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**(revised & corrected version)**

Office of the General Counsel  
Administrative Office of the U.S. Courts  
[JudicialConductRules@ao.uscourts.gov](mailto:JudicialConductRules@ao.uscourts.gov)

Re: Request to testify at 27sep7 hearing on Draft Rules & indication of testimony

Dear Mr. General Counsel,

Pursuant to the request, posted on the website of the Administrative Office, for public comment on the Draft Rules Governing Judicial Conduct and Disability Proceedings released by the Committee on Judicial Conduct and Disability of the Judicial Conference of the United States, I hereby respectfully request to appear and testify at the hearing on those Rules that is planned to commenced at 10:00 a.m. on September 27, 2007, in the U.S. Courthouse at 225 Cadman Plaza East, Brooklyn, New York.

To satisfy the requirement that together with the request to appear at the hearing a requester give a written indication of the testimony that he intends to provide on that occasion, I submit hereunder a draft of some of the comments that I, as an attorney at [Judicial-Discipline-Reform.org](http://Judicial-Discipline-Reform.org), intend to present at the hearing and in writing to the Committee.

I kindly request that you let me know how much time will be allocated to me to present at the hearing

Note: The letter above and the comments below are contained in a more readable form in the PDF attached hereto.

## **I. Comments on the Rules (see samples below)**

## **II. Whether the Rules' underlying basis, the Report of the Breyer Commission, provided any analysis not already available in, and not in contradiction with, the statistics since 1996 of the Administrative Office of the U.S. Courts on complaints filed under the Judicial Conduct and Disability Act of 1980**

- A. The system of handling judicial conduct and disability complaints is fundamentally flawed due to judges' bias and dominating interest in self-preservation because it is based on the chief circuit judges reviewing complaints against their peers and friends
- B. The conflict of interests inherent in a chief circuit judge reviewing a complaint against the circuit court's or even his own appointee, that is, a bankruptcy judge appointed under 28 U.S.C. §152(a)(1) or (3), respectively

**III. Whether the Rules or the Breyer Report deal with the fundamental institutional problems that have affected the application of the Judicial Conduct and Disability Act since its enactment in 1980**

- A. The fundamental problem of lack of checks and balances to control the conduct of federal judges and the dynamics of interdependent survivability of members of close and powerful groups, two factors that have prevented the removal of any federal judges from the bench except seven judges in the 218 years since the adoption of the U.S. Constitution in 1789, by the count of the Federal Judicial Center ([www.fjc.gov/history/home.nsf](http://www.fjc.gov/history/home.nsf)>Judges of the United States>Impeachments of Judges)

**IV. Whether the Rules have the potential to render effective the Federal Judiciary's current mechanism of self-discipline by ensuring that the Judiciary and its members are accountable for their administration of justice and perform their duty to safeguard the integrity of judicial process**

- A. Evidence that the Supreme Court has tolerated for years the systematic dismissal of misconduct complaints, thereby signaling that neither the Act nor the Rules were to be taken seriously
- B. The Judicial Conference has known that the Act and the current rules for its implementation are ineffective given that in the 27 years of the Act it has issued only 15 opinions under it, and that for years in a row the judicial councils have not allowed a single complaint to make it even to its Committee for the Review of Judicial Council Conduct and Disability Decisions
- C. How self-discipline through peer review is ineffective to prevent that judges appointed for life and as a matter of fact unimpeachable elevate themselves above the law, where they enjoy the privilege of having justice applied to them in private given that complaints against them are treated confidentially and by peer judges, who lack impartiality due to their reputational interest, or even self-preservation interest, in their complained-about peers being found above reproach
- D. The need for an independent board of citizens neither appointed by nor related to the judiciary, otherwise for a panel of three retired judges from circuits other than that of the complained-about judge, to enforce in public proceedings rules of judicial discipline and accountability aimed at providing persons injured by complained-about judges an effective remedy, that is, compensation, and at holding judges to the standard of "Equal Justice Under Law"

