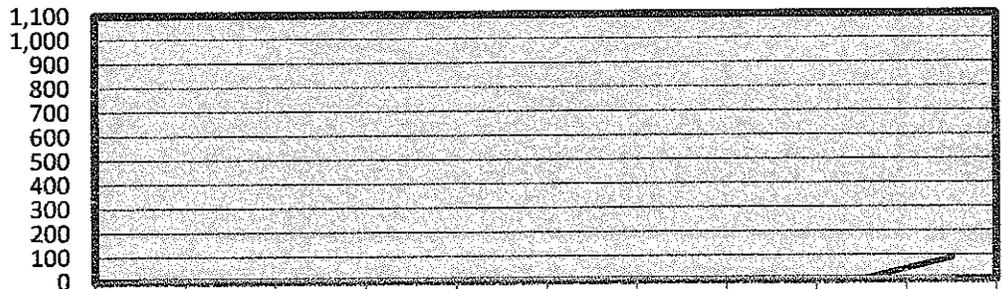
Number of complaints:



	97	98	99	00	01	02	03	04	05	06
filed by complainants	678	1,049	781	695	766	656	835	712	642	555
filed by chief judges	1	2	0	1	0	1	0	0	0	88
dismissed by chief judges & judicial councils	477	995	820	710	663	770	673	781	661	609
referred to Judicial Conference	0	0	0	0	0	0	0	0	0	0
special investigating committees appointed[†]	0	0	0	0	0	0	0	0	0	7

