

**JUDICIAL CONFERENCE OF THE UNITED STATES**

**RULES FOR JUDICIAL-CONDUCT AND  
JUDICIAL-DISABILITY PROCEEDINGS**

**Redlined Draft Reflecting Proposed Amendments  
(July 23, 2014)**

# RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS

## TABLE OF CONTENTS

Preface. . . . .	1
ARTICLE I. GENERAL PROVISIONS	
1. Scope. . . . .	2
2. Effect and Construction. . . . .	3
3. Definitions. . . . .	3
(a) Chief Judge. . . . .	3
(b) Circuit Clerk. . . . .	3
(c) Complaint. . . . .	3
(d) Court of Appeals, District Court, and District Judge. . . . .	3
(e) Disability. . . . .	3
(f) Judicial Council and Circuit. . . . .	4
(g) Magistrate Judge. . . . .	4
(h) Misconduct. . . . .	4
(i) Subject Judge. . . . .	4
4. Covered Judges. . . . .	7
ARTICLE II. INITIATION OF A COMPLAINT	
5. Identification of a Complaint. . . . .	8
(a) Identification. . . . .	8
(b) Noncompliance with Rule 6(d). . . . .	8
6. Filing a Complaint. . . . .	9
(a) Form. . . . .	9
(b) Brief Statement of Facts. . . . .	9
(c) Legibility. . . . .	10
(d) Complainant's Address and Signature; Verification. . . . .	10
(e) Number of Copies; Envelope Marking. . . . .	10
7. Where to Initiate Complaints. . . . .	10
(a) Where to File. . . . .	10
(b) Misconduct in Another Circuit; Transfer. . . . .	10
8. Action by Clerk. . . . .	11
(a) Receipt of Complaint. . . . .	11
(b) Distribution of Copies. . . . .	11
(c) Complaints Against Noncovered Persons. . . . .	11
(d) Receipt of Complaint about a Judge and Another Noncovered Person. . . . .	11
9. Time for Filing or Identifying a Complaint. . . . .	12

10.	Abuse of the Complaint Procedure. . . . .	12
	(a) Abusive Complaints. . . . .	12
	(b) Orchestrated Complaints. . . . .	12

ARTICLE III. REVIEW OF A COMPLAINT BY THE CHIEF JUDGE

11.	Review by the Chief Judge. . . . .	13
	(a) Purpose of Chief Judge's Review. . . . .	13
	(b) Inquiry by Chief Judge. . . . .	13
	(c) Dismissal. . . . .	13
	(d) Corrective Action. . . . .	14
	(e) Intervening Events. . . . .	14
	(f) Appointment of Special Committee. . . . .	14
	(g) Notice of Chief Judge's Action; Petitions for Review. . . . .	14
	(h) Public Availability of Chief Judge's Decision. . . . .	15

ARTICLE IV. INVESTIGATION AND REPORT BY SPECIAL COMMITTEE

12.	Composition of Special Committee. . . . .	19
	(a) Membership. . . . .	19
	(b) Presiding Officer. . . . .	19
	(c) Bankruptcy Judge or Magistrate Judge as Adviser. . . . .	19
	(d) Provision of Documents. . . . .	19
	(e) Continuing Qualification of Committee Members. . . . .	19
	(f) Inability of Committee Member to Complete Service. . . . .	19
	(g) Voting. . . . .	19
13.	Conduct of an Investigation. . . . .	21
	(a) Extent and Methods of Special-Committee Investigation. . . . .	21
	(b) Criminal Conduct. . . . .	21
	(c) Staff. . . . .	21
	(d) Delegation of Subpoena Power; Contempt. . . . .	21
14.	Conduct of Hearings by Special Committee. . . . .	22
	(a) Purpose of Hearings. . . . .	22
	(b) Committee Evidence. . . . .	22
	(c) Counsel for Witnesses. . . . .	22
	(d) Witness Fees. . . . .	22
	(e) Oath. . . . .	22
	(f) Rules of Evidence. . . . .	22
	(g) Record and Transcript. . . . .	22
15.	Rights of Subject Judge. . . . .	23
	(a) Notice. . . . .	23
	(b) Report of the Special Committee. . . . .	23
	(c) Presentation of Evidence. . . . .	23
	(d) Presentation of Argument. . . . .	23
	(e) Attendance at Hearings. . . . .	23
	(f) Representation by Counsel. . . . .	23

16.	Rights of Complainant in Investigation.....	24
	(a) Notice.....	24
	(b) Opportunity to Provide Evidence.....	24
	(c) Presentation of Argument. ....	24
	(d) Representation by Counsel.....	24
	(e) Cooperation. ....	24

17.	Special-Committee Report.....	25
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ARTICLE V. JUDICIAL-COUNCIL REVIEW

18.	Petitions for Review of Chief Judge Dispositions Under Rule 11(c), (d), or (e).....	26
	(a) Petitions for Review.....	26
	(b) When to File; Form; Where to File. ....	26
	(c) Receipt and Distribution of Petition. ....	26
	(d) Untimely Petition.....	26
	(e) Timely Petition Not in Proper Form. ....	26

19.	Judicial-Council Disposition of Petitions for Review.....	27
	(a) Rights of Subject Judge. ....	27
	(b) Judicial-Council Action.....	27
	(c) Notice of Council Decision. ....	28
	(d) Memorandum of Council Decision. ....	28
	(e) Review of Judicial-Council Decision. ....	28
	(f) Public Availability of Judicial-Council Decision. ....	28

20.	<del>Judicial-Council Consideration of Reports and Recommendations of</del> <del>Special Committees</del> <b>Judicial-Council Action Following Appointment of Special</b> <b>Committee.</b> ....	29
	(a) Rights of Subject Judge. ....	29
	(b) Judicial-Council Action.....	29
	(c) Inadequate Basis for Decision. ....	30
	(d) Council Vote. ....	30
	(e) Recommendation for Fee Reimbursement.....	30
	(f) Council Action.....	30

ARTICLE VI. REVIEW BY JUDICIAL CONFERENCE COMMITTEE ON CONDUCT AND DISABILITY

21.	Committee on Judicial Conduct and Disability.....	32
	(a) Review by Committee. ....	32
	(b) Reviewable Matters. ....	32
	(c) Committee Vote.....	32
	(d) Additional Investigation.....	33
	(e) Oral Argument; Personal Appearance.....	33
	(f) Committee Decisions.....	33
	(g) Finality.....	33

22.	Procedures for Review.....	34
(a)	Filing a Petition for Review.....	34
(b)	Form and Contents of Petition for Review. ....	34
(c)	Time.....	34
(d)	Copies. ....	34
(e)	Action on Receipt of Petition for Review. ....	34

ARTICLE VII. MISCELLANEOUS RULES

23.	Confidentiality.....	35
(a)	General Rule. ....	35
(b)	Files. ....	35
(c)	Disclosure in Decisions. ....	35
(d)	Availability to Judicial Conference. ....	35
(e)	Availability to District Court.....	35
(f)	Impeachment Proceedings.....	35
(g)	Subject Judge's Consent.....	35
(h)	Disclosure in Special Circumstances.....	35
(i)	Disclosure of Identity by Subject Judge.....	36
(j)	Assistance and Consultation. ....	36
24.	Public Availability of Decisions. ....	38
(a)	General Rule; Specific Cases.....	38
(b)	Manner of Making Public. ....	38
(c)	Orders of Judicial Conference Committee.....	38
(d)	Complaints Referred to the Judicial Conference of the United States.....	38
25.	Disqualification. ....	40
(a)	General Rule. ....	40
(b)	Subject Judge.....	40
(c)	Chief Judge Not Disqualified from Considering a Petition for Review of a Chief Judge's Order. ....	40
(d)	Member of Special Committee Not Disqualified. ....	40
(e)	Subject Judge's Disqualification After Appointment of a Special Committee. . .	40
(f)	Substitute for Disqualified Chief Judge.....	40
(g)	Judicial-Council Action When Multiple Judges Are Disqualified. ....	41
(h)	Disqualification of Members of the Judicial Conference Committee.....	41
26.	Transfer to Another Judicial Council.....	43
27.	Withdrawal of Complaints and Petitions for Review. ....	43
(a)	Complaint Pending Before Chief Judge.....	43
(b)	Complaint Pending Before Special Committee or Judicial Council. ....	44
(c)	Petition for Review. ....	44
28.	Availability of Rules and Forms. ....	44
29.	Effective Date. ....	44



1 **ARTICLE I. GENERAL PROVISIONS**

2  
3 **1. Scope**

4 **These Rules govern proceedings under the Judicial Conduct and Disability Act, 28 U.S.C.**  
5 **§§ 351–364 (the Act), to determine whether a covered judge has engaged in conduct**  
6 **prejudicial to the effective and expeditious administration of the business of the courts or is**  
7 **unable to discharge the duties of office because of mental or physical disability.**

8  
9 **Commentary on Rule 1**

10  
11 In September 2006, the Judicial Conduct and Disability Act Study Committee, appointed  
12 in 2004 by Chief Justice Rehnquist and known as the "Breyer Committee," presented a report,  
13 known as the "Breyer Committee Report," 239 F.R.D. 116 (Sept. 2006), to Chief Justice Roberts  
14 that evaluated implementation of the Judicial Conduct and Disability Act of 1980, 28 U.S.C.  
15 §§ 351-364. The Breyer Committee had been formed in response to criticism from the public  
16 and the Congress regarding the effectiveness of the Act's implementation. The Executive  
17 Committee of the Judicial Conference directed the Judicial Conference Committee on Judicial  
18 Conduct and Disability to consider the recommendations made by the Breyer Committee and to  
19 report on their implementation to the Conference.

20  
21 The Breyer Committee found that it could not evaluate implementation of the Act without  
22 establishing interpretive standards, Breyer Committee Report, 239 F.R.D. at 132, and that a  
23 major problem faced by chief judges in implementing the Act was the lack of authoritative  
24 interpretive standards. *Id.* at 212-15. The Breyer Committee then established standards to guide  
25 its evaluation, some of which were new formulations and some of which were taken from the  
26 "Illustrative Rules Governing Complaints of Judicial Misconduct and Disability," discussed  
27 below. The principal standards used by the Breyer Committee are in Appendix E of its Report.  
28 *Id.* at 238.

29  
30 Based on the findings of the Breyer Committee, the Judicial Conference Committee on  
31 Judicial Conduct and Disability concluded that there was a need for the Judicial Conference to  
32 exercise its power under Section 358 of the Act to fashion standards guiding the various officers  
33 and bodies who must exercise responsibility under the Act. To that end, the Judicial Conference  
34 Committee proposed rules that were based largely on Appendix E of the Breyer Committee  
35 Report and the Illustrative Rules.

36  
37 The Illustrative Rules were originally prepared in 1986 by the Special Committee of the  
38 Conference of Chief Judges of the United States Courts of Appeals, and were subsequently  
39 revised and amended, most recently in 2000, by the predecessor to the Committee on Judicial  
40 Conduct and Disability. The Illustrative Rules were adopted, with minor variations, by circuit  
41 judicial councils, to govern complaints under the Judicial Conduct and Disability Act.

42  
43 After being submitted for public comment pursuant to 28 U.S.C. § 358(c), the present  
44 Rules were promulgated by the Judicial Conference on March 11, 2008.

1 **2. Effect and Construction**

- 2 (a) **Generally.** These Rules are mandatory; they supersede any conflicting judicial-
- 3 **council rules. Judicial councils may promulgate additional rules to implement the**
- 4 **Act as long as those rules do not conflict with these Rules.**
- 5 (b) **Exception.** A Rule will not apply if, when performing duties authorized by the Act,
- 6 **a chief judge, a special committee, a judicial council, the Judicial Conference**
- 7 **Committee on Judicial Conduct and Disability, or the Judicial Conference of the**
- 8 **United States expressly finds that exceptional circumstances render application of**
- 9 **that Rule in a particular proceeding manifestly unjust or contrary to the purposes**
- 10 **of the Act or these Rules.**

11  
12 **Commentary on Rule 2**

13  
14 Unlike the Illustrative Rules, these Rules provide mandatory and nationally uniform

15 provisions governing the substantive and procedural aspects of misconduct and disability

16 proceedings under the Act. The mandatory nature of these Rules is authorized by 28 U.S.C.

17 § 358(a) and (c). Judicial councils retain the power to promulgate rules consistent with these

18 Rules. For example, a local rule may authorize the electronic distribution of materials pursuant

19 to Rule 8(b).

20  
21 Rule 2(b) recognizes that unforeseen and exceptional circumstances may call for a

22 different approach in particular cases.

23  
24 **3. Definitions**

- 25 (a) **Chief Judge.** “Chief judge” means the chief judge of a United States Court of
- 26 **Appeals, of the United States Court of International Trade, or of the United States**
- 27 **Court of Federal Claims.**
- 28 (b) **Circuit Clerk.** “Circuit clerk” means a clerk of a United States court of appeals, the
- 29 **clerk of the United States Court of International Trade, the clerk of the United**
- 30 **States Court of Federal Claims, or the circuit executive of the United States Court of**
- 31 **Appeals for the Federal Circuit.**
- 32 (c) **Complaint.** A complaint is:
- 33 (1) **a document that, in accordance with Rule 6, is filed by any person in his or**
- 34 **her individual capacity or on behalf of a professional organization; or**
- 35 (2) **information from any source, other than a document described in (c)(1), that**
- 36 **gives a chief judge probable cause to believe that a covered judge, as defined**
- 37 **in Rule 4, has engaged in misconduct or may have a disability, whether or**
- 38 **not the information is framed as or is intended to be an allegation of**
- 39 **misconduct or disability.**
- 40 (d) **Court of Appeals, District Court, and District Judge.** “Courts of appeals,” “district
- 41 **court,” and “district judge,” where appropriate, include the United States Court of**
- 42 **Federal Claims, the United States Court of International Trade, and the judges**
- 43 **thereof.**
- 44 (e) **Disability.** “Disability” is a temporary or permanent **condition impairment,**
- 45 **physical or mental,** rendering a judge unable to discharge the duties of the
- 46 **particular judicial office. Examples of disability include substance abuse, the**
- 47 **inability to stay awake during court proceedings, or a severe impairment of**



1 ~~cognitive abilities~~ **impairment of cognitive abilities that renders the judge unable to**  
2 **function effectively.**

3 (f) **Judicial Council and Circuit.** “Judicial council” and “circuit,” where appropriate,  
4 include any courts designated in 28 U.S.C. § 363.

5 (g) **Magistrate Judge.** “Magistrate judge,” where appropriate, includes a special  
6 master appointed by the Court of Federal Claims under 42 U.S.C. § 300aa–12(c).

7 (h) **Misconduct.** Cognizable misconduct:

8 (1) is conduct prejudicial to the effective and expeditious administration of the  
9 business of the courts. Misconduct includes, but is not limited to:

10 (A) using the judge's office to obtain special treatment for friends or  
11 relatives;

12 (B) accepting bribes, gifts, or other personal favors related to the judicial  
13 office;

14 (C) having improper discussions with parties or counsel for one side in a  
15 case;

16 (D) ~~treating litigants or attorneys~~ **litigants, attorneys, or others** in a  
17 demonstrably egregious and hostile manner;

18 (E) engaging in partisan political activity or making inappropriately  
19 partisan statements;

20 (F) soliciting funds for organizations; or

21 (G) **retaliating against complainants, witnesses, or others for their**  
22 **participation in this complaint process;**

23 (H) **refusing, without good cause shown, to cooperate in the investigation**  
24 **of a complaint under these rules; or**

25 ~~(G)~~(I) violating other specific, mandatory standards of judicial conduct,  
26 such as those pertaining to restrictions on outside income and  
27 requirements for financial disclosure.

28 (2) is conduct occurring outside the performance of official duties if the conduct  
29 might have a prejudicial effect on the administration of the business of the  
30 courts, including a substantial and widespread lowering of public confidence  
31 in the courts among reasonable people.

32 (3) does not include:

33 (A) an allegation that is directly related to the merits of a decision or  
34 procedural ruling. An allegation that calls into question the  
35 correctness of a judge's ruling, including a failure to recuse, without  
36 more, is merits-related. If the decision or ruling is alleged to be the  
37 result of an improper motive, e.g., a bribe, ex parte contact, racial or  
38 ethnic bias, or improper conduct in rendering a decision or ruling,  
39 such as personally derogatory remarks irrelevant to the issues, the  
40 complaint is not cognizable to the extent that it attacks the merits.

41 (B) an allegation about delay in rendering a decision or ruling, unless the  
42 allegation concerns an improper motive in delaying a particular  
43 decision or habitual delay in a significant number of unrelated cases.

44 (i) **Subject Judge.** “Subject judge” means any judge described in Rule 4 who is the  
45 subject of a complaint.

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### Commentary on Rule 3

Rule 3 is derived and adapted from the Breyer Committee Report and the Illustrative Rules.

Unless otherwise specified or the context otherwise indicates, the term "complaint" is used in these Rules to refer both to complaints identified by a chief judge under Rule 5 and to complaints filed by complainants under Rule 6.