## **I. Comments on the Rules (Sample)**

### **ARTICLE I. GENERAL PROVISIONS**

#### **Rule 1. Scope, p2, L3, and purpose**

1. The Rules<sup>1</sup> are designed by federal judges to protect their own position above both the law and the other two branches of the federal government, that is, the Executive and the Legislative. They are not designed to enable the attainment of the objective reasonably pursued by a person who bothers to write a complaint and thereby exposes himself to retaliation from the complained-against individual, namely, to cause that individual, here a judge, to cease and desist his complaint-causing conduct and to require such judge or his employer, the Judicial Branch, to compensate the complainant for the harm that he caused the complainant.
2. This is due to the Act<sup>2</sup>'s "largely based...administrative perspective", p11, L40, cf. p26, L37-38. This means that the Act is conceived as a set of housekeeping instructions for the internal management by the Federal Judiciary of its personnel, the judges. Neither the Act nor the Rules attempt to provide a system of checks and balances on the exercise by judges of judicial power. Hence, judges are allowed to exercise their considerable power over property, liberty, and even life not only "during Good Behaviour", U.S. Const., Art. III, Sec. 1, but as a matter of fact also 'during Bad Behaviour' for the rest of their lives.
3. The fact is that in the 217 years since the adoption of the U.S. Constitution in 1789, only seven judges have been removed from the bench, according to the Federal Judicial Center ([www.fjc.gov/history/home.nsf>Judges of the United States>Impeachments of Judges](http://www.fjc.gov/history/home.nsf>Judges of the United States>Impeachments of Judges)). So, they can behave badly while enjoying the assurance that they will not pay any price therefore because their salary cannot be diminished while they hold office, U.S. Const., Art. III, Sec. 1, or even hold on to office after retirement to protect their sinecure. Hence, power exercised for life without any checks and balances becomes absolute power. Such absolute power has a known effect on those who exercise it: It corrupts them absolutely.<sup>3</sup> Such corruption is not limited to the taking of bribes or rendering decisions that protect or advance their economic interests, such as their stockholdings, but also includes the complicit toleration of the wrongdoing that they see other peers practice and that they aid and abet through their silence in exchange for the emotional and social benefit of their friendship and continued camaraderie.
4. Neither the Act nor the Rules recognize the right of complainants to obtain an effective

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<sup>1</sup> Drafts Rules Governing Judicial Conduct and Disability Proceedings, released for public comment by the Committee on Judicial Conduct and Disability of the Judicial Conference of the United States; hereinafter the Rules.

<sup>2</sup> Judicial Conduct and Disability Act of 1980, 28 U.S.C. §351 et seq.; hereinafter the Act.

<sup>3</sup> "Power corrupts, and absolute power corrupts absolutely"; Lord Acton in his Letter to Bishop Mandell Creighton, April 3, 1887.

remedy, as the Judiciary, which is part of government, would have to do if it did not in fact hold itself, unlike the two ‘lesser’ branches of government, above the law, including the First Amendment, which provides “the right of the people peaceably to assemble, and petition the Government for a redress of grievances”. Rather, they allow the chief circuit judge to dismiss a complaint without more; if he does not do that, whatever he does is not aimed at providing redress to the complainant, but simply to do something that is “best able to influence a judge’s future behavior in constructive ways”, p11, L42. There is no attempt to remedy through compensation the harm that the complainant may have suffered at the hands of a judge who showed bias against him or disregarded the law, thereby causing him the loss of rights, property, or liberty and forcing him either to give up the prosecution of his case or to continue litigating in court at enormous additional material and emotional cost.

## **Rule 2. Effect and Construction, p3, L4**

5. A chief circuit judge can suspend the new Rules if he only “finds expressly that exceptional circumstances render the application of a Rule in a particular proceeding manifestly unjust or manifestly contrary to the purposes of 28 U.S.C. §§ 351-364 or these Rules”, p3, L11-13.
6. Rule 2 exhibits the same defect that the Breyer Committee<sup>4</sup> found regarding the evaluation of the original Rules, namely, a lack of “interpretive standards”, p22, L22-25. None of the competent entities for the implementation of the Act through the Rules<sup>5</sup> is required to provide a reasoned statement equivalent to conclusions of law under FRCivP 52(a) of what makes the application of the Rules “manifestly unjust or contrary to the purpose of the Act or the Rules”.
7. Note that when the Rule drafters wanted to require the chief circuit judge to state reasons for his conduct, they did so expressly: “The Act authorizes the chief circuit judge, by written order stating reasons, to identify a complaint and thereby dispense with the filing of a written complaint”, p9, L4-5.
8. Given the perfunctory decisions by which chief circuit judges systematically dismiss complaints, not to mention the mere forms used by a judicial council to deny review, there is every evidence to support the concern that under the Rules chief circuit judges will continue to dismiss complaints by finding at will and without stating their reasons that in the complaint at

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<sup>4</sup> The Judicial Conduct and Disability Act Study Committee, appointed in 2004 by the Late Chief Justice Rehnquist and chaired by Associate Justice Breyer. It presented a report, known as the “Breyer Report,” 239 F.R.D. 116 (Sept. 2006).