Judicial Councils' Action Against Complained-about Judges From 1997-2006

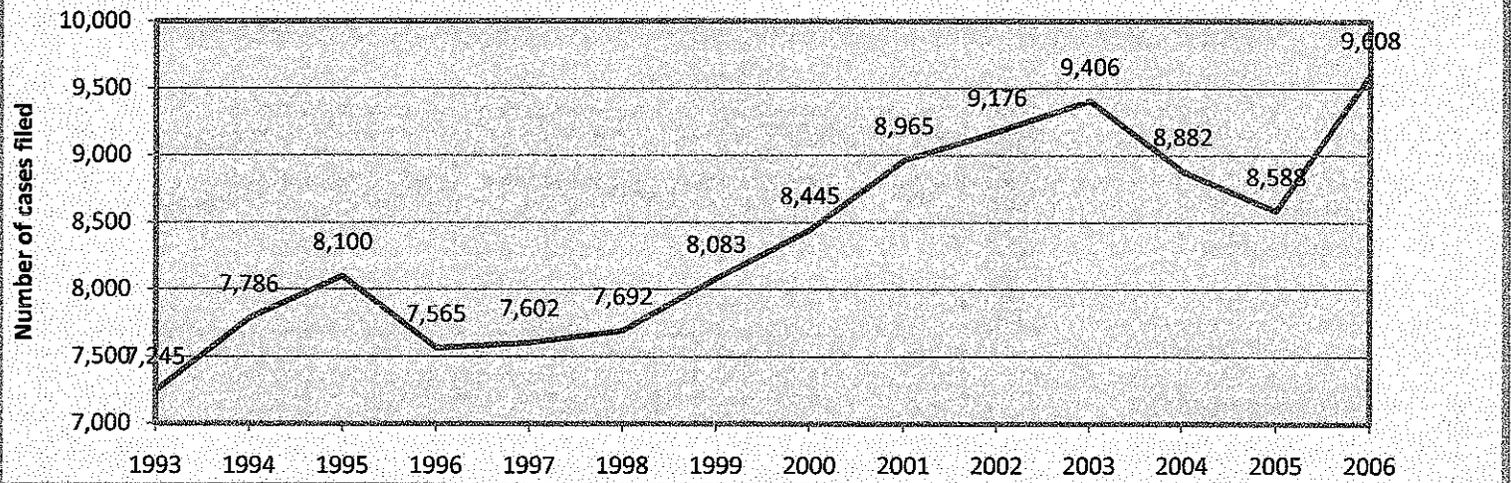
Number of complaints



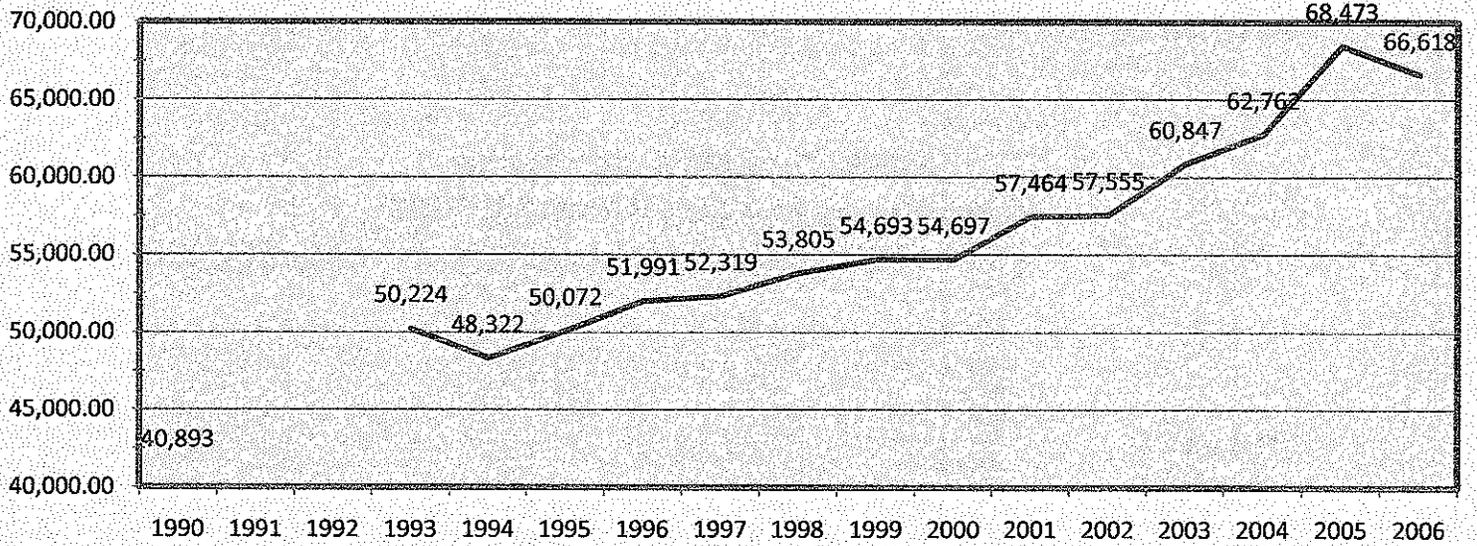
	97	98	99	00	01	02	03	04	05	06
filed by chief judges	1	2	0	1	0	1	0	0	0	88
directed chief district judge to take action (magistrate judges only)	0	0	0	0	0	0	0	0	0	1
certified disability	0	0	0	0	0	0	0	0	0	0
requested voluntary retirement	0	0	0	0	0	0	0	0	0	0
ordered temporary suspension of case assignment	0	1	0	0	0	0	0	0	0	0
privately censured	0	0	0	0	1	0	0	0	0	0
publicly censured	0	1	0	2	0	2	0	0	0	0
ordered other appropriate action	0	0	0	0	0	0	1	0	0	0
referred complaint to Judicial Conference	0	0	0	0	0	0	0	0	0	0
special investigating committees appointed[†]	0	0	0	0	0	0	0	0	0	7

Source: Tables of the Adm. Off. of the U.S. Courts; collected in http://Judicial-Discipline-Reform.org/judicial_complaints/DrCordero_on_rules.pdf

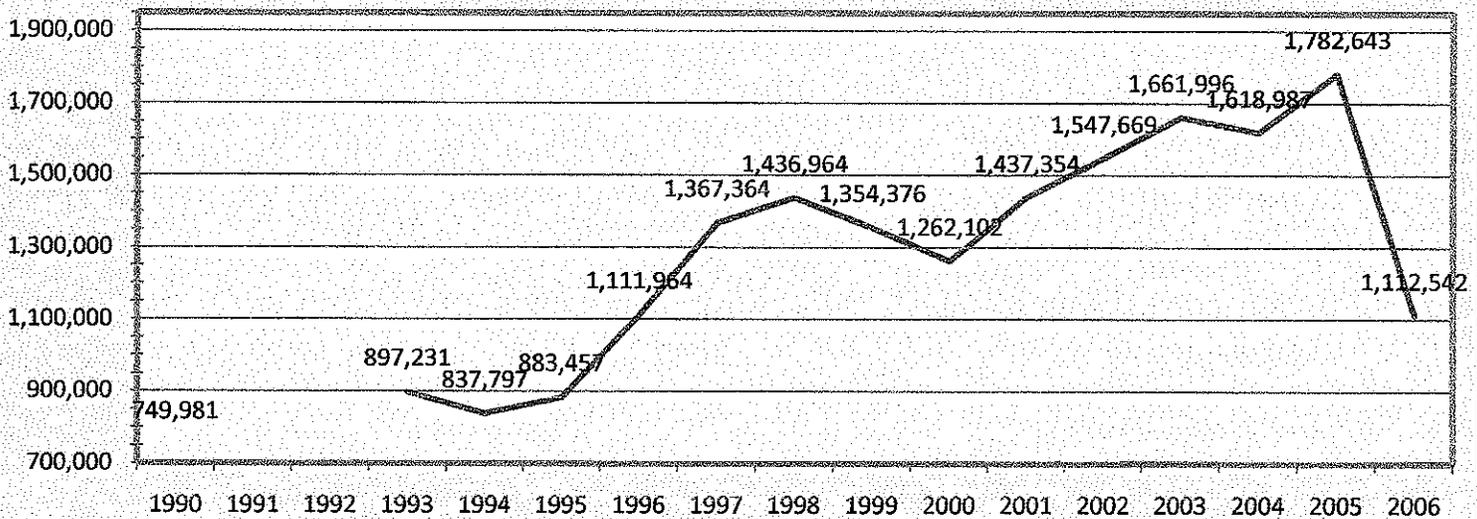
Cases Filed in the Supreme Court Between 93-06 showing a 33% increase