Under the Act, a "complaint" may be filed by "any person" or "identified" by a chief judge. See 28 U.S.C. § 351(a) and (b). Under Rule 3(c)(1), complaints may be submitted by a person, in his or her individual capacity, or by a professional organization. Generally, the word "complaint" brings to mind the commencement of an adversary proceeding in which the contending parties are left to present the evidence and legal arguments, and judges play the role of an essentially passive arbiter. The Act, however, establishes an administrative, inquisitorial process. For example, even absent a complaint under Rule 6, chief judges are expected in some circumstances to trigger the process -- "identify a complaint," see 28 U.S.C. § 351(b) and Rule 5 -- and conduct an investigation without becoming a party. See 28 U.S.C. § 352(a); Breyer Committee Report, 239 F.R.D. at 214; Illustrative Rule 2(j). Even when a complaint is filed by someone other than the chief judge, the complainant lacks many rights that a litigant would have, and the chief judge, instead of being limited to the "four corners of the complaint," must, under Rule 11, proceed as though misconduct or disability has been alleged where the complainant reveals information of misconduct or disability but does not claim it as such. See Breyer Committee Report, 239 F.R.D. at 183-84.

An allegation of misconduct or disability filed under Rule 6 is a "complaint," and the Rule so provides in subsection (c)(1). However, both the nature of the process and the use of the term "identify" suggest that the word "complaint" covers more than a document formally triggering the process. The process relies on chief judges considering known information and triggering the process when appropriate. "Identifying" a "complaint," therefore, is best understood as the chief judge's concluding that information known to the judge constitutes probable cause to believe that misconduct occurred or a disability exists, whether or not the information is framed as, or intended to be an accusation. This definition is codified in (c)(2).

Rule 3(e) relates to disability and provides only the most general definition, recognizing that a fact-specific approach is the only one available. **A mental disability could involve cognitive impairment or any psychiatric or psychological condition that renders the judge unable to discharge the duties of office. Such duties may include those that are administrative. If, for example, the judge is a chief judge, the judicial council, fulfilling its obligation under 28 U.S.C. § 332(d)(1) to make "necessary and appropriate orders for the effective and expeditious administration of justice," may find, under 28 U.S.C. § 45(d) or § 136(e), that the judge is "temporarily unable to perform" his or her chief-judge duties. In that event, an appropriate remedy could involve, under Rule 20(b)(1)(D)(vii), temporary reassignment of chief-judge duties to the next judge statutorily eligible to perform them.**

The phrase "prejudicial to the effective and expeditious administration of the business of the courts" is not subject to precise definition, and subsection (h)(1) therefore provides some specific examples. Although the Code of Conduct for United States Judges may be informative, its main precepts are highly general; the Code is in many potential applications aspirational rather

1 than a set of disciplinary rules. Ultimately, the responsibility for determining what constitutes  
2 misconduct under the statute is the province of the judicial council of the circuit subject to such  
3 review and limitations as are ordained by the statute and by these Rules.  
4

5 Even where specific, mandatory rules exist -- for example, governing the receipt of gifts  
6 by judges, outside earned income, and financial disclosure obligations -- the distinction between  
7 the misconduct statute and the specific, mandatory rules must be borne in mind. For example, an  
8 inadvertent, minor violation of any one of these Rules, promptly remedied when called to the  
9 attention of the judge, might still be a violation but might not rise to the level of misconduct  
10 under the statute. By contrast, a pattern of such violations of the Code might well rise to the  
11 level of misconduct.  
12

13 ~~An~~ Rule 3(h)(2) reflects that an allegation can meet the statutory standard even though the  
14 judge's alleged conduct did not occur in the course of the performance of official duties. ~~And~~  
15 ~~some conduct in the categories listed under subsection (h)(1), or in categories not listed, might,~~  
16 ~~depending on the circumstances, amount to "misconduct" under subsection (h)(2), or under both~~  
17 ~~(h)(1) and (h)(2).~~ ~~The~~ Also, the Code of Conduct for United States Judges expressly covers a  
18 wide range of extra-official activities, and some of these activities may constitute misconduct.  
19 For example, allegations that a judge solicited funds for a charity or participated in a partisan  
20 political event are cognizable under the Act.  
21

22 On the other hand, judges are entitled to some leeway in extra-official activities. For  
23 example, misconduct may not include a judge being repeatedly and publicly discourteous to a  
24 spouse (not including physical abuse) even though this might cause some reasonable people to  
25 have diminished confidence in the courts. Rule 3(h)(2) states that conduct of this sort is covered,  
26 for example, when it might lead to a "substantial and widespread" lowering of such confidence.  
27

28 Under Rule 3(h)(1)(G), a judge's efforts to retaliate against any person for his or her  
29 involvement in the complaint process constitutes cognizable misconduct. The Rule makes this  
30 explicit in the interest of public confidence in the complaint process.  
31

32 Rule 3(h)(3)(A) tracks the Act, 28 U.S.C. § 352(b)(1)(A)(ii), in excluding from the  
33 definition of misconduct allegations "[d]irectly related to the merits of a decision or procedural  
34 ruling." This exclusion preserves the independence of judges in the exercise of judicial power  
35 by ensuring that the complaint procedure is not used to collaterally attack the substance of a  
36 judge's ruling. Any allegation that calls into question the correctness of an official action of a  
37 judge -- without more -- is merits-related. The phrase "decision or procedural ruling" is not  
38 limited to rulings issued in deciding Article III cases or controversies. Thus, a complaint  
39 challenging the correctness of a chief judge's determination to dismiss a prior misconduct  
40 complaint would be properly dismissed as merits-related -- in other words, as challenging the  
41 substance of the judge's administrative determination to dismiss the complaint -- even though it  
42 does not concern the judge's rulings in Article III litigation. Similarly, an allegation that a judge  
43 had incorrectly declined to approve a Criminal Justice Act voucher is merits-related under this  
44 standard.  
45

46 Conversely, an allegation -- however unsupported -- that a judge conspired with a  
47 prosecutor to make a particular ruling is not merits-related, even though it "relates" to a ruling in  
48 a colloquial sense. Such an allegation attacks the propriety of conspiring with the prosecutor and  
49 goes beyond a challenge to the correctness -- "the merits" -- of the ruling itself. An allegation

1 that a judge ruled against the complainant because the complainant is a member of a particular  
2 racial or ethnic group, or because the judge dislikes the complainant personally, is also not  
3 merits-related. Such an allegation attacks the propriety of arriving at rulings with an illicit or  
4 improper motive. Similarly, an allegation that a judge used an inappropriate term to refer to a  
5 class of people is not merits-related even if the judge used it on the bench or in an opinion; the  
6 correctness of the judge's rulings is not at stake. An allegation that a judge treated litigants or  
7 attorneys in a demonstrably egregious and hostile manner while on the bench is also not  
8 merits-related.  
9

10 The existence of an appellate remedy is usually irrelevant to whether an allegation is  
11 merits-related. The merits-related ground for dismissal exists to protect judges' independence in  
12 making rulings, not to protect or promote the appellate process. A complaint alleging an  
13 incorrect ruling is merits-related even though the complainant has no recourse from that ruling.  
14 By the same token, an allegation that is otherwise cognizable under the Act should not be  
15 dismissed merely because an appellate remedy appears to exist (for example, vacating a ruling  
16 that resulted from an improper ex parte communication). However, there may be occasions when  
17 appellate and misconduct proceedings overlap, and consideration and disposition of a complaint  
18 under these Rules may be properly deferred by a chief judge until the appellate proceedings are  
19 concluded in order to avoid, inter alia, inconsistent decisions.  
20

21 Because of the special need to protect judges' independence in deciding what to say in an  
22 opinion or ruling, a somewhat different standard applies to determine the merits-relatedness of a  
23 non-frivolous allegation that a judge's language in a ruling reflected an improper motive. If the  
24 judge's language was relevant to the case at hand -- for example a statement that a claim is legally  
25 or factually "frivolous" -- then the judge's choice of language is presumptively merits-related and  
26 excluded, absent evidence apart from the ruling itself suggesting an improper motive. If, on the  
27 other hand, the challenged language does not seem relevant on its face, then an additional inquiry  
28 under Rule 11 is necessary.  
29

30 With regard to Rule 3(h)(3)(B), a complaint of delay in a single case is excluded as  
31 merits-related. Such an allegation may be said to challenge the correctness of an official action  
32 of the judge -- in other words, assigning a low priority to deciding the particular case. But, by the  
33 same token, an allegation of a habitual pattern of delay in a significant number of unrelated cases,  
34 or an allegation of deliberate delay in a single case arising out of an illicit motive, is not  
35 merits-related.  
36

37 The remaining subsections of Rule 3 provide technical definitions clarifying the  
38 application of the Rules to the various kinds of courts covered.  
39

#### 40 **4. Covered Judges**

41 **A complaint under these Rules may concern the actions or capacity only of judges of**  
42 **United States courts of appeals, judges of United States district courts, judges of United**  
43 **States bankruptcy courts, United States magistrate judges, and judges of the courts**  
44 **specified in 28 U.S.C. § 363.**  
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Commentary on Rule 4

This Rule tracks the Act. Rule 8(c) and (d) contain provisions as to the handling of complaints against persons not covered by the Act, such as other court personnel, or against both covered judges and noncovered persons.

## ARTICLE II. INITIATION OF A COMPLAINT

### 5. Identification of a Complaint

- (a) **Identification.** When a chief judge has information constituting reasonable grounds for inquiry into whether a covered judge has engaged in misconduct or has a disability, the chief judge may conduct an inquiry, as he or she deems appropriate, into the accuracy of the information even if no related complaint has been filed. A chief judge who finds probable cause to believe that misconduct has occurred or that a disability exists may seek an informal resolution that he or she finds satisfactory. If no informal resolution is achieved or is feasible, the chief judge may identify a complaint and, by written order stating the reasons, begin the review provided in Rule 11. If the evidence of misconduct is clear and convincing and no informal resolution is achieved or is feasible, the chief judge must identify a complaint. A chief judge must not decline to identify a complaint merely because the person making the allegation has not filed a complaint under Rule 6. This Rule is subject to Rule 7.
- (b) ~~Noncompliance with Rule 6(d). Rule 6 complaints that do not comply with the requirements of Rule 6(d)~~ **Submissions not Fully Complying with Rule 6. Legible submissions in substantial but not full compliance with Rule 6 must be considered as possible grounds for the identification of a complaint under this Rule 5(a).**

Commentary on Rule 5

This Rule is adapted from the Breyer Committee Report, 239 F.R.D. at 245-46.

The Act authorizes the chief judge, by written order stating reasons, to identify a complaint and thereby dispense with the filing of a written complaint. See 28 U.S.C. § 351(b). Under Rule 5, when a chief judge becomes aware of information constituting reasonable grounds to inquire into possible misconduct or disability on the part of a covered judge, and no formal complaint has been filed, the chief judge has the power in his or her discretion to begin an appropriate inquiry. A chief judge's decision whether to informally seek a resolution and/or to identify a complaint is guided by the results of that inquiry. If the chief judge concludes that there is probable cause to believe that misconduct has occurred or a disability exists, the chief judge may seek an informal resolution, if feasible, and if failing in that, may identify a complaint. Discretion is accorded largely for the reasons police officers and prosecutors have discretion in making arrests or bringing charges. The matter may be trivial and isolated, based on marginal evidence, or otherwise highly unlikely to lead to a misconduct or disability finding. On the other hand, if the inquiry leads the chief judge to conclude that there is clear and convincing evidence of misconduct or a disability, and no satisfactory informal resolution has been achieved or is feasible, the chief judge is required to identify a complaint.

An informal resolution is one agreed to by the subject judge and found satisfactory by the chief judge. Because an informal resolution under Rule 5 reached before a complaint is filed

1 under Rule 6 will generally cause a subsequent Rule 6 complaint alleging the identical matter  
2 to be concluded, see Rule 11(d), the chief judge must be sure that the resolution is fully  
3 appropriate before endorsing it. In doing so, the chief judge must balance the seriousness of the  
4 matter against the particular judge's alacrity in addressing the issue. The availability of this  
5 procedure should encourage attempts at swift remedial action before a formal complaint is filed.  
6

7 When a complaint is identified, a written order stating the reasons for the identification  
8 must be provided; this begins the process articulated in Rule 11. Rule 11 provides that once the  
9 chief judge has identified a complaint, the chief judge, subject to the disqualification provisions  
10 of Rule 25, will perform, with respect to that complaint, all functions assigned to the chief judge  
11 for the determination of complaints filed by a complainant.  
12

13 In high-visibility situations, it may be desirable for the chief judge to identify a complaint  
14 without first seeking an informal resolution (and then, if the circumstances warrant, dismiss or  
15 conclude the identified complaint without appointment of a special committee) in order to assure  
16 the public that the allegations have not been ignored.  
17

18 A chief judge's decision not to identify a complaint under Rule 5 is not appealable and is  
19 subject to Rule 3(h)(3)(A), which excludes merits-related complaints from the definition of  
20 misconduct.  
21

22 A chief judge may not decline to identify a complaint solely on the basis that the unfiled  
23 allegations could be raised by one or more persons in a filed complaint, but none of these persons  
24 has opted to do so.  
25

26 Subsection (a) concludes by stating that this Rule is "subject to Rule 7." This is intended  
27 to establish that only: (i) the chief judge of the home circuit of a potential subject judge, or  
28 (ii) the chief judge of a circuit in which misconduct is alleged to have occurred in the course of  
29 official business while the potential subject judge was sitting by designation, shall have the  
30 power or a duty under this Rule to identify a complaint.  
31

32 Subsection (b) provides that ~~complaints filed~~ **submissions under Rule 6** that do not  
33 comply with the requirements of Rule 6(d); must be considered under ~~this Rule 5(a)~~. For  
34 instance, if a complaint has been filed but the form submitted is unsigned, or the truth of the  
35 statements therein are not verified in writing under penalty of perjury, then a chief judge must  
36 nevertheless consider the allegations as known information; ~~and proceed to follow~~ **and as a**  
37 **possible basis for the identification of a complaint under** the process described in Rule 5(a).  
38

## 39 **6. Filing a Complaint**

- 40 **(a) Form.** A complainant may use the form reproduced in the appendix to these Rules  
41 or a form designated by the rules of the judicial council in the circuit in which the  
42 complaint is filed. A complaint form is also available on each court of appeals'  
43 website or may be obtained from the circuit clerk or any district court or  
44 bankruptcy court within the circuit. A form is not necessary to file a complaint, but  
45 the complaint must be written and must include the information described in (b).  
46 **(b) Brief Statement of Facts.** A complaint must contain a concise statement that details  
47 the specific facts on which the claim of misconduct or disability is based. The  
48 statement of facts should include a description of:  
49 **(1) what happened;**



- 1 (2) when and where the relevant events happened;  
2 (3) any information that would help an investigator check the facts; and  
3 (4) for an allegation of disability, any additional facts that form the basis of that  
4 allegation.
- 5 (c) **Legibility.** A complaint should be typewritten if possible. If not typewritten, it must  
6 be legible. An illegible complaint will be returned to the complainant with a request  
7 to resubmit it in legible form. If a resubmitted complaint is still illegible, it will not  
8 be accepted for filing.
- 9 (d) **Complainant's Address and Signature; Verification.** The complainant must provide  
10 a contact address and sign the complaint. The truth of the statements made in the  
11 complaint must be verified in writing under penalty of perjury. If any of these  
12 requirements are not met, the complaint will be accepted for filing **submission will**  
13 **be accepted**, but it will be reviewed under only Rule 5(b).
- 14 (e) **Number of Copies; Envelope Marking.** The complainant shall provide the number  
15 of copies of the complaint required by local rule. Each copy should be in an  
16 envelope marked "Complaint of Misconduct" or "Complaint of Disability." The  
17 envelope must not show the name of any subject judge.

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Commentary on Rule 6

The Rule is adapted from the Illustrative Rules and is self-explanatory.

## 7. Where to Initiate Complaints

- (a) **Where to File.** Except as provided in (b),
- (1) a complaint against a judge of a United States court of appeals, a United States district court, a United States bankruptcy court, or a United States magistrate judge must be filed with the circuit clerk in the jurisdiction in which the subject judge holds office.
- (2) a complaint against a judge of the United States Court of International Trade or the United States Court of Federal Claims must be filed with the respective clerk of that court.
- (3) a complaint against a judge of the United States Court of Appeals for the Federal Circuit must be filed with the circuit executive of that court.
- (b) **Misconduct in Another Circuit; Transfer.** If a complaint alleges misconduct in the course of official business while the subject judge was sitting on a court by designation under 28 U.S.C. §§ 291–293 and 294(d), the complaint may be filed or identified with the circuit clerk of that circuit or of the subject judge's home circuit. The proceeding will continue in the circuit of the first-filed or first-identified complaint. The judicial council of the circuit where the complaint was first filed or first identified may transfer the complaint to the subject judge's home circuit or to the circuit where the alleged misconduct occurred, as the case may be.

Commentary on Rule 7

Title 28 U.S.C. § 351 states that complaints are to be filed with "the clerk of the court of appeals for the circuit." However, in many circuits, this role is filled by circuit executives. Accordingly, the term "circuit clerk," as defined in Rule 3(b) and used throughout these Rules, applies to circuit executives.