<sup>5</sup> These entities are the chief circuit judge, the special committee, the judicial council, the Judicial Conduct and Disability Act Committee, and the Judicial Conference.

hand the Rules are inapplicable due to “exceptional circumstances”.

9. Since a district judge cannot suspend the FRCivP just because he deems their application “manifestly unjust or contrary” to the purpose of the law or the FRCivP, why should the chief circuit judge be allowed to do so with respect to the application of the Rules to one of his peers or even to one of his bankruptcy appointees?
10. In any event, once the chief circuit judge finds the Rules inapplicable, what does he do?: dismiss the complaint for lack regulatory authority or just make up his own rules as he goes along to the detriment of the complainant, who filed her complaint in reliance on those Rules?
11. What the final sentence of Rule 2 does in effect is turn the Rules into suggestions that the chief circuit judge can disregard whenever pressure from his peers or a conflict of interests makes it expedient to do so.

## **ARTICLE II. INITIATION OF A COMPLAINT**

### **Rule 5. Identification of a Complaint, p8, L7**

12. “(2) A chief judge:...(B) need not identify a complaint if it is clear on the basis of the total mix of information available to the chief circuit judge that the review provided in Rule 11 will result in a dismissal under Rule 11(c), (d), or (e). However, a chief circuit judge may identify a complaint in such circumstances in order to assure the public that highly visible allegations have been investigated. In such a case, appointment of a special committee under Rule 11(f) may not be necessary”, p8L9, 24-30
13. In all but so many words, this Rule allows the chief circuit judge to mislead the public by pretending that he has identified a complaint against a judge and will investigate the information constituting an identifiable complaint, when in fact he has already decided that there is not going to be any such investigation and that the complaint is as good as dismissed but for the signing of the order to that effect.
14. What kind of trust in the integrity of the process did the drafters intend to build in judges, complainants, and the public when they authorized the handling of complaints through deceit? Would stockholders bring a cause of action for negligence, deceit, and mounting a cover up against an investment bank that announced, not just once, but rather as part of an express policy, that it had opened a file on a complaint that some of its officers had engaged in inside trading, falsifying profit figures, and operating illegal offshore accounts, when in fact it had not only not opened any such file, but also never intended to investigate the complaints at all? What would a jury find?

15. This Rule disregards the first and second Laws of Sloth, which precede those of Newton as well as the Magna Carta: first, a person shall not do any work that he can avoid doing; and second, whenever a person, particularly one on a fixed salary, is afforded an excuse not to take onerous action required to perform her duty, especially one that will increase her discomfort by affecting her interests adversely, she will invoke that excuse to minimize discomfort and maximize comfort, her duty notwithstanding. This Law is also known by its popular name, that is, take the easy way out and enjoy your piña colada.

## **Rule 6. Filing a Complaint, p9, L10**

20. “The name of the subject judge should not appear on the envelope”<sup>6</sup>, p.11, L1-2. This is an example of unequal justice, since a complaint against any member of the other two branches of government is not shrouded in such secrecy. The secrecy protecting the name of a peer only makes it easier for the chief circuit judge to dismiss the complaint at will without any review or examination whatsoever.
21. Such secrecy is misused when it is a means for the Judiciary to protect its reputation interest in appearing not to have rogue judges in its midst. Bad or rotten apples appear in every organization where human beings, with all their virtues and vices, are present. Actually, if “power corrupts, and absolute power corrupts absolutely”, then one would expect to find an above average number of cases of absolute corruption in an institution such as the Federal Judiciary, whose members wield power of over the property, liberty, and life of everybody else and do so for life so long as their peers pretend that theirs is “good Behaviour”.
22. Secrecy may be necessary to protect the complainant, for as the drafters recognize, complainants may fear retaliation by judges against people who make statements accusing them of misconduct, such as “an attorney who practices in federal court, and that [insists on remaining an] unnamed witness...unwilling to be identified or to come forward”, p17, L35-36. But such secrecy should be maintained at the option of the complainant, to the extent that it does not detract from the basic notion of fairness that ensures any person the right to confront his accusers.
23. However, the secrecy that the drafters require is not for the protection of the complainant, but rather for that of the Judiciary and its judges. This is shown by the fact that if the complainant does not agree to remain quiet about her complaint beyond the fact of filing it, she will be penalized by the special committee not letting her know what one could reasonably expect a complainant to be entitled to know if the filing of the complaint were conceived as an act of a victim of a judge’s misconduct seeking a remedy, namely, to know with what zeal,