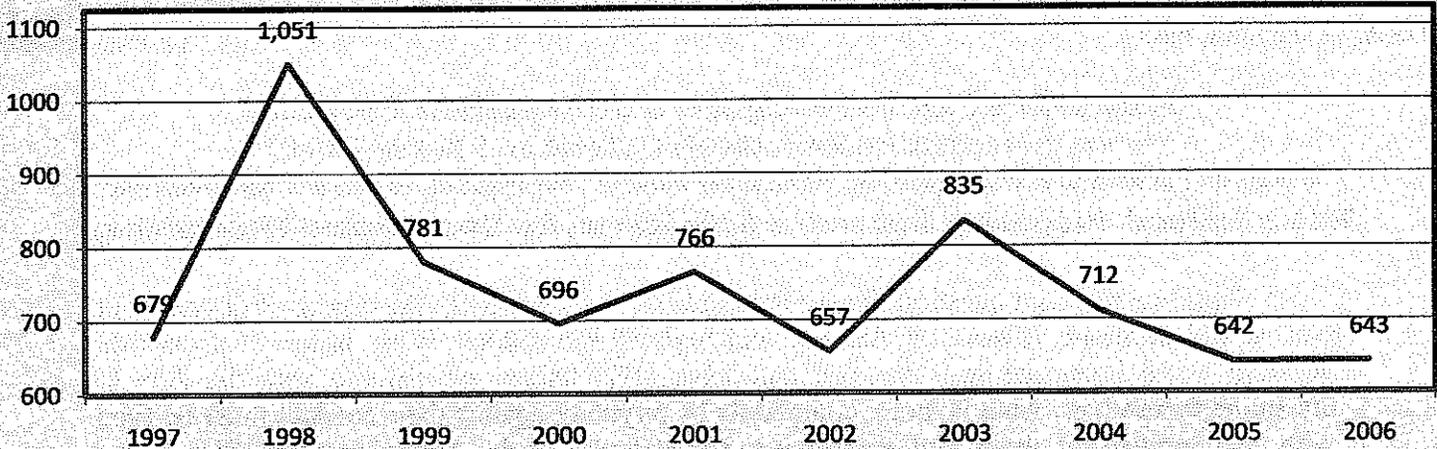
Cases Filed in the Court of Appeals Between 90-06 Showing a 63% Increase



Cases Filed in Bankruptcy Courts Between 90-06 Showing a 138% Increase at Peak



Complaints Filed Between 97-06 Showing a Decrease of 5%



[Footnotes in the originals]

NOTE: EXCLUDES COMPLAINTS NOT ACCEPTED BY THE CIRCUITS BECAUSE THEY DUPLICATED PREVIOUS FILINGS OR WERE OTHERWISE INVALID FILINGS.

* REVISED. [regarding complaints pending]

** EACH COMPLAINT MAY INVOLVE MULTIPLE ALLEGATIONS AGAINST NUMEROUS JUDGES. NATURE OF ALLEGATIONS IS COUNTED WHEN A COMPLAINT IS CONCLUDED.

Source: for Tables 1, 2, and 3, Judicial Business of U.S. Courts, 1997-2006 Annual Reports of the Director, Administrative Office of the United States Courts.

For Tables 3, 4, 5, 2005-2006 Judicial Facts and Figures, Administrative Office of the U.S. Courts.

The original Tables are collected and reproduced in http://Judicial-Discipline-Reform.org/judicial_complaints/DrCordero_on_rules.pdf, wherein they are accompanied by links to the originals.