1 Section 351 uses the term "the circuit" in a way that suggests that either the home circuit  
2 of the subject judge or the circuit in which misconduct is alleged to have occurred is the proper  
3 venue for complaints. With an exception for judges sitting by designation, the Rule requires the  
4 identifying or filing of a misconduct or disability complaint in the circuit in which the judge  
5 holds office, largely based on the administrative perspective of the Act. Given the Act's  
6 emphasis on the future conduct of the business of the courts, the circuit in which the judge holds  
7 office is the appropriate forum because that circuit is likely best able to influence a judge's future  
8 behavior in constructive ways.  
9

10 However, when judges sit by designation, the non-home circuit has a strong interest in  
11 redressing misconduct in the course of official business, and where allegations also involve a  
12 member of the bar -- *ex parte* contact between an attorney and a judge, for example -- it may  
13 often be desirable to have the judicial and bar misconduct proceedings take place in the same  
14 venue. Rule 7(b), therefore, allows transfer to, or filing or identification of a complaint in, the  
15 non-home circuit. The proceeding may be transferred by the judicial council of the filing or  
16 identified circuit to the other circuit.  
17

## 18 8. Action by Clerk

- 19 (a) **Receipt of Complaint.** Upon receiving a complaint against a judge ~~filed under Rule~~  
20 **5 or 6 filed under Rule 6 or identified under Rule 5**, the circuit clerk must open a  
21 file, assign a docket number according to a uniform numbering scheme  
22 promulgated by the Judicial Conference Committee on Judicial Conduct and  
23 Disability, and acknowledge the complaint's receipt.
- 24 (b) **Distribution of Copies.** The clerk must promptly send copies of a complaint filed  
25 under Rule 6 to the chief judge or the judge authorized to act as chief judge under  
26 Rule 25(f), and copies of complaints ~~filed under Rule 5 or 6~~ **filed under Rule 6 or**  
27 **identified under Rule 5** to each subject judge. The clerk must retain the original  
28 complaint. Any further distribution should be as provided by local rule.
- 29 (c) **Complaints Against Noncovered Persons.** If the clerk receives a complaint about a  
30 person not holding an office described in Rule 4, the clerk must not accept the  
31 complaint ~~for filing under these Rules~~.
- 32 (d) **Receipt of Complaint about a Judge and Another Noncovered Person.** If a  
33 complaint is received about a judge described in Rule 4 and a person not holding an  
34 office described in Rule 4, the clerk must accept the complaint ~~for filing under these~~  
35 **Rules only with regard to the judge and must so inform the complainant of the**  
36 **limitation.**  
37

### 38 Commentary on Rule 8

39 This Rule is adapted from the Illustrative Rules and is largely self-explanatory.  
40

41  
42 The uniform docketing scheme described in subsection (a) should take into account  
43 potential problems associated with a complaint that names multiple judges. One solution may be  
44 to provide separate docket numbers for each subject judge. Separate docket numbers would help  
45 avoid difficulties in tracking cases, particularly if a complaint is dismissed with respect to some,  
46 but not all of the named judges.  
47

48 Complaints against noncovered persons are not to be accepted for processing under these  
49 Rules but may, of course, be accepted under other circuit rules or procedures for grievances.



1 **9. Time for Filing or Identifying a Complaint**

2 **A complaint may be filed or identified at any time. If the passage of time has made an**  
3 **accurate and fair investigation of a complaint impractical **impracticable**, the complaint**  
4 **must be dismissed under Rule 11(c)(1)(E).**

5  
6 **Commentary on Rule 9**

7  
8 This Rule is adapted from the Act, 28 U.S.C. §§ 351, 352(b)(1)(A)(iii), and the  
9 Illustrative Rules.

10  
11 **10. Abuse of the Complaint Procedure**

- 12 **(a) Abusive Complaints. A complainant who has filed repetitive, harassing, or frivolous**  
13 **complaints, or has otherwise abused the complaint procedure, may be restricted**  
14 **from filing further complaints. After giving the complainant an opportunity to**  
15 **show cause in writing why his or her right to file further complaints should not be**  
16 **limited, a judicial council may prohibit, restrict, or impose conditions on the**  
17 **complainant's use of the complaint procedure. Upon written request of the**  
18 **complainant, the judicial council may revise or withdraw any prohibition,**  
19 **restriction, or condition previously imposed.**
- 20 **(b) Orchestrated Complaints. When many essentially identical complaints from**  
21 **different complainants are received and appear to be part of an orchestrated**  
22 **campaign, the chief judge may recommend that the judicial council issue a written**  
23 **order instructing the circuit clerk to accept only a certain number of such**  
24 **complaints for filing and to refuse to accept further ones. The clerk must send a**  
25 **copy of any such order to anyone whose complaint was not accepted.**

26  
27 **Commentary on Rule 10**

28  
29 This Rule is adapted from the Illustrative Rules.

30  
31 Rule 10(a) provides a mechanism for a judicial council to restrict the filing of further  
32 complaints by a single complainant who has abused the complaint procedure. In some instances,  
33 however, the complaint procedure may be abused in a manner for which the remedy provided in  
34 Rule 10(a) may not be appropriate. For example, some circuits have been inundated with  
35 submissions of dozens or hundreds of essentially identical complaints against the same judge or  
36 judges, all submitted by different complainants. In many of these instances, persons with  
37 grievances against a particular judge or judges used the Internet or other technology to  
38 orchestrate mass complaint-filing campaigns against them. If each complaint submitted as part  
39 of such a campaign were accepted for filing and processed according to these Rules, there would  
40 be a serious drain on court resources without any benefit to the adjudication of the underlying  
41 merits.

42  
43 A judicial council may, therefore, respond to such mass filings under Rule 10(b) by  
44 declining to accept repetitive complaints for filing, regardless of the fact that the complaints are  
45 nominally submitted by different complainants. When the first complaint or complaints have  
46 been dismissed on the merits, and when further, essentially identical submissions follow, the  
47 judicial council may issue a second order noting that these are identical or repetitive complaints,

1 directing the circuit clerk not to accept these complaints or any further such complaints for filing,  
2 and directing the clerk to send each putative complainant copies of both orders.  
3

### 4 **ARTICLE III. REVIEW OF A COMPLAINT BY THE CHIEF JUDGE**

#### 5 **11. Review by the Chief Judge**

6 **(a) Purpose of Chief Judge's Review.** When a complaint is identified by the chief judge  
7 or is filed, the chief judge must review it unless the chief judge is disqualified under  
8 Rule 25. If the complaint contains information constituting evidence of misconduct  
9 or disability, but the complainant does not claim it as such, the chief judge must  
10 treat the complaint as if it did allege misconduct or disability and give notice to the  
11 subject judge. After reviewing the complaint, the chief judge must determine  
12 whether it should be:

- 13 (1) dismissed;
- 14 (2) concluded on the ground that voluntary corrective action has been taken;
- 15 (3) concluded because intervening events have made action on the complaint no  
16 longer necessary; or
- 17 (4) referred to a special committee.

18 **(b) Inquiry by Chief Judge.** In determining what action to take under Rule 11(a), the  
19 chief judge may conduct a limited inquiry. The chief judge, or a designee, may  
20 communicate orally or in writing with the complainant, the subject judge, and any  
21 others who may have knowledge of the matter, and ~~may review transcripts or other~~  
22 ~~relevant documents~~ **may obtain and review transcripts and other relevant**  
23 **documents.** In conducting the inquiry, the chief judge must not determine any  
24 reasonably disputed issue. **Any such determination must be left to a special**  
25 **committee appointed under Rule 11(f) and to the circuit judicial council that**  
26 **considers the special committee's report.**

27 **(c) Dismissal.**

- 28 (1) Allowable grounds. A complaint must be dismissed in whole or in part to the  
29 extent that the chief judge concludes that the complaint:
  - 30 (A) alleges conduct that, even if true, is not prejudicial to the effective and  
31 expeditious administration of the business of the courts and does not  
32 indicate a mental or physical disability resulting in inability to  
33 discharge the duties of judicial office;
  - 34 (B) is directly related to the merits of a decision or procedural ruling;
  - 35 (C) is frivolous;
  - 36 (D) is based on allegations lacking sufficient evidence to raise an inference  
37 that misconduct has occurred or that a disability exists;
  - 38 (E) is based on allegations which are incapable of being established  
39 through investigation;
  - 40 (F) has been filed in the wrong circuit under Rule 7; or
  - 41 (G) is otherwise not appropriate for consideration under the Act.
- 42 (2) Disallowed grounds. A complaint must not be dismissed solely because it  
43 repeats allegations of a previously dismissed complaint if it also contains  
44 material information not previously considered and does not constitute  
45 harassment of the subject judge.  
46  
47

- 1 (d) **Corrective Action.** The chief judge may conclude the complaint proceeding in whole  
2 or in part if:
- 3 (1) an informal resolution under Rule 5 satisfactory to the chief judge was  
4 reached before the complaint was filed under Rule 6, or
- 5 (2) the chief judge determines that the subject judge has taken appropriate  
6 voluntary corrective action that acknowledges and remedies the problems  
7 raised by the complaint.
- 8 (e) **Intervening Events.** The chief judge may conclude the complaint proceeding in  
9 whole or in part upon determining that intervening events render some or all of the  
10 allegations moot or make remedial action impossible.
- 11 (f) **Appointment of Special Committee.** If some or all of the complaint is not dismissed  
12 or concluded, the chief judge must promptly appoint a special committee to  
13 investigate the complaint or any relevant portion of it and to make  
14 recommendations to the judicial council. Before appointing a special committee, the  
15 chief judge must invite the subject judge to respond to the complaint either orally or  
16 in writing if the judge was not given an opportunity during the limited inquiry. In  
17 the chief judge's discretion, separate complaints may be joined and assigned to a  
18 single special committee. Similarly, a single complaint about more than one judge  
19 may be severed and more than one special committee appointed.
- 20 (g) **Notice of Chief Judge's Action; Petitions for Review.**
- 21 (1) When special committee is appointed. If a special committee is appointed,  
22 the chief judge must notify the complainant and the subject judge that the  
23 matter has been referred to a special committee, **notify the complainant of a**  
24 **complainant's rights under Rule 16,** and identify the members of the  
25 committee. A copy of the order appointing the special committee must be  
26 sent to the Judicial Conference Committee on Judicial Conduct and  
27 Disability.
- 28 (2) When chief judge disposes of complaint without appointing special  
29 committee. If the chief judge disposes of the complaint under Rule 11(c), (d),  
30 or (e), the chief judge must prepare a supporting memorandum that sets  
31 forth the reasons for the disposition. **If the complaint was initiated by**  
32 **identification under Rule 5, the memorandum must so indicate.** Except as  
33 authorized by 28 U.S.C. § 360, the memorandum must not include the name  
34 of the complainant or of the subject judge. The order and the supporting  
35 memorandum, which may be one document, must be **provided promptly**  
36 **sent** to the complainant, the subject judge, and the Judicial Conference  
37 Committee on Judicial Conduct and Disability.
- 38 (3) **Right of petition for review.** If the chief judge disposes of a complaint under  
39 Rule 11(c), (d), or (e), the complainant and subject judge must be notified of  
40 the right to petition the judicial council for review of the disposition, as  
41 provided in Rule 18. **If the chief judge so disposes of a complaint that was**  
42 **identified under Rule 5 or filed by its subject judge, the chief judge must**  
43 **transmit the order and supporting memorandum prepared under (g)(2) to**  
44 **the judicial council of the circuit for review in accordance with Rule 19. In**  
45 **the event of such a transmission, the subject judge may make a written**  
46 **submission to the judicial council but will have no further right of review**  
47 **except as allowed under Rule 21(b)(1)(B). If a petition for review is filed**  
48 **When a disposition is to be reviewed by the judicial council, the chief judge**



1 X, dismissal is appropriate, but if potential witnesses who are reasonably accessible have not  
2 been questioned, then the matter remains reasonably in dispute. Id.  
3

4 Similarly, under (c)(1)(A), if it is clear that the conduct or disability alleged, even if true,  
5 is not cognizable under these Rules, the complaint should be dismissed. If that issue is  
6 reasonably in dispute, however, dismissal under (c)(1)(A) is inappropriate.  
7

8 Essentially, the standard articulated in subsection (b) is that used to decide motions for  
9 summary judgment pursuant to Fed. R. Civ. P. 56. Genuine issues of material fact are not  
10 resolved at the summary judgment stage. A material fact is one that "might affect the outcome of  
11 the suit under the governing law," and a dispute is "genuine" if "the evidence is such that a  
12 reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, 477  
13 U.S. 242, 248 (1986). Similarly, the chief judge may not resolve a genuine issue concerning a  
14 material fact or the existence of misconduct or a disability when conducting a limited inquiry  
15 pursuant to subsection (b).  
16

17 Subsection (c) describes the grounds on which a complaint may be dismissed. These are  
18 adapted from the Act, 28 U.S.C. § 352(b), and the Breyer Committee Report, 239 F.R.D. at  
19 239-45. Subsection (c)(1)(A) permits dismissal of an allegation that, even if true, does not  
20 constitute misconduct or disability under the statutory standard. The proper standards are set out  
21 in Rule 3 and discussed in the Commentary on that Rule. Subsection (c)(1)(B) permits dismissal  
22 of complaints related to the merits of a decision by a subject judge; this standard is also governed  
23 by Rule 3 and its accompanying Commentary.  
24

25 Subsections (c)(1)(C)-(E) implement the statute by allowing dismissal of complaints that  
26 are "frivolous, lacking sufficient evidence to raise an inference that misconduct has occurred, or  
27 containing allegations which are incapable of being established through investigation." 28  
28 U.S.C. § 352(b)(1)(A)(iii).  
29

30 Dismissal of a complaint as "frivolous," under Rule 11(c)(1)(C), will generally occur  
31 without any inquiry beyond the face of the complaint. For instance, when the allegations are  
32 facially incredible or so lacking in indicia of reliability that no further inquiry is warranted,  
33 dismissal under this subsection is appropriate.  
34

35 A complaint warranting dismissal under Rule 11(c)(1)(D) is illustrated by the following  
36 example. Consider a complainant who alleges an impropriety and asserts that he knows of it  
37 because it was observed and reported to him by a person who is identified. The judge denies that  
38 the event occurred. When contacted, the source also denies it. In such a case, the chief judge's  
39 proper course of action may turn on whether the source had any role in the allegedly improper  
40 conduct. If the complaint was based on a lawyer's statement that he or she had an improper ex  
41 parte contact with a judge, the lawyer's denial of the impropriety might not be taken as wholly  
42 persuasive, and it would be appropriate to conclude that a real factual issue is raised. On the  
43 other hand, if the complaint quoted a disinterested third party and that disinterested party denied  
44 that the statement had been made, there would be no value in opening a formal investigation. In  
45 such a case, it would be appropriate to dismiss the complaint under Rule 11(c)(1)(D).  
46

47 Rule 11(c)(1)(E) is intended, among other things, to cover situations when no evidence is  
48 offered or identified, or when the only identified source is unavailable. Breyer Committee  
49 Report, 239 F.R.D. at 243. For example, a complaint alleges that an unnamed attorney told the

1 complainant that the judge did X. Id. The subject judge denies it. The chief judge requests that  
2 the complainant (who does not purport to have observed the judge do X) identify the unnamed  
3 witness, or that the unnamed witness come forward so that the chief judge can learn the unnamed  
4 witness's account. Id. The complainant responds that he has spoken with the unnamed witness,  
5 that the unnamed witness is an attorney who practices in federal court, and that the unnamed  
6 witness is unwilling to be identified or to come forward. Id. at 243-44. The allegation is then  
7 properly dismissed as containing allegations that are incapable of being established through  
8 investigation. Id.  
9

10 If, however, the situation involves a reasonable dispute over credibility, the matter should  
11 proceed. For example, the complainant alleges an impropriety and alleges that he or she  
12 observed it and that there were no other witnesses; the subject judge denies that the event  
13 occurred. Unless the complainant's allegations are facially incredible or so lacking indicia of  
14 reliability ~~warranting as to warrant~~ dismissal under Rule 11(c)(1)(C), a special committee must  
15 be appointed because there is a material factual question that is reasonably in dispute.  
16

17 Dismissal is also appropriate when a complaint is filed so long after an alleged event that  
18 memory loss, death, or changes to unknown residences prevent a proper investigation.  
19

20 Subsection (c)(2) indicates that the investigative nature of the process prevents the  
21 application of claim preclusion principles where new and material evidence becomes available.  
22 However, it also recognizes that at some point a renewed investigation may constitute  
23 harassment of the subject judge and should ~~be foregone~~ **not be undertaken**, depending of course  
24 on the seriousness of the issues and the weight of the new evidence.  
25

26 Rule 11(d) implements the Act's provision for dismissal if voluntary appropriate  
27 corrective action has been taken. It is largely adapted from the Breyer Committee Report, 239  
28 F.R.D. 244-45. The Act authorizes the chief judge to conclude the proceedings if "appropriate  
29 corrective action has been taken." 28 U.S.C. § 352(b)(2). Under the Rule, action taken after the  
30 complaint is filed is "appropriate" when it acknowledges and remedies the problem raised by the  
31 complaint. Breyer Committee Report, 239 F.R.D. at 244. Because the Act deals with the  
32 conduct of judges, the emphasis is on correction of the judicial conduct that was the subject of  
33 the complaint. Id. Terminating a complaint based on corrective action is premised on the  
34 implicit understanding that voluntary self-correction or redress of misconduct or a disability is  
35 preferable to sanctions. Id. The chief judge may facilitate this process by giving the subject  
36 judge an objective view of the appearance of the judicial conduct in question and by suggesting  
37 appropriate corrective measures. Id. Moreover, when corrective action is taken under Rule 5  
38 satisfactory to the chief judge before a complaint is filed, that informal resolution will be  
39 sufficient to conclude a subsequent complaint based on the identical conduct.  
40

41 "Corrective action" must be voluntary action taken by the subject judge. Breyer  
42 Committee Report, 239 F.R.D. at 244. A remedial action directed by the chief judge or by an  
43 appellate court without the participation of the subject judge in formulating the directive or  
44 without the subject judge's subsequent agreement to such action does not constitute the requisite  
45 voluntary corrective action. Id. Neither the chief judge nor an appellate court has authority  
46 under the Act to impose a formal remedy or sanction; only the judicial council can impose a  
47 formal remedy or sanction under 28 U.S.C. § 354(a)(2). Id. Compliance with a previous council  
48 order may serve as corrective action allowing conclusion of a later complaint about the same  
49 behavior. Id.