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<sup>6</sup> “Subject judge” is the term of art for ‘complained about judge’, or as the Rules define it, “The term “subject judge” means any judge described in Rule 4 who is the subject of a complaint”, p4, L23-25.

competency, and completeness the judiciary investigated one of its own and to that end, receive as of right a copy of the report of the investigation conducted by the special committee.

24. Under Rule 16(e), by contrast, the possibility –not the certainty- of receiving such report is a carrot dangled in front of the complainant. She may be allowed to eat it depending on “the degree of the complainant’s cooperation in preserving the confidentiality of the proceedings, including the identity of the subject judge”, p26, L30-31. The drafters put it even blunter terms in their Commentary: “In exercising their discretion regarding the role of the complainant, the special committee and the judicial council should protect the confidentiality of the complaint process. As a consequence, Subsection (e) provides that a special committee may consider the degree to which a complainant has cooperated in preserving the confidentiality of the proceedings in determining what role beyond the minimum required by these Rules should be given to that complainant”, p27, L13-17.
25. This means that the drafters accord a higher value to keeping the identity of the subject judge secret than to obtaining the benefit that can result for the Judiciary as well as for the complainant from the latter publicizing her complaint, namely, to cause witnesses and other persons similarly injured by the subject judge come forward. Thereby the complainant can buttress her complaint and ensure that it is not dismissed out of hand by the chief circuit judge and that he not only appoints a special committee, but that the one appointed conducts its investigation as broadly and deeply as the real extent of the problem warrants, which redounds to the benefit of the Judiciary by enabling it to correct the problem...but this could entail finding the subject judge at fault and even having to reprimand her publicly, which impairs the Judiciary’s reputational interests and can threaten the chief circuit judge’s and his peers’ self-preservation interests...‘uhm, better the complainant keep quiet or she will be made to pay a price by not being allowed to learn about the handling of her complaint “beyond the minimum required by these Rules”, p27, L17. Secrecy trumps efficiency and fairness.
26. The Rules’ requirement of secrecy and its denial of any meaningful remedy to the complainant for the harm caused her by a subject judge (see comments on Rule 11(d), ¶52 et seq. below) show that the Rules treat the complainant as a mere informant whose only role is to assist a “process view[ed] as fundamentally administrative and inquisitorial, [so that] 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”, p26, L37-39. In light of these circumstances, why should a potential complainant ever bother to file a complaint against a judge since there is nothing in it for her except the implicitly acknowledged well-founded fear of retaliation by, not only the subject judge, but also every other judge “in federal court”, p17, L35-36 and ¶22 above,?