Tables 1, 2, and 6, supra, report on complaints filed and processed in the Federal Circuit, the District of Columbia, the 1st-11th circuits, the U.S. Claims Court, and the Court of International Trade

†The category "Special Investigating Committees Appointed" appears for the first time in the 2006 Table.

These figures do not even include cases filed with Article I courts, which are part of the Executive, not the Judicial, Branch, such as the U.S. Tax Court, established in 1969 (after it was created as the Board of Tax Appeals in 1924 and its name was first changed to Tax Court of the U.S. in 1942). Another such court is the U.S. Claims Court, established as an Article I court in 1982, and renamed U.S. Court of Federal Claims in 1992. Likewise, the U.S. Court of Veterans' Appeals was established as an Article I court in 1989 and then renamed the Court of Appeals for Veterans Claims in 1998.

They too support the conclusion to be drawn from these statistics: The significant increase in cases filed with these courts every year attests to the litigiousness of the American society. They belie the judges' report that for the last 10 years Americans have filed a steady number of complaints against them hovering around the average (after eliminating the outlier) of only 712 complaints. The explanation lies in the first footnote in the originals, above: Judges have arbitrarily excluded an undetermined number of complaints. The fact that they have manipulated these statistics is also revealed by the first table above: After 9 years during which the judges filed less than one complaint a year, they jumped to 88 in 2006...and that same year it just so happened that complainants filed the lowest number of complaints ever, 555! *Implausible!* Yet, the judges did not discipline a single peer, just one magistrate.

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Synopsis of an Investigative Journalism Proposal

Where the Leads in Evidence Already Gathered in 12 Federal Cases¹

Would be Pursued in a Watergate-like *Follow the money!* Investigation to Answer the Question:
Has a Federal Judgeship Become a Safe Haven for Coordinated Wrongdoing?

This is a poignant question, for it casts doubt on the integrity of the branch of government that should incarnate respect for the law and high ethical values. What makes it a realistic question worth investigating is the fact that since 1980 judges are charged with the duty to discipline themselves; what is more, complaints by anybody against their conduct must be filed with, and handled by, them. But according to the statistics of the Administrative Office of the U.S. Courts², judges systematically dismiss³ all complaints. As a result, in the last 27 years only three judges out of some 2,133 federal judges, have been impeached, the last one in 1989. Actually, in the whole 218 years since the U.S. Constitution of 1789, only 7 judges⁴ have been impeached and removed from the bench...on average one every 31 years!

If that were the time it would take for your CEO to be held accountable by his peers for his conduct toward you and the other people in your office, and in the meantime he could wield power over your property, liberty, and life with no more consequences than the suspension of a decision of his, do you think that he would be tempted to treat you however he wanted? If all complaints of yours ended up in the wastebasket together with those of your colleagues in the office, would you say that they would want to know of your efforts to force your CEO and his peers out of their safe haven in order to require them to treat you and your colleagues with respect or be liable to all of you? If so, you have a U.S. audience of 300 million colleagues waiting to know about your efforts to hold your judicial CEO and his peers accountable for their conduct.

Indeed, by law the chief justice of the Supreme Court and the associate justices review with the chief district and appellate judges twice a year reports⁵ showing that complaints against judges are dismissed systematically, which points to coordination to disregard a duty placed upon them by law. They have known also that in an area such as bankruptcy, judges wield enormous power over tens of billions of dollars annually. Power and money, the two most insidious and absolute corruptors in the hands of the same judges that have exempted themselves from any discipline. There is evidence that bankruptcy judges have engaged in a bankruptcy fraud scheme⁶ with the knowledge and support of district judges, and at least the toleration of circuit judges and the justices of the Supreme Court. That evidence and leads⁷ are hereby being offered for a joint *Follow the money!* investigative journalism project.

The discovery of evidence that a federal judgeship has become a safe haven for coordinated wrongdoing is bound to have a farther reaching impact than finding out that the Watergate Burglary was connected to President Richard Nixon. Unlike the president and his White House aides, federal judges hold office for life or renewable 14-year terms and can only be removed through the historically useless impeachment mechanism⁸. Hence, the investment of investigative resources in this project would not be for a momentary scoop, but rather for the development of a lode of news that would implicate the Congress dominated by "the culture of corruption"⁹ and the Executive, whose agenda is challenged in court. A *Follow the money!* investigation from acts or toleration of judicial bias and disregard for the law to concealed assets would outrage the public and lead to a cleansing institutional crisis. For the bloggers and investigative journalists that pursued the story most competently there are rewards to be gained: 15 minutes of fame, a Pulitzer Prize, or the title of the Bob Woodward and Carl Bernstein of our generation. Let's get together to discuss the objectives and strategy¹⁰ to join resources and push forward this investigation.¹¹