1 Where a judge's conduct has resulted in identifiable, particularized harm to the  
2 complainant or another individual, appropriate corrective action should include steps taken by  
3 that judge to acknowledge and redress the harm, if possible, such as by an apology, recusal from  
4 a case, or a pledge to refrain from similar conduct in the future. Id. While the Act is generally  
5 forward-looking, any corrective action should, to the extent possible, serve to correct a specific  
6 harm to an individual, if such harm can reasonably be remedied. Id. In some cases, corrective  
7 action may not be "appropriate" to justify conclusion of a complaint unless the complainant or  
8 other individual harmed is meaningfully apprised of the nature of the corrective action in the  
9 chief judge's order, in a direct communication from the subject judge, or otherwise. Id.

10  
11 Voluntary corrective action should be proportionate to any plausible allegations of  
12 misconduct in the complaint. The form of corrective action should also be proportionate to any  
13 sanctions that a judicial council might impose under Rule 20(b), such as a private or public  
14 reprimand or a change in case assignments. Breyer Committee Report, 239 F.R.D at 244-45. In  
15 other words, minor corrective action will not suffice to dispose of a serious matter. Id.

16  
17 Rule 11(e) implements Section 352(b)(2) of the Act, which permits the chief judge to  
18 "conclude the proceeding," if "action on the complaint is no longer necessary because of  
19 intervening events," such as a resignation from judicial office. Ordinarily, however, stepping  
20 down from an administrative post such as chief judge, judicial-council member, or court-  
21 committee chair does not constitute an event rendering unnecessary any further action on a  
22 complaint alleging judicial misconduct. Breyer Committee Report, 239 F.R.D. at 245. As long  
23 as the subject of the complaint performs judicial duties, a complaint alleging judicial misconduct  
24 must be addressed. Id.

25  
26 If a complaint is not disposed of pursuant to Rule 11(c), (d), or (e), a special committee  
27 must be appointed. Rule 11(f) states that a subject judge must be invited to respond to the  
28 complaint before a special committee is appointed, if no earlier response was invited.

29  
30 Subject judges, of course, receive copies of complaints at the same time that they are  
31 referred to the chief judge, and they are free to volunteer responses to them. Under Rule 11(b),  
32 the chief judge may request a response if it is thought necessary. However, many complaints are  
33 clear candidates for dismissal even if their allegations are accepted as true, and there is no need  
34 for the subject judge to devote time to a defense.

35  
36 The Act requires that the order dismissing a complaint or concluding the proceeding  
37 contain a statement of reasons and that a copy of the order be sent to the complainant. 28 U.S.C.  
38 § 352(b). Rule 24, dealing with availability of information to the public, contemplates that the  
39 order, **even if subsequently vacated or modified**, will be made public, usually without disclosing  
40 the names of the complainant or the subject judge. If desired for administrative purposes, more  
41 identifying information can be included in a non-public version of the order.

42  
43 When complaints are disposed of by chief judges, the statutory purposes are best served  
44 by providing the complainant with a full, particularized, but concise explanation, giving reasons  
45 for the conclusions reached. See also Commentary on Rule 24, dealing with public availability.

46  
47 Rule 11(g) provides that the complainant and subject judge must be notified, in the case  
48 of a disposition by the chief judge, of the right to petition the judicial council for review.

49 **Because an identified complaint has no "complainant" to petition for review, a chief judge's**

1 dispositive order on such a complaint will be transmitted to the judicial council for review. The  
2 same will apply where a complaint was filed by its subject judge. A copy of a chief judge's order  
3 and memorandum, which may be one document, disposing of a complaint must be sent by the  
4 circuit clerk to the Judicial Conference Committee on Judicial Conduct and Disability.  
5

## 6 **ARTICLE IV. INVESTIGATION AND REPORT BY SPECIAL** 7 **COMMITTEE**

### 9 **12. Composition of Special Committee**

- 10 (a) **Membership.** Except as provided in (e), a special committee appointed under Rule  
11 11(f) must consist of the chief judge and equal numbers of circuit and district  
12 judges. **These judges may include senior judges.** If the complaint is about a district  
13 judge, bankruptcy judge, or magistrate judge, then, when possible, the district-  
14 judge members of the committee must be from districts other than the district of the  
15 subject judge. For the courts named in 28 U.S.C. § 363, the committee must be  
16 selected from the judges serving on the subject judge's court.
- 17 (b) **Presiding Officer.** When appointing the committee, the chief judge may serve as the  
18 presiding officer or else must designate a committee member as the presiding  
19 officer.
- 20 (c) **Bankruptcy Judge or Magistrate Judge as Adviser.** If the subject judge is a  
21 bankruptcy judge or magistrate judge, he or she may, within 14 days after being  
22 notified of the committee's appointment, ask the chief judge to designate as a  
23 committee adviser another bankruptcy judge or magistrate judge, as the case may  
24 be. The chief judge must grant such a request but may otherwise use discretion in  
25 naming the adviser. Unless the adviser is a Court of Federal Claims special master  
26 appointed under 42 U.S.C. § 300aa-12(c), the adviser must be from a district other  
27 than the district of the subject bankruptcy judge or subject magistrate judge. The  
28 adviser cannot vote but has the other privileges of a committee member.
- 29 (d) **Provision of Documents.** The chief judge must certify to each other member of the  
30 committee and to any adviser copies of the complaint and statement of facts in  
31 whole or relevant part, and any other relevant documents on file.
- 32 (e) **Continuing Qualification of Committee Members.** A member of a special committee  
33 ~~who was qualified to serve when appointed~~ may continue to serve on the committee  
34 even though the member relinquishes the position of chief judge, active circuit  
35 judge, or active district judge, as the case may be, but only if the member continues  
36 to hold office under Article III, Section 1, of the Constitution of the United States, or  
37 under 28 U.S.C. § 171.
- 38 (f) **Inability of Committee Member to Complete Service.** If a member of a special  
39 committee can no longer serve because of death, disability, disqualification,  
40 resignation, retirement from office, or other reason, the chief judge must decide  
41 whether to appoint a replacement member, either a circuit or district judge as  
42 needed under (a). No special committee appointed under these Rules may function  
43 with only a single member, and the votes of a two-member committee must be  
44 unanimous.
- 45 (g) **Voting.** All actions by a committee must be by vote of a majority of all members of  
46 the committee.  
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## Commentary on Rule 12

This Rule is adapted from the Act and the Illustrative Rules.

Rule 12 leaves the size of a special committee flexible, to be determined on a case-by-case basis. The question of committee size is one that should be weighed with care in view of the potential for consuming the members' time; a large committee should be appointed only if there is a special reason to do so. **Rule 12(a) acknowledges the common practice of including senior judges in the membership of a special committee.**

Although the Act requires that the chief judge be a member of each special committee, 28 U.S.C. § 353(a)(1), it does not require that the chief judge preside. Accordingly, Rule 12(b) provides that if the chief judge does not preside, he or she must designate another committee member as the presiding officer.

Rule 12(c) provides that the chief judge must appoint a bankruptcy judge or magistrate judge as an adviser to a special committee at the request of a bankruptcy or magistrate subject judge.

Subsection (c) also provides that the adviser will have all the privileges of a committee member except a vote. The adviser, therefore, may participate in all deliberations of the committee, question witnesses at hearings, and write a separate statement to accompany the special committee's report to the judicial council.

Rule 12(e) provides that a member of a special committee who remains an Article III judge may continue to serve on the committee even though the member's status otherwise changes. Thus, a committee that originally consisted of the chief judge and an equal number of circuit and district judges, as required by the law, may continue to function even though changes of status alter that composition. This provision reflects the belief that stability of membership will contribute to the quality of the work of such committees.

Stability of membership is also the principal concern animating Rule 12(f), which deals with the case in which a special committee loses a member before its work is complete. The Rule permits the chief judge to determine whether a replacement member should be appointed. Generally, appointment of a replacement member is desirable in these situations unless the committee has conducted evidentiary hearings before the vacancy occurs. However, cases may arise in which a committee is in the late stages of its work, and in which it would be difficult for a new member to play a meaningful role. The Rule also preserves the collegial character of the committee process by prohibiting a single surviving member from serving as a committee and by providing that a committee of two surviving members will, in essence, operate under a unanimity rule.

Rule 12(g) provides that actions of a special committee must be by vote of a majority of all the members. All the members of a committee should participate in committee decisions. In that circumstance, it seems reasonable to require that committee decisions be made by a majority of the membership, rather than a majority of some smaller quorum.

1 **13. Conduct of an Investigation**

- 2 (a) **Extent and Methods of Special-Committee Investigation.** Each **A** special committee  
3 **must ~~should~~ determine the appropriate extent and methods of the investigation in**  
4 **light of the allegations of the complaint ~~and its preliminary inquiry~~. The**  
5 **investigation may include use of appropriate experts or other professionals.** If, in  
6 the course of the investigation, the committee has cause to believe that the subject  
7 judge may have engaged in misconduct or has a disability that is beyond the scope  
8 of the complaint, the committee must refer the new matter to the chief judge for  
9 **action under Rule 5 or Rule 11 for a determination of whether action under Rule 5**  
10 **or Rule 11 is necessary before the committee’s investigation is expanded to include**  
11 **the new matter.**
- 12 (b) **Criminal Conduct.** If the committee's investigation concerns conduct that may be a  
13 crime, the committee must consult with the appropriate prosecutorial authorities to  
14 the extent permitted by the Act to avoid compromising any criminal investigation.  
15 The committee has final authority over the timing and extent of its investigation and  
16 the formulation of its recommendations.
- 17 (c) **Staff.** The committee may arrange for staff assistance to conduct the investigation.  
18 It may use existing staff of the judicial branch or may hire special staff through the  
19 Director of the Administrative Office of the United States Courts.
- 20 (d) **Delegation of Subpoena Power; Contempt.** The chief judge may delegate the  
21 authority to exercise the committee's subpoena powers. The judicial council or  
22 special committee may institute a contempt proceeding under 28 U.S.C. § 332(d)  
23 against anyone who fails to comply with a subpoena.

24  
25 **Commentary on Rule 13**

26  
27 This Rule is adapted from the Illustrative Rules.

28  
29 Rule 13, as well as Rules 14, 15, and 16, are concerned with the way in which a special  
30 committee carries out its mission. They reflect the view that a special committee has two roles  
31 that are separated in ordinary litigation. First, the committee has an investigative role of the kind  
32 that is characteristically left to executive branch agencies or discovery by civil litigants. 28  
33 U.S.C. § 353(c). Second, it has a formalized fact-finding and recommendation-of-disposition  
34 role that is characteristically left to juries, judges, or arbitrators. *Id.* Rule 13 generally governs  
35 the investigative stage. Even though the same body has responsibility for both roles under the  
36 Act, it is important to distinguish between them in order to ensure that appropriate rights are  
37 afforded at appropriate times to the subject judge.

38  
39 Rule 13(a) includes a provision making clear that a special committee may choose to  
40 consult appropriate experts or other professionals if it determines that such a consultation is  
41 warranted. If, for example, the special committee has cause to believe that the subject judge may  
42 be unable to discharge all of the duties of office by reason of mental or physical disability, the  
43 special committee may ask the subject judge to undergo a medical or psychological examination.  
44 In advance of any such examination, the special committee may enter into an agreement with the  
45 subject judge as to the use that may be made of the examination results. In addition or in the  
46 alternative, the special committee may ask to review existing records, including medical records.

47  
48 The extent of the subject judge’s cooperation in the investigation may be taken into  
49 account in the consideration of the underlying complaint. If, for example, the subject judge

1 impedes reasonable efforts to confirm or disconfirm the presence of a disability, the special  
2 committee may still consider whether the conduct alleged in the complaint and confirmed in the  
3 investigation constitutes misconduct. The special committee may also consider whether such a  
4 judge might be in violation of his or her duty to cooperate in an investigation under these Rules, a  
5 duty rooted not only in the Act’s definition of misconduct but also in the Code of Conduct for  
6 United States Judges, which emphasizes the need to maintain public confidence in the judiciary,  
7 see Canon 2(A), Canon 1 cmt., and requires judges to “facilitate the performance of the  
8 administrative responsibilities of other judges and court personnel,” Canon 3(B)(1). If the  
9 special committee finds a possible breach of the duty to cooperate and believes that the breach  
10 may amount to misconduct under Rule 3(h)(1)(H), it should determine, under the final sentence  
11 of Rule 13(a), whether that possibility must be referred to the chief judge for consideration of  
12 action under Rule 5 or Rule 11.  
13

14 One of the difficult questions that can arise is the relationship between proceedings under  
15 the Act and criminal investigations. Rule 13(b) assigns responsibility for coordination to the  
16 special committee in cases in which criminal conduct is suspected, but gives the committee the  
17 authority to determine the appropriate pace of its activity in light of any criminal investigation.  
18

19 Title 28 U.S.C. § 356(a) provides that a special committee will have full subpoena  
20 powers as provided in 28 U.S.C. § 332(d). Section 332(d)(1) provides that subpoenas will be  
21 issued on behalf of judicial councils by the circuit clerk "at the direction of the chief judge of the  
22 circuit or his designee." Rule 13(d) contemplates that, where the chief judge designates someone  
23 else as presiding officer of a special committee, the presiding officer also be delegated the  
24 authority to direct the circuit clerk to issue subpoenas related to committee proceedings. That is  
25 not intended to imply, however, that the decision to use the subpoena power is exercisable by the  
26 presiding officer alone. See Rule 12(g).  
27

#### 28 **14. Conduct of Hearings by Special Committee**

- 29 **(a) Purpose of Hearings.** The committee may hold hearings to take testimony and  
30 receive other evidence, to hear argument, or both. If the committee is investigating  
31 allegations against more than one judge, it may hold joint or separate hearings.
- 32 **(b) Committee Evidence.** Subject to Rule 15, the committee must obtain material,  
33 nonredundant evidence in the form it considers appropriate. In the committee's  
34 discretion, evidence may be obtained by committee members, staff, or both.  
35 Witnesses offering testimonial evidence may include the complainant and the  
36 subject judge.
- 37 **(c) Counsel for Witnesses.** The subject judge has the right to counsel. The special  
38 committee has discretion to decide whether other witnesses may have counsel  
39 present when they testify.
- 40 **(d) Witness Fees.** Witness fees must be paid as provided in 28 U.S.C. § 1821.
- 41 **(e) Oath.** All testimony taken at a hearing must be given under oath or affirmation.
- 42 **(f) Rules of Evidence.** The Federal Rules of Evidence do not apply to special-committee  
43 hearings.
- 44 **(g) Record and Transcript.** A record and transcript must be made of all hearings.  
45

#### 46 **Commentary on Rule 14**

47  
48 This Rule is adapted from Section 353 of the Act and the Illustrative Rules.  
49

1 Rule 14 is concerned with the conduct of fact-finding hearings. Special-committee  
2 hearings will normally be held only after the investigative work has been completed and the  
3 committee has concluded that there is sufficient evidence to warrant a formal fact-finding  
4 proceeding. Special-committee proceedings are primarily inquisitorial rather than adversarial.  
5 Accordingly, the Federal Rules of Evidence do not apply to such hearings. Inevitably, a hearing  
6 will have something of an adversary character. Nevertheless, that tendency should be moderated  
7 to the extent possible. Even though a proceeding will commonly have investigative and hearing  
8 stages, committee members should not regard themselves as prosecutors one day and judges the  
9 next. Their duty -- and that of their staff -- is at all times to be impartial seekers of the truth.

10  
11 Rule 14(b) contemplates that material evidence will be obtained by the committee and  
12 presented in the form of affidavits, live testimony, etc. Staff or others who are organizing the  
13 hearings should regard it as their role to present evidence representing the entire picture. With  
14 respect to testimonial evidence, the subject judge should normally be called as a committee  
15 witness. Cases may arise in which the judge will not testify voluntarily. In such cases, subpoena  
16 powers are available, subject to the normal testimonial privileges. Although Rule 15(c)  
17 recognizes the subject judge's statutory right to call witnesses on his or her own behalf, exercise  
18 of this right should not usually be necessary.