## **Rule 7. Where to Initiate Complaints, p11, L13**

27. “With an exception for judges sitting by designation, the Rule requires the identifying or filing of a misconduct or disability complaint in the circuit in which the judge holds office, largely based **on the administrative perspective of the Act**. Given **the Act’s emphasis on the future conduct of the business of the courts**, the circuit in which the judge holds office is the appropriate forum because that circuit is likely best able **to influence a judge’s future**”, p11, L38-42, **“behavior in constructive ways”**, p12, L1. (emphasis added)
28. There are no standards setting forth the circumstances under which a non-home circuit can transfer a complaint to the subject judge’s home-circuit, except “where allegations also involve a member of the bar -- ex parte contact between an attorney and a judge, for example -- it may often be desirable to have the judicial and bar misconduct proceedings take place in the same venue. Rule 7(b), therefore, allows transfer to, or filing or identification of a complaint in, the non-home circuit. The proceeding may be transferred by the judicial council of the filing or identified circuit to the other circuit”, p12, L4-9.
29. There is no consideration of the concerns that warrant the application of the doctrine of forum non-conveniens, or of the practical inconvenience for the complainant who resides in the subject judge’s non-home circuit to pursue his complaint against the local lawyer if the non-home judicial circuit decides nevertheless to split the complaint and transfer the part against the subject judge to his home-circuit. The complainant’s views on the issue of transfer are not taken into consideration because, after all, the Act takes an “administrative perspective” on complaints and considers them merely an internal matter to be decided, not in order to render justice to the complainant, let alone to punish the subject judge, but simply to improve “the future conduct of the business of the courts”, ¶27. If fault the subject judge committed in the past, it has already been forgiven and largely forgotten because the Act is not dealing with even the fault’s impact on the present, but rather with how the subject judge’s conduct may affect other people in the future. Is the complainant supposed to endure all the considerable emotional and material ‘inconvenience’ of filing a complaint and petitions against the statistically overwhelmingly frequent dismissal and denial of review just as a public service for the benefit of others? Would it be from the peers of the subject judge that she would receive the example of such altruism?

## **Rule 8. Action by Clerk, p12, L11**

30. “(b) Distribution of Copies”, p12, L13. Rule 8 does not require the chief circuit judge to discuss the complaint with the subject judge before dismissing it. The accuracy of this statement is corroborated by Rule 11(f), which provides that “Before appointing a special

committee, the chief circuit judge must invite the subject judge to respond to the complaint either orally or in writing if such an opportunity was not given during the limited inquiry”, p15, L27-29. The drafters justify the chief circuit judges taking this initiative at this time on behalf of their peers because the drafters validate the chief circuit judges’ prejudice against complaints, that is, their preconceived judgment that complaints are meritless and not worthy of subject judges’ time since “many complaints are clear candidates for dismissal even if their allegations are accepted as true, and there is no need for the subject judge to devote time to a defense”, p19, L31-33.

31. Hence, Rule 8 does not require the subject judge to take cognizance of the complaint and put in writing his or her response, which at the very least would have a cautionary effect by giving notice to the subject judge that somebody took exception to his or her conduct. Likewise, it does not require the chief judge of the court on which the subject judge sits to do absolutely anything with the copy of the complaint that the clerk is required to send him; he does not even have to bother to read it since he does not have to take a position on it at all. The complaint may well be received by the clerk of his court and systematically sent to the slush pile.
32. Constructive knowledge of the complaint may be imputed to such chief judge by the fact of just having been sent a copy of it. However, requiring that such chief judge certify that she has actually received and in fact taken cognizance of the complaint against one of the judges in her court would have the salutary effect of alerting her to a problem with the subject judge in her court or even in her court as a whole. Knowing the complaint’s content would afford her the opportunity to take appropriate administrative measures to deal with the problem, if not at the earliest opportunity because she already knew or by exercising her supervisory function with due diligence would have known about such problem, at least from then on. What is more, such knowledge would impose on her an affirmative duty to deal with the problem, similar to that which every single judge is under pursuant to 18 U.S.C. §3057 Bankruptcy investigations, that is, the chief judge would have the duty to communicate to the chief circuit judge ‘any reasonable grounds that she had for believing either that the subject judge engaged in the conduct or had the disability complained about or that an investigation should be had in connection with the complaint’.
33. The absence in Rule 8(b), ¶30 above, of any required action by either the subject judge or the chief judge of his court upon receipt of the complaint is in faithful compliance with a corollary to the second Law of Sloth, namely: Do not waste your effort doing anything that you are not required to do because if neither the law, nor the rules, nor a code of conduct requires you to do it, then by the definition it is not important and you have nothing to gain from doing it. This corollary has been translated from legalese into plain English as “do not go looking for trouble; let them chase after you, and if they catch you, then do the minimum indispensable to get away with it”.