## 19 20 **15. Rights of Subject Judge**

### 21 **(a) Notice.**

#### 22 **(1) Generally. The subject judge must receive written notice of:**

- 23 **(A) the appointment of a special committee under Rule 11(f);**
- 24 **(B) the expansion of the scope of an investigation under Rule 13(a);**
- 25 **(C) any hearing under Rule 14, including its purposes, the names of any**  
26 **witnesses the committee intends to call, and the text of any statements**  
27 **that have been taken from those witnesses.**

#### 28 **(2) Suggestion of additional witnesses. The subject judge may suggest additional** 29 **witnesses to the committee.**

### 30 **(b) Report of the Special Committee. The subject judge must be sent a copy of the** 31 **special committee's report when it is filed with the judicial council.**

### 32 **(c) Presentation of Evidence. At any hearing held under Rule 14, the subject judge has** 33 **the right to present evidence, to compel the attendance of witnesses, and to compel** 34 **the production of documents. At the request of the subject judge, the chief judge or** 35 **the judge's designee must direct the circuit clerk to issue a subpoena to a witness** 36 **under 28 U.S.C. § 332(d)(1). The subject judge must be given the opportunity to** 37 **cross-examine committee witnesses, in person or by counsel.**

### 38 **(d) Presentation of Argument. The subject judge may submit written argument to the** 39 **special committee and must be given a reasonable opportunity to present oral** 40 **argument at an appropriate stage of the investigation.**

### 41 **(e) Attendance at Hearings. The subject judge has the right to attend any hearing held** 42 **under Rule 14 and to receive copies of the transcript, of any documents introduced,** 43 **and of any written arguments submitted by the complainant to the committee.**

### 44 **(f) Representation by Counsel. The subject judge may choose to be represented by** 45 **counsel in the exercise of any right enumerated in this Rule. As provided in Rule** 46 **20(e), the United States may bear the costs of the representation.**

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Commentary on Rule 15

This Rule is adapted from the Act and the Illustrative Rules.

The Act states that these Rules must contain provisions requiring that "the judge whose conduct is the subject of a complaint . . . be afforded an opportunity to appear (in person or by counsel) at proceedings conducted by the investigating panel, to present oral and documentary evidence, to compel the attendance of witnesses or the production of documents, to cross-examine witnesses, and to present argument orally or in writing." 28 U.S.C. § 358(b)(2). To implement this provision, Rule 15(e) gives the judge the right to attend any hearing held for the purpose of receiving evidence of record or hearing argument under Rule 14.

The Act does not require that the subject judge be permitted to attend all proceedings of the special committee. Accordingly, the Rules do not give a right to attend other proceedings -- for example, meetings at which the committee is engaged in investigative activity, such as interviewing persons to learn whether they ought to be called as witnesses or examining for relevance purposes documents delivered pursuant to a subpoena duces tecum, or meetings in which the committee is deliberating on the evidence or its recommendations.

## 16. Rights of Complainant in Investigation

- (a) **Notice.** The complainant must receive written notice of the investigation as provided in Rule 11(g)(1). When the special committee's report to the judicial council is filed, the complainant must be notified of the filing. The judicial council may, in its discretion, provide a copy of the report of a special committee to the complainant.
- (b) **Opportunity to Provide Evidence.** **If the complainant knows of relevant evidence not already before the committee, the complainant may briefly explain in writing the basis of that knowledge and the nature of that evidence.** If the committee determines that the complainant ~~may have evidence that does not already exist in writing~~ **has information, not already known to the committee, that would assist in the committee's investigation**, a representative of the committee must interview the complainant.
- (c) **Presentation of Argument.** The complainant may submit written argument to the special committee. In its discretion, the special committee may permit the complainant to offer oral argument.
- (d) **Representation by Counsel.** A complainant may submit written argument through counsel and, if permitted to offer oral argument, may do so through counsel.
- (e) **Cooperation.** In exercising its discretion under this Rule, a special committee may take into account the degree of the complainant's cooperation in preserving the confidentiality of the proceedings, including the identity of the subject judge.

Commentary on Rule 16

This Rule is adapted from the Act and the Illustrative Rules.

In accordance with the view of the process as fundamentally administrative and inquisitorial, these Rules do not give the complainant the rights of a party to litigation, and leave the complainant's role largely to the discretion of the special committee. However, Rule 16(b) provides that, where a special committee has been appointed and it determines that the

1 complainant may have additional evidence, the complainant must be interviewed by a  
2 representative of the committee. However, Rule 16(b) gives the complainant the prerogative to  
3 make a brief written submission showing that he or she is aware of relevant evidence not already  
4 known to the special committee. (Such a submission may precede any written or oral argument  
5 the complainant provides under Rule 16(c), or it may accompany that argument.) If the special  
6 committee determines, independently or from the complainant's submission, that the  
7 complainant has information that would assist the committee in its investigation, the complainant  
8 must be interviewed by a representative of the committee. Such an interview may be in person or  
9 by telephone, and the representative of the committee may be either a member or staff.

10  
11 Rule 16 does not contemplate that the complainant will ordinarily be permitted to attend  
12 proceedings of the special committee except when testifying or presenting oral argument. A  
13 special committee may exercise its discretion to permit the complainant to be present at its  
14 proceedings, or to permit the complainant, individually or through counsel, to participate in the  
15 examination or cross-examination of witnesses.

16  
17 The Act authorizes an exception to the normal confidentiality provisions where the  
18 judicial council in its discretion provides a copy of the report of the special committee to the  
19 complainant and to the subject judge. 28 U.S.C. § 360(a)(1). However, the Rules do not entitle  
20 the complainant to a copy of the special committee's report.

21  
22 In exercising their discretion regarding the role of the complainant, the special committee  
23 and the judicial council should protect the confidentiality of the complaint process. As a  
24 consequence, subsection (e) provides that a special committee may consider the degree to which  
25 a complainant has cooperated in preserving the confidentiality of the proceedings in determining  
26 what role beyond the minimum required by these Rules should be given to that complainant.

## 27 28 **17. Special-Committee Report**

29 **The committee must file with the judicial council a comprehensive report of its**  
30 **investigation, including findings and recommendations for council action. The report must**  
31 **be accompanied by a statement of the vote by which it was adopted, any separate or**  
32 **dissenting statements of committee members, and the record of any hearings held under**  
33 **Rule 14. ~~In addition to being sent to the subject judge under Rule 15(b), a copy of the~~**  
34 **report and accompanying statement ~~the report and any accompanying statements and~~**  
35 **documents must be sent to the Judicial Conference Committee on Judicial Conduct and**  
36 **Disability.**

### 37 38 **Commentary on Rule 17**

39  
40 This Rule is adapted from the Illustrative Rules and is self-explanatory. The provision for  
41 sending a copy of the special-committee report and accompanying ~~statement~~ **statements and**  
42 **documents** to the Judicial Conference Committee is new.



1 **ARTICLE V. JUDICIAL-COUNCIL REVIEW**

2  
3 **18. Petitions for Review of Chief Judge Dispositions Under**  
4 **Rule 11(c), (d), or (e)**

- 5 (a) **Petitions for Review.** After the chief judge issues an order under Rule 11(c), (d), or  
6 (e), a complainant or subject judge may petition the judicial council of the circuit to  
7 review the order. By rules promulgated under 28 U.S.C. § 358, the judicial council  
8 may refer a petition for review filed under this Rule to a panel of no fewer than five  
9 members of the council, at least two of whom must be district judges.
- 10 (b) **When to File; Form; Where to File.** A petition for review must be filed in the office  
11 of the circuit clerk ~~within 35 days of the date on the clerk's letter informing the~~  
12 ~~parties of the chief judge's order~~ **within 42 days after the date of the chief judge's**  
13 **order.** The petition should be in letter form, addressed to the circuit clerk, and in  
14 an envelope marked "Misconduct Petition" or "Disability Petition." The name of the  
15 subject judge must not be shown on the envelope. The letter should be typewritten  
16 or otherwise legible. It should begin with "I hereby petition the judicial council for  
17 review of . . ." and state the reasons why the petition should be granted. It must  
18 be signed.
- 19 (c) **Receipt and Distribution of Petition.** A circuit clerk who receives a petition for  
20 review filed ~~within the time allowed and in proper form~~ **in accordance with this rule**  
21 **must:**
- 22 (1) **acknowledge its receipt and send a copy to the complainant or subject judge,**  
23 **as the case may be;**
  - 24 (2) **promptly distribute to each member of the judicial council, or its relevant**  
25 **panel, except for any member disqualified under Rule 25, or make available**  
26 **in the manner provided by local rule, the following materials:**
    - 27 (A) **copies of the complaint;**
    - 28 (B) **all materials obtained by the chief judge in connection with the**  
29 **inquiry;**
    - 30 (C) **the chief judge's order disposing of the complaint;**
    - 31 (D) **any memorandum in support of the chief judge's order;**
    - 32 (E) **the petition for review; and**
    - 33 (F) **an appropriate ballot;**
  - 34 (3) **send the petition for review to the Judicial Conference Committee on Judicial**  
35 **Conduct and Disability. Unless the Judicial Conference Committee requests**  
36 **them, the clerk will not send copies of the materials obtained by the chief**  
37 **judge.**
- 38 (d) **Untimely Petition.** The clerk must refuse to accept a petition that is received ~~after~~  
39 ~~the deadline in (b)~~ **received after the time allowed in (b).**
- 40 (e) **Timely Petition Not in Proper Form.** When the clerk receives a petition filed within  
41 the time allowed but in a form that is improper to a degree that would substantially  
42 impair its consideration by the judicial council — such as a document that is  
43 ambiguous about whether it is intended to be a petition for review — the clerk must  
44 acknowledge its receipt, call the filer's attention to the deficiencies, and give the filer  
45 the opportunity to correct the deficiencies ~~within 21 days of the date of the clerk's~~  
46 ~~letter about the deficiencies or within the original deadline for filing the petition,~~  
47 **whichever is later within the original time allowed for filing the petition or within 21**  
48 **days after the date on which a notice of the deficiencies was sent to the complainant,**

1 **whichever is later. If the deficiencies are corrected within the time allowed, the**  
2 **clerk will proceed according to paragraphs (a) and (c) of this Rule. If the**  
3 **deficiencies are not corrected, the clerk must reject the petition.**  
4

#### 5 Commentary on Rule 18

6 Rule 18 is adapted largely from the Illustrative Rules.  
7

8  
9 Subsection (a) permits a subject judge, as well as the complainant, to petition for review  
10 of a chief judge's order dismissing a complaint under Rule 11(c), or concluding that appropriate  
11 corrective action or intervening events have remedied or mooted the problems raised by the  
12 complaint pursuant to Rule 11(d) or (e). Although the subject judge may ostensibly be  
13 vindicated by the dismissal or conclusion of a complaint, a chief judge's order may include  
14 language disagreeable to the subject judge. For example, an order may dismiss a complaint, but  
15 state that the subject judge did in fact engage in misconduct. Accordingly, a subject judge may  
16 wish to object to the content of the order and is given the opportunity to petition the judicial  
17 council of the circuit for review.  
18

19 Subsection (b) contains a time limit of ~~thirty-five~~ **42** days to file a petition for review. It  
20 is important to establish a time limit on petitions for review of chief judges' dispositions in order  
21 to provide finality to the process. If the complaint requires an investigation, the investigation  
22 should proceed; if it does not, the subject judge should know that the matter is closed.  
23

24 The standards for timely filing under the Federal Rules of Appellate Procedure should be  
25 applied to petitions for review. See Fed. R. App. P. 25(a)(2)(A) and (C).  
26

27 Rule 18(e) provides for an automatic extension of the time limit imposed under  
28 subsection (b) if a person files a petition that is rejected for failure to comply with formal  
29 requirements.  
30

### 31 **19. Judicial-Council Disposition of Petitions for Review**

32 **(a) Rights of Subject Judge. At any time after a complainant files a petition for review,**  
33 **the subject judge may file a written response with the circuit clerk. The clerk must**  
34 **promptly distribute copies of the response to each member of the judicial council or**  
35 **of the relevant panel, unless that member is disqualified under Rule 25. Copies**  
36 **must also be distributed to the chief judge, to the complainant, and to the Judicial**  
37 **Conference Committee on Judicial Conduct and Disability. The subject judge must**  
38 **not otherwise communicate with individual council members about the matter. The**  
39 **subject judge must be given copies of any communications to the judicial council**  
40 **from the complainant.**

41 **(b) Judicial-Council Action. After considering a petition for review and the materials**  
42 **before it, a judicial council may:**

- 43 **(1) affirm the chief judge's disposition by denying the petition;**
  - 44 **(2) return the matter to the chief judge with directions to conduct a further**  
45 **inquiry under Rule 11(b) or to identify a complaint under Rule 5;**
  - 46 **(3) return the matter to the chief judge with directions to appoint a special**  
47 **committee under Rule 11(f); or**
  - 48 **(4) in exceptional circumstances, take other appropriate action.**
- 49



- 1 (c) **Notice of Council Decision.** Copies of the judicial council's order, together with any  
 2 accompanying memorandum in support of the order or separate concurring or  
 3 dissenting statements, must be given to the complainant, the subject judge, and the  
 4 **Judicial Conference Committee on Judicial Conduct and Disability.**
- 5 (d) **Memorandum of Council Decision.** If the council's order affirms the chief judge's  
 6 disposition, a supporting memorandum must be prepared only if the judicial council  
 7 concludes that there is a need to supplement the chief judge's explanation. A  
 8 memorandum supporting a council order must not include the name of the  
 9 complainant or the subject judge.
- 10 (e) **Review of Judicial-Council Decision.** If the judicial council's decision is adverse to  
 11 the petitioner, and if no member of the council dissented ~~on the ground that a~~  
 12 ~~special committee should be appointed under Rule 11(f)~~, the complainant must be  
 13 notified that he or she has no right to seek review of the decision. If there was a  
 14 dissent, the petitioner must be informed that he or she can file a petition for review  
 15 under Rule 21(b) ~~solely on the issue of whether a special committee should be~~  
 16 ~~appointed.~~
- 17 (f) **Public Availability of Judicial-Council Decision.** Materials related to the council's  
 18 decision must be made public to the extent, at the time, and in the manner set forth  
 19 in Rule 24.

20  
 21 **Commentary on Rule 19**

22  
 23 This Rule is largely adapted from the Act and is self-explanatory.

24  
 25 The council should ordinarily review the decision of the chief judge on the merits,  
 26 treating the petition for review for all practical purposes as an appeal. The judicial council may  
 27 respond to a petition by affirming the chief judge's order, remanding the matter, or, in exceptional  
 28 cases, taking other appropriate action. **A petition for review of a judicial council's decision may**  
 29 **be filed under Rule 21(b) in any matter in which one or more members of the judicial council**  
 30 **dissented from the order.**

31  
 32 **20. ~~Judicial-Council Consideration of Reports and Recommendations of~~**  
 33 **~~Special Committees~~ **Judicial-Council Action Following Appointment of****  
 34 ****Special Committee****

- 35 (a) **Rights of Subject Judge.** Within 21 days after the filing of the report of a special  
 36 committee, the subject judge may send a written response to the members of the  
 37 judicial council. The judge must also be given an opportunity to present argument  
 38 through counsel, written or oral, as determined by the council. The judge must not  
 39 otherwise communicate with council members about the matter.

40 (b) **Judicial-Council Action.**

- 41 (1) **Discretionary actions on special-committee report.** ~~Subject to the judge's~~  
 42 ~~rights set forth in subsection (a), the judicial council may~~ **Upon considering**  
 43 **the report of the special committee, the judicial council may, subject to the**  
 44 **judge's rights set forth in (a):**

45 (A) **dismiss the complaint because:**

- 46 (i) **even if the claim is true, the claimed conduct is not conduct**  
 47 **prejudicial to the effective and expeditious administration of the**

- 1 business of the courts and does not indicate a mental or physical  
2 disability resulting in inability to discharge the duties of office;
- 3 (ii) the complaint is directly related to the merits of a decision or  
4 procedural ruling;
- 5 (iii) the facts on which the complaint is based have not been  
6 established; or
- 7 (iv) the complaint is otherwise not appropriate for consideration  
8 under 28 U.S.C. §§ 351–364.
- 9 (B) conclude the proceeding because appropriate corrective action has  
10 been taken or intervening events have made the proceeding  
11 unnecessary.
- 12 (C) refer the complaint to the Judicial Conference of the United States  
13 with the council's recommendations for action.
- 14 (D) take remedial action to ensure the effective and expeditious  
15 administration of the business of the courts, including:
- 16 (i) censuring or reprimanding the subject judge, either by private  
17 communication or by public announcement;
- 18 (ii) ordering that no new cases be assigned to the subject judge for  
19 a limited, fixed period;
- 20 (iii) in the case of a magistrate judge, ordering the chief judge of the  
21 district court to take action specified by the council, including  
22 the initiation of removal proceedings under 28 U.S.C. § 631(i) or  
23 42 U.S.C. § 300aa–12(c)(2);
- 24 (iv) in the case of a bankruptcy judge, removing the judge from  
25 office under 28 U.S.C. § 152(e);
- 26 (v) in the case of a circuit or district judge, requesting the judge to  
27 retire voluntarily with the provision (if necessary) that ordinary  
28 length-of-service requirements will be waived; and
- 29 (vi) in the case of a circuit or district judge who is eligible to retire  
30 but does not do so, certifying the disability of the judge under  
31 28 U.S.C. § 372(b) so that an additional judge may be  
32 appointed; and
- 33 (vii) in the case of a circuit chief judge or district chief judge, finding  
34 that the judge is temporarily unable to perform chief-judge  
35 duties, with the result that those duties devolve to the next  
36 eligible judge in accordance with 28 U.S.C. § 45(d) or § 136(e).
- 37 (E) take any combination of actions described in (b)(1)(A)–(D) of this Rule  
38 that is within its power.
- 39 (2) **Mandatory actions.** A judicial council must refer a complaint to the Judicial  
40 Conference if the council determines that a circuit judge or district judge may  
41 have engaged in conduct that:
- 42 (A) might constitute ground for impeachment; or
- 43 (B) in the interest of justice, is not amenable to resolution by the judicial  
44 council.
- 45 (3) **Discretionary actions following appointment of special committee.** Unless it  
46 has issued a final decision on the merits, a judicial council may, at any time  
47 after the appointment of a special committee, conclude the proceeding because  
48 appropriate corrective action has been taken or intervening events have made  
49 the proceeding unnecessary.

- 1 (c) **Inadequate Basis for Decision.** If the judicial council finds that a special committee's  
2 report, recommendations, and record provide an inadequate basis for decision, it  
3 may return the matter to the committee for further investigation and a new report,  
4 or it may conduct further investigation. If the judicial council decides to conduct  
5 further investigation, the subject judge must be given adequate prior notice in  
6 writing of that decision and of the general scope and purpose of the additional  
7 investigation. The judicial council's conduct of the additional investigation must  
8 generally accord with the procedures and powers set forth in Rules 13 through 16 for  
9 the conduct of an investigation by a special committee.
- 10 (d) **Council Vote.** Council action must be taken by a majority of those members of the  
11 council who are not disqualified. A decision to remove a bankruptcy judge from  
12 office requires a majority vote of all the members of the council.
- 13 (e) **Recommendation for Fee Reimbursement.** If the complaint has been finally  
14 dismissed or concluded under (b)(1)(A) or (B) of this Rule, and if the subject judge so  
15 requests, the judicial council may recommend that the Director of the Administrative  
16 Office of the United States Courts use funds appropriated to the Judiciary to  
17 reimburse the judge for reasonable expenses incurred during the investigation, when  
18 those expenses would not have been incurred but for the requirements of the Act and  
19 these Rules. Reasonable expenses include attorneys' fees and expenses related to a  
20 successful defense or prosecution of a proceeding under Rule 21(a) or (b).
- 21 (f) **Council Action.** Council action must be by written order. Unless the council finds  
22 that extraordinary reasons would make it contrary to the interests of justice, the  
23 order must be accompanied by a memorandum setting forth the factual  
24 determinations on which it is based and the reasons for the council action. **Such a**  
25 **memorandum may incorporate all or part of any underlying special-committee**  
26 **report. If the complaint was initiated by identification under Rule 5, the**  
27 **memorandum must so indicate.** The order and the supporting memorandum must  
28 be provided to the complainant, the subject judge, and the Judicial Conference  
29 Committee on Judicial Conduct and Disability. The complainant and the subject  
30 judge must be notified of any right to review of the judicial council's decision as  
31 provided in Rule 21(b). **If the complaint was identified under Rule 5 or filed by its**  
32 **subject judge, the council must transmit the order and supporting memorandum to**  
33 **the Judicial Conference Committee on Judicial Conduct and Disability for review in**  
34 **accordance with Rule 21. In the event of such a transmission, the subject judge may**  
35 **make a written submission to the Committee on Judicial Conduct and Disability but**  
36 **will have no further right of review.**

37  
38 **Commentary on Rule 20**

39  
40 This Rule is largely adapted from the Illustrative Rules.

41  
42 Rule 20(a) provides that within twenty-one days after the filing of the report of a special  
43 committee, the subject judge may address a written response to all of the members of the judicial  
44 council. The subject judge must also be given an opportunity to present ~~oral~~ argument to the  
45 council, personally or through counsel. **Whether that argument is written or oral would be for the**  
46 **council to determine.** The subject judge may not otherwise communicate with council members  
47 about the matter.  
48  
49

1 Rule 20(b)(1)(D) recites the remedial actions enumerated in 28 U.S.C. § 354(a)(2) while  
2 making clear that this list is not exhaustive. A judicial council may consider lesser remedies.  
3 Some remedies may be unique to senior judges, whose caseloads can be modified by agreement or  
4 through statutory designation and certification processes.  
5

6 Under 28 U.S.C. §§ 45(d) and 136(e), which provide for succession where “a chief judge  
7 is temporarily unable to perform his duties as such,” the determination whether such an inability  
8 exists is not expressly reserved to the chief judge. Nor, indeed, is it assigned to any particular  
9 judge or court-governance body. Clearly, however, a chief judge’s inability to function as chief  
10 could implicate “the effective and expeditious administration of justice,” which the circuit judicial  
11 council must, under 28 U.S.C. § 332(d)(1), “make all necessary and appropriate orders” to secure.  
12 For this reason, and because temporary reassignment of chief-judge duties is a milder action than  
13 the temporary suspension of case assignments that 28 U.S.C. § 354(a)(2)(A)(i) and Rule  
14 20(b)(1)(D)(ii) allow, such reassignment is among a circuit council’s remedial options, as  
15 subsection (b)(1)(D)(vii) makes clear. Consistent with §§ 45(d) and 136(e), however, any  
16 reassignment of chief-judge duties must not outlast the subject judge’s inability to perform them.  
17 Nor can such reassignment result in any extension of the subject judge’s term as chief judge.  
18

19 Rule 20(c) provides that if the judicial council decides to conduct an additional  
20 investigation, the subject judge must be given adequate prior notice in writing of that decision and  
21 of the general scope and purpose of the additional investigation. The conduct of the investigation  
22 will be generally in accordance with the procedures set forth in Rules 13 through 16 for the  
23 conduct of an investigation by a special committee. However, if hearings are held, the council  
24 may limit testimony or the presentation of evidence to avoid unnecessary repetition of testimony  
25 and evidence before the special committee.  
26

27 Rule 20(d) provides that council action must be taken by a majority of those members of  
28 the council who are not disqualified, except that a decision to remove a bankruptcy judge from  
29 office requires a majority of all the members of the council as required by 28 U.S.C. § 152(e).  
30 However, it is inappropriate to apply a similar rule to the less severe actions that a judicial council  
31 may take under the Act. If some members of the council are disqualified in the matter, their  
32 disqualification should not be given the effect of a vote against council action.  
33

34 With regard to Rule 20(e), the judicial council, on the request of the subject judge, may  
35 recommend to the Director of the Administrative Office of the United States Courts that the  
36 subject judge be reimbursed for reasonable expenses, including attorneys' fees, incurred. The  
37 judicial council has the authority to recommend such reimbursement where, after investigation by  
38 a special committee, the complaint has been finally dismissed or concluded under subsection  
39 (b)(1) (A) or (B) of this Rule. It is contemplated that such reimbursement may be provided for the  
40 successful prosecution or defense of a proceeding under Rule 21(a) or (b), in other words, one that  
41 results in a Rule 20(b)(1)(A) or (B) dismissal or conclusion.  
42

43 Rule 20(f) requires that council action **be by order and**, normally, **that it** be supported with  
44 a memorandum of factual determinations and reasons. ~~and that~~ **Notice** of the action **must** be  
45 given to the complainant and the subject judge, **and** ~~Rule 20(f) also requires that the notification~~  
46 ~~to the complainant and the subject judge~~ **must** include notice of any right to petition for review of  
47 the council's decision under Rule 21(b). **Because an identified complaint has no “complainant” to**  
48 **petition for review, a judicial council’s dispositive order on an identified complaint on which a**  
49 **special committee has been appointed must be transmitted to the Judicial Conduct and Disability**

1 Committee for review. The same will apply where a complaint was filed by its subject judge.  
2

3 As with all orders under the Act, any judicial-council order, even one subsequently  
4 modified or vacated, must be published under Rule 24 when the complaint has received final  
5 action and is no longer subject to review of right.  
6

## 7 **ARTICLE VI. REVIEW BY JUDICIAL CONFERENCE COMMITTEE** 8 **ON CONDUCT AND DISABILITY** 9

### 10 **21. Committee on Judicial Conduct and Disability**

11 (a) **Review by Committee.** The Committee on Judicial Conduct and Disability,  
12 consisting of seven members, considers and disposes of all petitions for review under  
13 (b) of this Rule, in conformity with the Committee's jurisdictional statement. **Its**  
14 **review of judicial-council orders is for errors of law, clear errors of fact, or abuse of**  
15 **discretion.** Its disposition of petitions for review is ordinarily final. The Judicial  
16 Conference of the United States may, in its sole discretion, review any such  
17 Committee decision, but a complainant or subject judge does not have a right to this  
18 review.

19 (b) **Reviewable Matters.**

20 (1) **Upon petition.** A complainant or subject judge may petition the Committee  
21 for review of a judicial-council order entered in accordance with:

22 (A) Rule 20(b)(1)(A), (B), (D), or (E); or

23 (B) Rule 19(b)(1) or (4) if one or more members of the judicial council  
24 dissented from the order ~~on the ground that a special committee~~  
25 ~~should be appointed under Rule 11(f); in that event, the Committee's~~  
26 ~~review will be limited to the issue of whether a special committee~~  
27 ~~should be appointed.~~

28 (2) **Upon Committee's initiative.** At its initiative and in its sole discretion, the  
29 Committee may review any judicial-council order entered under Rule 19(b)(1)  
30 or (4), but only to determine whether a special committee should be  
31 appointed. Before undertaking the review, the Committee must invite that  
32 judicial council to explain why it believes the appointment of a special  
33 committee is unnecessary, unless the reasons are clearly stated in the judicial  
34 council's order denying the petition for review. If the Committee believes that  
35 it would benefit from a submission by the subject judge, it may issue an  
36 appropriate request. If the Committee determines that a special committee  
37 should be appointed, the Committee must issue a written decision giving its  
38 reasons.

39 (c) **Committee Vote.** Any member of the Committee from the same circuit as the subject  
40 judge is disqualified from considering or voting on a petition for review. Committee  
41 decisions under (b) of this Rule must be by majority vote of the qualified Committee  
42 members. ~~If only six members are qualified to vote on a petition for review, the~~  
43 ~~decision must be made by a majority of a panel of five members drawn from a~~  
44 ~~randomly selected list that rotates after each decision by a panel drawn from the list~~  
45 **If the qualified members are equally divided in their vote on a petition for review,**  
46 **the order of the judicial council will remain in force as though affirmed.** The  
47 ~~members who will determine the petition must be selected based on committee~~  
48 ~~membership as of the date on which the petition is received.~~ Those members selected



1 ~~to hear~~ **hearing** the petition should serve in that capacity until final disposition of the  
2 petition, whether or not their term of committee membership has ended. ~~If only four~~  
3 ~~members are qualified to vote, the Chief Justice must appoint, if available, an ex-~~  
4 ~~member of the Committee or, if not, another United States judge to consider the~~  
5 ~~petition.~~ **If the number of members qualified to consider a petition is not more than**  
6 **four, the Chief Justice must name a panel of five United States judges, including the**  
7 **qualified Committee members, to consider it. To the extent possible, the judges**  
8 **whom the Chief Justice selects to join the qualified members for this purpose must be**  
9 **drawn from among former members of the Committee.**

- 10 (d) **Additional Investigation.** Except in extraordinary circumstances, the Committee will  
11 not conduct an additional investigation. The Committee may return the matter to  
12 the judicial council with directions to undertake an additional investigation. If the  
13 Committee conducts an additional investigation, it will exercise the powers of the  
14 Judicial Conference under 28 U.S.C. § 331.
- 15 (e) **Oral Argument; Personal Appearance.** There is ordinarily no oral argument or  
16 personal appearance before the Committee. In its discretion, the Committee may  
17 permit written submissions ~~from the complainant or subject judge.~~
- 18 (f) **Committee Decisions.** Committee decisions under this Rule must be transmitted  
19 promptly to the Judicial Conference of the United States. Other distribution will be  
20 by the Administrative Office at the direction of the Committee chair.
- 21 (g) **Finality.** All orders of the Judicial Conference or of the Committee (when the  
22 Conference does not exercise its power of review) are final.

#### 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49

Commentary on Rule 21

This Rule is largely self-explanatory.

Rule 21(a) is intended to clarify that the delegation of power to the Judicial Conference Committee on Judicial Conduct and Disability to dispose of petitions does not preclude review of such dispositions by the Conference. However, there is no right to such review in any party.

Rules 21(b)(1)(B) and (b)(2) are intended to fill a jurisdictional gap as to review of dismissals or conclusions of complaints under Rule 19(b)(1) or (4). Where one or more members of a judicial council reviewing a petition have dissented ~~on the ground that a special committee should have been appointed,~~ the complainant or subject judge has the right to petition for review by the Committee ~~but only as to that issue.~~ Under Rule 21(b)(2), the Judicial Conference Committee on Judicial Conduct and Disability may review such a dismissal or conclusion in its sole discretion, whether or not such a dissent occurred, and only as to the appointment of a special committee. **Any review under Rule 21(b)(2) will be conducted as soon as practicable after the dismissal or conclusion at issue.** No party has a right to such review, and such review will be rare.

Rule 21(c) provides for review only by Committee members from circuits other than that of the subject judge. ~~To avoid tie votes, the Committee will decide petitions for review by rotating panels of five when only six members are qualified. If only four members are qualified, the Chief Justice must appoint an additional judge to consider that petition for review. If four or fewer members are qualified, the Chief Justice must appoint other judges, drawn first from among the Committee's former members, to join the qualified current members in a five-judge panel to consider the petition.~~

1 Under this Rule, all Committee decisions are final in that they are unreviewable unless the  
2 Judicial Conference, in its discretion, decides to review a decision. Committee decisions,  
3 however, do not necessarily constitute final action on a complaint for purposes of Rule 24.  
4

## 5 **22. Procedures for Review**

6 (a) **Filing a Petition for Review.** A petition for review of a judicial-council decision **on a**  
7 **complaint referred to a special committee** may be filed by sending a brief written  
8 statement to the Judicial Conference Committee on Judicial Conduct and Disability,  
9 addressed to:

10 **Judicial Conference Committee on Judicial Conduct and Disability**  
11 **Attn: Office of General Counsel**  
12 **Administrative Office of the United States Courts**  
13 **One Columbus Circle, NE**  
14 **Washington, D.C. 20544**

15 The Administrative Office will send a copy of the petition to the complainant or  
16 subject judge, as the case may be.

17 (b) **Form and Contents of Petition for Review.** No particular form is required. The  
18 petition must contain a short statement of the basic facts underlying the complaint,  
19 the history of its consideration before the appropriate judicial council, a copy of the  
20 judicial council's decision, and the grounds on which the petitioner seeks review.  
21 The petition for review must specify the date and docket number of the judicial-  
22 council order for which review is sought. The petitioner may attach any documents  
23 or correspondence arising in the course of the proceeding before the judicial council  
24 or its special committee. A petition should not normally exceed 20 pages plus  
25 necessary attachments.

26 (c) **Time.** A petition must be submitted within ~~63~~**42** days of **after** the date of the order  
27 for which review is sought.

28 (d) **Copies.** Seven copies of the petition for review must be submitted, at least one of  
29 which must be signed by the petitioner or his or her attorney. If the petitioner  
30 submits a signed declaration of inability to pay the expense of duplicating the  
31 petition, the Administrative Office must accept the original petition and must  
32 reproduce copies at its expense.

33 (e) **Action on Receipt of Petition for Review.** ~~The Administrative Office must~~  
34 ~~acknowledge receipt of a petition for review submitted under this Rule~~ **When a**  
35 **petition for review of a judicial council decision on a complaint referred to a special**  
36 **committee is submitted in accordance with this Rule, the Administrative Office must**  
37 **acknowledge its receipt**, notify the chair of the Judicial Conference Committee on  
38 Judicial Conduct and Disability, and distribute the petition to the members of the  
39 Committee for their deliberation.  
40

41 **Commentary on Rule 22**

42  
43 Rule 22 is self-explanatory.  
44  
45

1 **ARTICLE VII. MISCELLANEOUS RULES**

2  
3 **23. Confidentiality**

- 4 (a) **General Rule.** The consideration of a complaint by the chief judge, a special  
5 committee, the judicial council, or the Judicial Conference Committee on Judicial  
6 Conduct and Disability is confidential. Information about this consideration must  
7 not be disclosed by any judge or employee of the judicial branch or by any person  
8 who records or transcribes testimony except as allowed by these Rules. In  
9 extraordinary circumstances, a chief judge may disclose the existence of a proceeding  
10 under these Rules when necessary to maintain public confidence in the federal  
11 judiciary's ability to redress misconduct or disability.
- 12 (b) **Files.** All files related to complaints must be separately maintained with appropriate  
13 security precautions to ensure confidentiality.
- 14 (c) **Disclosure in Decisions.** Except as otherwise provided in Rule 24, written decisions  
15 of the chief judge, the judicial council, or the Judicial Conference Committee on  
16 Judicial Conduct and Disability, and dissenting opinions or separate statements of  
17 members of the council or Committee may contain information and exhibits that the  
18 authors consider appropriate for inclusion, and the information and exhibits may be  
19 made public.
- 20 (d) **Availability to Judicial Conference.** On request of the Judicial Conference or its  
21 Committee on Judicial Conduct and Disability, the circuit clerk must furnish any  
22 requested records related to a complaint. For auditing purposes, the circuit clerk  
23 must provide access to the Committee to records of proceedings under the Act at the  
24 site where the records are kept.
- 25 (e) **Availability to District Court.** If the judicial council directs the initiation of  
26 proceedings for removal of a magistrate judge under Rule 20(b)(1)(D)(iii), the circuit  
27 clerk must provide to the chief judge of the district court copies of the report of the  
28 special committee and any other documents and records that were before the judicial  
29 council at the time of its decision. On request of the chief judge of the district court,  
30 the judicial council may authorize release to that chief judge of any other records  
31 relating to the investigation.
- 32 (f) **Impeachment Proceedings.** If the Judicial Conference determines that consideration  
33 of impeachment may be warranted, it must transmit the record of all relevant  
34 proceedings to the Speaker of the House of Representatives.
- 35 (g) **Subject Judge's Consent.** If both the subject judge and the chief judge consent in  
36 writing, any materials from the files may be disclosed to any person. In any such  
37 disclosure, the chief judge may require that the identity of the complainant, or of  
38 witnesses in an investigation conducted by a chief judge, a special committee, or the  
39 judicial council **investigation conducted under these rules**, not be revealed.
- 40 (h) **Disclosure in Special Circumstances.** The Judicial Conference, its Committee on  
41 Judicial Conduct and Disability, or a judicial council may authorize disclosure of  
42 information about the consideration of a complaint, including the papers, documents,  
43 and transcripts relating to the investigation, to the extent that disclosure is justified  
44 by special circumstances and is not prohibited by the Act. Disclosure may be made  
45 to judicial researchers engaged in the study or evaluation of experience under the  
46 Act and related modes of judicial discipline, but only where the study or evaluation  
47 has been specifically approved by the Judicial Conference or by the Judicial  
48 Conference Committee on Judicial Conduct and Disability. Appropriate steps must



1 be taken to protect the identities of the subject judge, the complainant, and witnesses  
2 from public disclosure. Other appropriate safeguards to protect against the  
3 dissemination of confidential information may be imposed.

4 (i) Disclosure of Identity by Subject Judge. Nothing in this Rule precludes the subject  
5 judge from acknowledging that he or she is the judge referred to in documents made  
6 public under Rule 24.

7 (j) Assistance and Consultation. ~~Nothing in this Rule precludes the chief judge or~~  
8 ~~judicial council acting on a complaint filed under the Act from seeking the help of~~  
9 ~~qualified staff or from consulting other judges who may be helpful in the disposition~~  
10 ~~of the complaint. Nothing in this Rule prohibits a chief judge, a special committee, a~~  
11 ~~judicial council, or the Judicial Conference or its Committee on Judicial Conduct~~  
12 ~~and Disability, in the performance of any function authorized under the Act or these~~  
13 ~~Rules, from seeking the help of qualified staff or experts or from consulting other~~  
14 ~~judges who may be helpful regarding the performance of that function.~~

### 15 16 Commentary on Rule 23

17  
18 Rule 23 was adapted from the Illustrative Rules.

19  
20 The Act applies a rule of confidentiality to "papers, documents, and records of proceedings  
21 related to investigations conducted under this chapter" and states that they may not be disclosed  
22 "by any person in any proceeding," with enumerated exceptions. 28 U.S.C. § 360(a). Three  
23 questions arise: Who is bound by the confidentiality rule, what proceedings are subject to the  
24 rule, and who is within the circle of people who may have access to information without  
25 breaching the rule?

26  
27 With regard to the first question, Rule 23(a) provides that judges, employees of the judicial  
28 branch, and those persons involved in recording proceedings and preparing transcripts are obliged  
29 to respect the confidentiality requirement. This of course includes subject judges who do not  
30 consent to identification under Rule 23(i).

31  
32 With regard to the second question, Rule 23(a) applies the rule of confidentiality broadly  
33 to consideration of a complaint at any stage.

34  
35 With regard to the third question, there is no barrier of confidentiality among a chief judge,  
36 judicial council, the Judicial Conference, and the Judicial Conference Committee on Judicial  
37 Conduct and Disability. Each may have access to any of the confidential records for use in their  
38 consideration of a referred matter, a petition for review, or monitoring the administration of the  
39 Act. A district court may have similar access if the judicial council orders the district court to  
40 initiate proceedings to remove a magistrate judge from office, and Rule 23(e) so provides.

41  
42 In extraordinary circumstances, a chief judge may disclose the existence of a proceeding  
43 under these Rules. The disclosure of such information in high-visibility or controversial cases is  
44 to reassure the public that the federal judiciary is capable of redressing judicial misconduct or  
45 disability. Moreover, the confidentiality requirement does not prevent the chief judge from  
46 "communicat[ing] orally or in writing with . . . [persons] who may have knowledge of the  
47 matter," as part of a limited inquiry conducted by the chief judge under Rule 11(b).

1 Rule 23 recognizes that there must be some exceptions to the Act's confidentiality  
2 requirement. For example, the Act requires that certain orders and the reasons for them must be  
3 made public. 28 U.S.C. § 360(b). Rule 23(c) makes it explicit that memoranda supporting chief  
4 judge and council orders, as well as dissenting opinions and separate statements, may contain  
5 references to information that would otherwise be confidential and that such information may be  
6 made public. However, subsection (c) is subject to Rule 24(a) which provides the general rule  
7 regarding the public availability of decisions. For example, the name of a subject judge cannot be  
8 made public in a decision if disclosure of the name is prohibited by that Rule.  
9

10 The Act makes clear that there is a barrier of confidentiality between the judicial branch  
11 and the legislative. It provides that material may be disclosed to Congress only if it is believed  
12 necessary to an impeachment investigation or trial of a judge. 28 U.S.C. § 360(a)(2).  
13 Accordingly, Section 355(b) of the Act requires the Judicial Conference to transmit the record of  
14 the proceeding to the House of Representatives if the Conference believes that impeachment of a  
15 subject judge may be appropriate. Rule 23(f) implements this requirement.  
16

17 The Act provides that confidential materials may be disclosed if authorized in writing by  
18 the subject judge and by the chief judge. 28 U.S.C. § 360(a)(3). Rule 23(g) implements this  
19 requirement. Once the subject judge has consented to the disclosure of confidential materials  
20 related to a complaint, the chief judge ordinarily will refuse consent only to the extent necessary to  
21 protect the confidentiality interests of the complainant or of witnesses who have testified in  
22 investigatory proceedings or who have provided information in response to a limited inquiry  
23 undertaken pursuant to Rule 11. It will generally be necessary, therefore, for the chief judge to  
24 require that the identities of the complainant or of such witnesses, as well as any identifying  
25 information, be shielded in any materials disclosed, except insofar as the chief judge has secured  
26 the consent of the complainant or of a particular witness to disclosure, or there is a demonstrated  
27 need for disclosure of the information that, in the judgment of the chief judge, outweighs the  
28 confidentiality interest of the complainant or of a particular witness (as may be the case where the  
29 complainant is delusional or where the complainant or a particular witness has already  
30 demonstrated a lack of concern about maintaining the confidentiality of the proceedings).  
31

32 Rule 23(h) permits disclosure of additional information in circumstances not enumerated.  
33 For example, disclosure may be appropriate to permit a prosecution for perjury based on  
34 testimony given before a special committee. Another example might involve evidence of criminal  
35 conduct by a judge discovered by a special committee.  
36

37 Subsection (h) also permits the authorization of disclosure of information about the  
38 consideration of a complaint, including the papers, documents, and transcripts relating to the  
39 investigation, to judicial researchers engaged in the study or evaluation of experience under the  
40 Act and related modes of judicial discipline. The Rule envisions disclosure of information from  
41 the official record of complaint proceedings to a limited category of persons for appropriately  
42 authorized research purposes only, and with appropriate safeguards to protect individual identities  
43 in any published research results that ensue. In authorizing disclosure, the judicial council may  
44 refuse to release particular materials when such release would be contrary to the interests of  
45 justice, or that constitute purely internal communications. The Rule does not envision disclosure  
46 of purely internal communications between judges and their colleagues and staff.  
47

48 Under Rule 23(j), ~~chief judges and judicial councils~~ **any of the specified judges or entities**  
49 **performing a function authorized under these Rules** may seek **expert or** staff assistance or **may**  
50 **consult with other judges who may be helpful in the process of complaint disposition regarding**  
51 **performance of that function**; the confidentiality requirement does not preclude this. The chief

1 judge, for example, may properly seek the advice and assistance of another judge who the chief  
2 judge deems to be in the best position to communicate with the subject judge in an attempt to  
3 bring about corrective action. As another example, a new chief judge may wish to confer with a  
4 predecessor to learn how similar complaints have been handled. In consulting with other judges,  
5 of course, the chief judge should disclose information regarding the complaint only to the extent  
6 the chief judge deems necessary under the circumstances.  
7

## 8 **24. Public Availability of Decisions**

9 **(a) General Rule; Specific Cases. ~~When final action has been taken on a complaint and~~**  
10 **~~it is no longer subject to review, all orders entered by the chief judge and judicial~~**  
11 **~~council, including any supporting memoranda and any dissenting opinions or~~**  
12 **~~separate statements by members of the judicial council, must be made public, with~~**  
13 **~~the following exceptions~~ **When final action has been taken on a complaint and it is no****  
14 ****longer subject to review of right, all chief-judge and judicial-council orders,****  
15 ****including orders vacated or modified, but excluding any orders under Rule 5 or****  
16 ****11(f), must be made public as originally issued, together with any supporting****  
17 ****memoranda, dissenting opinions, and council members' separate statements, with the****  
18 ****following exceptions:****

- 19 **(1) if the complaint is finally dismissed under Rule 11(c) without the appointment**  
20 **of a special committee, or if it is concluded under Rule 11(d) because of**  
21 **voluntary corrective action, the publicly available materials must not disclose**  
22 **the name of the subject judge without his or her consent.**
- 23 **(2) if the complaint is concluded because of intervening events, or dismissed at**  
24 **any time after a special committee is appointed, the judicial council must**  
25 **determine whether the name of the subject judge should be disclosed.**
- 26 **(3) if the complaint is finally disposed of by a privately communicated censure or**  
27 **reprimand, the publicly available materials must not disclose either the name**  
28 **of the subject judge or the text of the reprimand.**
- 29 **(4) if the complaint is finally disposed of under Rule 20(b)(1)(D) by any action**  
30 **other than private censure or reprimand, the text of the dispositive order**  
31 **must be included in the materials made public, and the name of the subject**  
32 **judge must be disclosed.**
- 33 **(5) the name of the complainant must not be disclosed in materials made public**  
34 **under this Rule unless the chief judge orders disclosure.**

35 **(b) Manner of Making Public. The orders described in (a) must be made public by**  
36 **placing them in a publicly accessible file in the office of the circuit clerk ~~or~~ **and** by**  
37 **placing the orders on the court's public website. If the orders appear to have**  
38 **precedential value, the chief judge may cause them to be published. In addition, the**  
39 **Judicial Conference Committee on Judicial Conduct and Disability will make**  
40 **available on the Federal Judiciary's website, [www.uscourts.gov](http://www.uscourts.gov), selected illustrative**  
41 **orders described in paragraph (a), appropriately redacted, to provide additional**  
42 **information to the public on how complaints are addressed under the Act.**

43 **(c) Orders of Judicial Conference Committee. Orders of this Committee constituting**  
44 **final action in a complaint proceeding arising from a particular circuit will be made**  
45 **available to the public in the office of the clerk of the relevant court of appeals. The**  
46 **Committee will also make such orders available on the Federal Judiciary's website,**  
47 **[www.uscourts.gov](http://www.uscourts.gov). When authorized by the Committee, other orders related to**  
48 **complaint proceedings will similarly be made available.**

49 **(d) Complaints Referred to the Judicial Conference of the United States. If a complaint**  
50 **is referred to the Judicial Conference under Rule 20(b)(1)(C) or 20(b)(2), materials**

1 **relating to the complaint will be made public only if ordered by the Judicial**  
2 **Conference.**

3  
4 **Commentary on Rule 24**

5  
6 Rule 24 is adapted from the Illustrative Rules and the recommendations of the Breyer  
7 Committee.

8  
9 The Act requires the circuits to make available only written orders of a judicial council or  
10 the Judicial Conference imposing some form of sanction. 28 U.S.C. § 360(b). The Judicial  
11 Conference, however, has long recognized the desirability of public availability of a broader range  
12 of orders and other materials. In 1994, the Judicial Conference "urge[d] all circuits and courts  
13 covered by the Act to submit to the West Publishing Company, for publication in Federal  
14 Reporter 3d, and to Lexis all orders issued pursuant to [the Act] that are deemed by the issuing  
15 circuit or court to have significant precedential value to other circuits and courts covered by the  
16 Act." Report of the Proceedings of the Judicial Conference of the United States, Mar. 1994, at  
17 28. Following this recommendation, the 2000 revision of the Illustrative Rules contained a public  
18 availability provision very similar to Rule 24. In 2002, the Judicial Conference again voted to  
19 encourage the circuits "to submit non-routine public orders disposing of complaints of judicial  
20 misconduct or disability for publication by on-line and print services." Report of the Proceedings  
21 of the Judicial Conference of the United States, Sept. 2002, at 58. The Breyer Committee Report  
22 further emphasized that "[p]osting such orders on the judicial branch's public website would not  
23 only benefit judges directly, it would also encourage scholarly commentary and analysis of the  
24 orders." Breyer Committee Report, 239 F.R.D. at 216. With these considerations in mind, Rule  
25 24 provides for public availability of a wide range of materials.

26  
27 Rule 24 provides for public availability of orders of the chief judge, the judicial council,  
28 and the Judicial Conference Committee on Judicial Conduct and Disability and the texts of any  
29 memoranda supporting their orders, together with any dissenting opinions or separate statements  
30 by members of the judicial council. However, these orders and memoranda are to be made public  
31 only when final action on the complaint has been taken and any right of review has been  
32 exhausted. The provision that decisions will be made public only after final action has been taken  
33 is designed in part to avoid public disclosure of the existence of pending proceedings. Whether  
34 the name of the subject judge is disclosed will then depend on the nature of the final action. If the  
35 final action is an order predicated on a finding of misconduct or disability (other than a privately  
36 communicated censure or reprimand) the name of the judge must be made public. If the final  
37 action is dismissal of the complaint, the name of the subject judge must not be disclosed. Rule  
38 24(a)(1) provides that where a proceeding is concluded under Rule 11(d) by the chief judge on the  
39 basis of voluntary corrective action, the name of the subject judge must not be disclosed.  
40 Shielding the name of the subject judge in this circumstance should encourage informal  
41 disposition.

42  
43 If a complaint is dismissed as moot, or because intervening events have made action on the  
44 complaint unnecessary, after appointment of a special committee, Rule 24(a)(2) allows the  
45 judicial council to determine whether the subject judge will be identified. In such a case, no final  
46 decision has been rendered on the merits, but it may be in the public interest -- particularly if a  
47 judicial officer resigns in the course of an investigation -- to make the identity of the judge known.  
48

49 Once a special committee has been appointed, and a proceeding is concluded by the full  
50 council on the basis of a remedial order of the council, Rule 24(a)(4) provides for disclosure of the  
51 name of the subject judge.

1 Finally, Rule 24(a)(5) provides that the identity of the complainant will be disclosed only  
2 if the chief judge so orders. Identifying the complainant when the subject judge is not identified  
3 would increase the likelihood that the identity of the subject judge would become publicly known,  
4 thus circumventing the policy of nondisclosure. It may not always be practicable to shield the  
5 complainant's identity while making public disclosure of the judicial council's order and  
6 supporting memoranda; in some circumstances, moreover, the complainant may consent to public  
7 identification.

8  
9 **Rule 24(b) makes clear that circuits must post on their external websites all orders**  
10 **required to be made public under Rule 24(a).**  
11

## 12 **25. Disqualification**

- 13 (a) **General Rule.** Any judge is disqualified from participating in any proceeding under  
14 these Rules if the judge, in his or her discretion, concludes that circumstances  
15 warrant disqualification. If the complaint is filed by a judge, that judge is  
16 disqualified from participating in any consideration of the complaint except to the  
17 extent that these Rules provide for a complainant's participation. A chief judge who  
18 has identified a complaint under Rule 5 is not automatically disqualified from  
19 considering the complaint.
- 20 (b) **Subject Judge.** A subject judge is disqualified from considering the complaint except  
21 to the extent that these Rules provide for participation by a subject judge.
- 22 (c) **Chief Judge Not Disqualified from Considering a Petition for Review of a Chief**  
23 **Judge's Order.** If a petition for review of a chief judge's order entered under Rule  
24 11(c), (d), or (e) is filed with the judicial council in accordance with Rule 18, the chief  
25 judge is not disqualified from participating in the council's consideration of the  
26 petition.
- 27 (d) **Member of Special Committee Not Disqualified.** A member of the judicial council  
28 who serves on a special committee, including the chief judge, is not disqualified from  
29 participating in council consideration of the committee's report.
- 30 (e) **Subject Judge's Disqualification After Appointment of a Special Committee.** Upon  
31 appointment of a special committee, the subject judge is automatically disqualified  
32 from participating in any proceeding arising under the Act or these Rules as a  
33 member of any special committee, the judicial council of the circuit, the Judicial  
34 Conference of the United States, and the Judicial Conference Committee on Judicial  
35 Conduct and Disability **the identification or consideration of any complaint, related**  
36 **or unrelated to the pending matter, under the Act or these Rules.** The  
37 disqualification continues until all proceedings on the complaint against the subject  
38 judge are finally terminated with no further right of review.
- 39 (f) **Substitute for Disqualified Chief Judge.** If the chief judge is disqualified from  
40 participating in consideration of the complaint, ~~the duties and responsibilities of the~~  
41 ~~chief judge under these Rules~~ **performing duties that the Act and these Rules assign**  
42 **to a chief judge, those duties** must be assigned to the ~~most-senior active circuit judge~~  
43 **circuit judge in regular active service next senior in date of commission who is not**  
44 **disqualified.** If all circuit judges in regular active service are disqualified, the  
45 judicial council may determine whether to request a transfer under Rule 26, or, in  
46 the interest of sound judicial administration, to permit the chief judge to dispose of  
47 the complaint on the merits. Members of the judicial council who are named in the  
48 complaint may participate in this determination if necessary to obtain a quorum of  
49 the judicial council.  
50



- 1 (g) **Judicial-Council Action When Multiple Judges Are Disqualified. Notwithstanding**  
2 **any other provision in these Rules to the contrary,**  
3 (1) **a member of the judicial council who is a subject judge may participate in its**  
4 **disposition if:**  
5 (A) **participation by one or more subject judges is necessary to obtain a**  
6 **quorum of the judicial council;**  
7 (B) **the judicial council finds that the lack of a quorum is due to the**  
8 **naming of one or more judges in the complaint for the purpose of**  
9 **disqualifying that judge or judges, or to the naming of one or more**  
10 **judges based on their participation in a decision excluded from the**  
11 **definition of misconduct under Rule 3(h)(3); and**  
12 (C) **the judicial council votes that it is necessary, appropriate, and in the**  
13 **interest of sound judicial administration that one or more subject**  
14 **judges be eligible to act.**  
15 (2) **otherwise disqualified members may participate in votes taken under**  
16 **(g)(1)(B) and (g)(1)(C).**  
17 (h) **Disqualification of Members of the Judicial Conference Committee. No member of**  
18 **the Judicial Conference Committee on Judicial Conduct and Disability is disqualified**  
19 **from participating in any proceeding under the Act or these Rules because of**  
20 **consultations with a chief judge, a member of a special committee, or a member of a**  
21 **judicial council about the interpretation or application of the Act or these Rules,**  
22 **unless the member believes that the consultation would prevent fair-minded**  
23 **participation.**  
24

25 **Commentary on Rule 25**

26 Rule 25 is adapted from the Illustrative Rules.

27  
28  
29 Subsection (a) provides the general rule for disqualification. Of course, a judge is not  
30 disqualified simply because the subject judge is on the same court. However, this subsection  
31 recognizes that there may be cases in which an appearance of bias or prejudice is created by  
32 circumstances other than an association with the subject judge as a colleague. For example, a  
33 judge may have a familial relationship with a complainant or subject judge. When such  
34 circumstances exist, a judge may, in his or her discretion, conclude that disqualification is  
35 warranted.  
36

37 Subsection (e) makes it clear that the disqualification of the subject judge relates only to  
38 the subject judge's participation in any proceeding arising under the Act or these Rules ~~as a~~  
39 ~~member of a special committee, judicial council, Judicial Conference, or the Judicial Conference~~  
40 ~~Committee. For example, the subject judge cannot initiate complaints by identification, conduct~~  
41 ~~limited inquiries, or choose between dismissal and special-committee investigation as the~~  
42 ~~threshold disposition of a complaint. Likewise, the subject judge cannot participate in any~~  
43 ~~proceeding arising under the Act or these Rules as a member of any special committee, the~~  
44 ~~judicial council of the circuit, the Judicial Conference of the United States, or the Judicial~~  
45 ~~Conference Committee on Judicial Conduct and Disability.~~ The Illustrative Rule, based on  
46 Section 359(a) of the Act, is ambiguous and could be read to disqualify a subject judge from  
47 service of any kind on each of the bodies mentioned. This is undoubtedly not the intent of the  
48 Act; such a disqualification would be anomalous in light of the Act's allowing a subject judge to  
49 continue to decide cases and to continue to exercise the powers of chief circuit or district judge. It  
50 would also create a substantial deterrence to the appointment of special committees, particularly

1 where a special committee is needed solely because the chief judge may not decide matters of  
2 credibility in his or her review under Rule 11.  
3

4 While a subject judge is barred by Rule 25(b) from participating in the disposition of the  
5 complaint in which he or she is named, Rule 25(e) recognizes that participation in proceedings  
6 arising under the Act or these Rules by a judge who is the subject of a special committee  
7 investigation may lead to an appearance of self-interest in creating substantive and procedural  
8 precedents governing such proceedings; Rule 25(e) bars such participation.  
9

10 Under the Act, a complaint against the chief judge is to be handled by "that circuit judge in  
11 regular active service next senior in date of commission." 28 U.S.C. § 351(c). Rule 25(f)  
12 provides that seniority among judges other than the chief judge is to be determined by date of  
13 commission, with the result that complaints against the chief judge may be routed to a former  
14 chief judge or other judge who was appointed earlier than the chief judge. The Rules do not  
15 purport to prescribe who is to preside over meetings of the judicial council. Consequently, where  
16 the presiding member of the judicial council is disqualified from participating under these Rules,  
17 the order of precedence prescribed by Rule 25(f) for performing "the duties and responsibilities of  
18 the chief circuit judge under these Rules" does not apply to determine the acting presiding  
19 member of the judicial council. That is a matter left to the internal rules or operating practices of  
20 each judicial council. In most cases the most senior active circuit judge who is a member of the  
21 judicial council and who is not disqualified will preside.  
22

23 Sometimes a single complaint is filed against a large group of judges. If the normal  
24 disqualification rules are observed in such a case, no court of appeals judge can serve as acting  
25 chief judge of the circuit, and the judicial council will be without appellate members. Where the  
26 complaint is against all circuit and district judges, under normal rules no member of the judicial  
27 council can perform the duties assigned to the council under the statute.  
28

29 A similar problem is created by successive complaints arising out of the same underlying  
30 grievance. For example, a complainant files a complaint against a district judge based on alleged  
31 misconduct, and the complaint is dismissed by the chief judge under the statute. The complainant  
32 may then file a complaint against the chief judge for dismissing the first complaint, and when that  
33 complaint is dismissed by the next senior judge, still a third complaint may be filed. The threat is  
34 that the complainant will bump down the seniority ladder until, once again, there is no member of  
35 the court of appeals who can serve as acting chief judge for the purpose of the next complaint.  
36 Similarly, complaints involving the merits of litigation may involve a series of decisions in which  
37 many judges participated or in which a rehearing en banc was denied by the court of appeals, and  
38 the complaint may name a majority of the judicial council as subject judges.  
39

40 In recognition that these multiple-judge complaints are virtually always meritless, the  
41 judicial council is given discretion to determine: (1) whether it is necessary, appropriate, and in  
42 the interest of sound judicial administration to permit the chief judge to dispose of a complaint  
43 where it would otherwise be impossible for any active circuit judge in the circuit to act, and  
44 (2) whether it is necessary, appropriate, and in the interest of sound judicial administration, after  
45 appropriate findings as to need and justification are made, to permit subject judges of the judicial  
46 council to participate in the disposition of a petition for review where it would otherwise be  
47 impossible to obtain a quorum.  
48

49 Applying a rule of necessity in these situations is consistent with the appearance of justice.  
50 See, e.g., In re Complaint of Doe, 2 F.3d 308 (8th Cir. Jud. Council 1993) (invoking the rule of  
51 necessity); In re Complaint of Judicial Misconduct, No. 91-80464 (9th Cir. Jud. Council 1992)



1 (same). There is no unfairness in permitting the chief judge to dispose of a patently insubstantial  
2 complaint that names all active circuit judges in the circuit.  
3

4 Similarly, there is no unfairness in permitting subject judges, in these circumstances, to  
5 participate in the review of a chief judge's dismissal of an insubstantial complaint. The remaining  
6 option is to assign the matter to another body. Among other alternatives, the council may request  
7 a transfer of the petition under Rule 26. Given the administrative inconvenience and delay  
8 involved in these alternatives, it is desirable to request a transfer only if the judicial council  
9 determines that the petition is substantial enough to warrant such action.  
10

11 In the unlikely event that a quorum of the judicial council cannot be obtained to consider  
12 the report of a special committee, it would normally be necessary to request a transfer under Rule  
13 26.  
14

15 Rule 25(h) recognizes that the jurisdictional statement of the Judicial Conference  
16 Committee contemplates consultation between members of the Committee and judicial  
17 participants in proceedings under the Act and these Rules. Such consultation should not  
18 automatically preclude participation by a member in that proceeding.  
19

## 20 **26. Transfer to Another Judicial Council**

21 **In exceptional circumstances, a chief judge or a judicial council may ask the Chief Justice to**  
22 **transfer a proceeding based on a complaint identified under Rule 5 or filed under Rule 6 to**  
23 **the judicial council of another circuit. The request for a transfer may be made at any stage**  
24 **of the proceeding before a reference to the Judicial Conference under Rule 20(b)(1)(C) or**  
25 **20(b)(2) or a petition for review is filed under Rule 22. Upon receiving such a request, the**  
26 **Chief Justice may refuse the request or select the transferee judicial council, which may**  
27 **then exercise the powers of a judicial council under these Rules.**  
28

### 29 **Commentary on Rule 26**

30  
31 Rule 26 is new; it implements the Breyer Committee's recommended use of transfers.  
32 Breyer Committee Report, 239 F.R.D. at 214-15.  
33

34 Rule 26 authorizes the transfer of a complaint proceeding to another judicial council  
35 selected by the Chief Justice. Such transfers may be appropriate, for example, in the case of a  
36 serious complaint where there are multiple disqualifications among the original council, where the  
37 issues are highly visible and a local disposition may weaken public confidence in the process,  
38 where internal tensions arising in the council as a result of the complaint render disposition by a  
39 less involved council appropriate, or where a complaint calls into question policies or governance  
40 of the home court of appeals. The power to effect a transfer is lodged in the Chief Justice to avoid  
41 disputes in a council over where to transfer a sensitive matter and to ensure that the transferee  
42 council accepts the matter.  
43

44 Upon receipt of a transferred proceeding, the transferee council shall determine the proper  
45 stage at which to begin consideration of the complaint -- for example, reference to the transferee  
46 chief judge, appointment of a special committee, etc.  
47

## 48 **27. Withdrawal of Complaints and Petitions for Review**

49 **(a) Complaint Pending Before Chief Judge. With the chief judge's consent, a**  
50 **complainant may withdraw a complaint that is before the chief judge for a decision**

1 under Rule 11. The withdrawal of a complaint will not prevent a chief judge from  
2 identifying or having to identify a complaint under Rule 5 based on the withdrawn  
3 complaint.

- 4 (b) **Complaint Pending before Special Committee or Judicial Council.** After a complaint  
5 has been referred to a special committee for investigation and before the committee  
6 files its report, the complainant may withdraw the complaint only with the consent of  
7 both the subject judge and either the special committee or the judicial council.  
8 (c) **Petition for Review.** A petition for review addressed to a judicial council under Rule  
9 18, or the Judicial Conference Committee on Judicial Conduct and Disability under  
10 Rule 22 may be withdrawn if no action on the petition has been taken.

11  
12 **Commentary on Rule 27**  
13

14 Rule 27 is adapted from the Illustrative Rules and treats the complaint proceeding, once  
15 begun, as a matter of public business rather than as the property of the complainant. Accordingly,  
16 the chief judge or the judicial council remains responsible for addressing any complaint under the  
17 Act, even a complaint that has been formally withdrawn by the complainant.  
18

19 Under subsection 27(a), a complaint pending before the chief judge may be withdrawn if  
20 the chief judge consents. Where the complaint clearly lacked merit, the chief judge may  
21 accordingly be saved the burden of preparing a formal order and supporting memorandum.  
22 However, the chief judge may, or be obligated under Rule 5, to identify a complaint based on  
23 allegations in a withdrawn complaint.  
24

25 If the chief judge appoints a special committee, Rule 27(b) provides that the complaint  
26 may be withdrawn only with the consent of both the body before which it is pending (the special  
27 committee or the judicial council) and the subject judge. Once a complaint has reached the stage  
28 of appointment of a special committee, a resolution of the issues may be necessary to preserve  
29 public confidence. Moreover, the subject judge is given the right to insist that the matter be  
30 resolved on the merits, thereby eliminating any ambiguity that might remain if the proceeding  
31 were terminated by withdrawal of the complaint.  
32

33 With regard to all petitions for review, Rule 27(c) grants the petitioner unrestricted  
34 authority to withdraw the petition. It is thought that the public's interest in the proceeding is  
35 adequately protected, because there will necessarily have been a decision by the chief judge and  
36 often by the judicial council as well in such a case.  
37

38 **28. Availability of Rules and Forms**

39 **These Rules and copies of the complaint form as provided in Rule 6(a) must be available**  
40 **without charge in the office of the clerk of each court of appeals, district court, bankruptcy**  
41 **court, or other federal court whose judges are subject to the Act. Each court must also**  
42 **make these Rules and the complaint form available on the court's website, or provide an**  
43 **Internet link to the Rules and complaint form that are available on the appropriate court of**  
44 **appeals' website. Each court must also make these Rules, the complaint form, and**  
45 **complaint-filing instructions available on the court's website, or provide an Internet link to**  
46 **these items on the appropriate court of appeals website or on [www.uscourts.gov](http://www.uscourts.gov).**  
47

48 **29. Effective Date**

49 **These Rules will become effective 30 days after promulgation by the Judicial Conference of**  
50 **the United States.**

# **A P P E N D I X**

## **COMPLAINT FORM**

A two-page complaint form follows.

**COMPLAINT OF JUDICIAL MISCONDUCT OR DISABILITY**

To begin the complaint process, complete this form and prepare the brief statement of facts described in item 54 (below). The RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS, adopted by the Judicial Conference of the United States, contain information on what to include in a complaint (Rule 6), where to file a complaint (Rule 7), and other important matters. The rules are available in federal court clerks' offices, on individual federal courts' Web sites, and on [www.uscourts.gov](http://www.uscourts.gov).

Your complaint (this form and the statement of facts) should be typewritten and must be legible. For the number of copies to file, consult the local rules or clerk's office of the court in which your complaint is required to be filed. Enclose each copy of the complaint in an envelope marked "COMPLAINT OF MISCONDUCT" or "COMPLAINT OF DISABILITY" and submit it to the appropriate clerk of court. **Do not put the name of any judge on the envelope.**

1. Name of Complainant: \_\_\_\_\_  
Contact Address: \_\_\_\_\_  
\_\_\_\_\_  
Daytime telephone: ( \_\_\_\_ ) \_\_\_\_\_

2. Name(s) of Judge(s): \_\_\_\_\_  
Court: \_\_\_\_\_

3. Does this complaint concern the behavior of the judge(s) in a particular lawsuit or lawsuits?

Yes  No

If "yes," give the following information about each lawsuit:

Court: \_\_\_\_\_

Case Number: \_\_\_\_\_

Docket number of any appeal to the \_\_\_\_ Circuit: \_\_\_\_\_

Are (were) you a party or lawyer in the lawsuit?

Party  Lawyer  Neither

If you are (were) a party and have (had) a lawyer, give the lawyer's name, address, and telephone number:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

~~4. Have you filed any lawsuits against the judge?~~

~~\_\_\_\_\_ [ ] Yes \_\_\_\_\_ [ ] No~~

~~\_\_\_\_\_ If "yes," give the following information about each such lawsuit:~~

~~\_\_\_\_\_ Court: \_\_\_\_\_~~

~~\_\_\_\_\_ Case Number: \_\_\_\_\_~~

~~\_\_\_\_\_ Present status of lawsuit: \_\_\_\_\_~~

~~\_\_\_\_\_ Name, address, and telephone number of your lawyer for the lawsuit against the judge:~~

~~\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_~~

~~\_\_\_\_\_ Court to which any appeal has been taken in the lawsuit against the judge:~~

~~\_\_\_\_\_  
\_\_\_\_\_~~

~~\_\_\_\_\_ Docket number of the appeal: \_\_\_\_\_~~

~~\_\_\_\_\_ Present status of the appeal: \_\_\_\_\_~~

**54. Brief Statement of Facts.** Attach a brief statement of the specific facts on which the claim of judicial misconduct or disability is based. Include what happened, when and where it happened, and any information that would help an investigator check the facts. If the complaint alleges judicial disability, also include any additional facts that form the basis of that allegation.

**65. Declaration and signature:**

I declare under penalty of perjury that the statements made in this complaint are true and correct to the best of my knowledge.

(Signature) \_\_\_\_\_

(Date) \_\_\_\_\_