34. As far as the complaint goes, nobody but the chief circuit judge may ever have to know that a complaint was filed. Consequently, the Rules do not provide for the complainant to be informed of the subject judge's reaction to the complaint, for no such reaction is required. As a result, the complaint may be dismissed by the chief circuit judge under Rule 11 without either the complainant, the subject judge, or his chief judge becoming any the wiser for it.
35. What is more, if reaction there is on the part of the subject judge because the chief circuit judge uses his faculty under Rule 11(b) whereby he "may communicate orally or in writing with...the subject judge", p14, L35-36, the complainant may not know of the tenor of it since the chief circuit judge is not even required to notify the complainant of such communication with the subject judge...and all the better, for what would the chief circuit judge notify about his communication with the subject judge?, which is likely to go off thus:

CCJ: Hey Nicky, how are you!?

SJ: Joey!, How's it going?

CSJ: Real good. I wanted to let you know again how much I enjoyed that last judicial junket.

SJ: Me too. I learned a lot about fly fishing.

CCJ: Listen, my wife just got the photos. I think Millie will like them too.

SJ: You'r right. My wife is making the album for all of us this time.

CCJ: I'll send them to you right away by courier. By the way, I found this thing about you that has been lying on my desk for months, you know... What's the story 'bout it?

SJ: You mean the complaint? Well, so long ago. I think one of the clerks told me that one of those had come in. Joey, there is not'ing to it. You know how things go. These little people come into your court out of their wits 'cause they got sued or are revved up by a petty offense they just whipped up from a tea pot into a stormy lawsuit and they're nervous and misunderstand everything you say and exaggerate everything you do and don't understand not'ing about how things are done in the local practice of a real courtroom.

CCJ: Nicky, you don't have to tell me. If remember how things were when I was in district. Today I just give'em a summary order: Affirmed! Affirmed! Affirmed! and move on.

SJ: How I envy you!, Joey. I try as much I can to get rid of these pesky mud slingers to work on the cases with pedigree names. Anyway, you can't shortchange the honchos with big law firms. They have the means to go up and make you look like a hack...

CCJ: and you end up calling in your IOUs to fix it! Nicky, Nicky! I know the drill. Well, I'm so glad we have discussed this matter fully. Sorry I even mentioned it. But don't you sweat it. I'll give this complaint the good shot; I have a form for them too: Dismissed! Dismissed! Dismissed!

SJ: You do that and thank you so much, I really appreciate what you'r doing for me with those photos. Send them right away. I think you gotta one when Harry was startled by his first fish ever...and fell from the boat into the lake! We'r gonna be teasing him until we meet you guys at the circuit conference!

CCJ: You are such a jerk! I'll help you: I'll write a note on the back of that photo. Make sure the gang is together when he reads it: You'll do it in your pants laughing!

36. Did the Rule drafters honestly expect CCJ Joey to be "administrative and inquisitorial", p5, L5-6, when he called SJ Nicky to fully discuss the complaint against him? Would he be Torquemada inquiring with piercing fact questions the conscience of a heretic who practiced conduct in opposition to that prescribed in the code of conduct for judges? Or precisely because such code is as weak a basis for any disciplinary action as are other regulations on judicial conduct, p5-L27/p6, L6, would CCJ instead call to administer reassurance to his long-standing friendship with colleagues that he has known for 10, 15, 20 years?
37. During those many years, CCJ has 'worked' with his colleagues, not only at judicial junkets and circuit conferences, but also in judicial council meetings and those of the Judicial Conference as well as in several of the many Judicial Conference committees, just as in committees to renovate the courthouse, in those appointed by the Chief Justice to review judicial salary or discipline; at weekend retreats to induct a new judge, or ceremonies to bid farewell to a retiring judge or celebrate taking of office as chief judge; in delegations to other countries to teach at seminars on the American judicial system or to receive foreign delegates, and with whom he shared memorable moments at the wedding of a daughter, trying moments of accident and death, and made plans to go together with the gang on a Caribbean cruise next...stop it right there! 'cause Dick Schmock just filed a complaint alleging misconduct on SJ Nicky's part so CCJ Joey, who was nominated by the President solely because of his integrity and legal acumen, and was made incorruptible when confirmed by the Senate, as are made all other federal judges, is going to call SJ Nicky to roast on an inquisitorial skewer his motives, impartiality, and respect for the law, regardless of how that incident will char CCJ's relationship to SJ and to all the other judges for the rest of CCJ's career, but Dick Schmock's one-off complaint is so worth it that...Nonsense! Pure wishful thinking or a knowingly deceitful scenario, for it is contrary to human nature and the evidence of the 218 year history of the federal judiciary and its grand total of seven removals from the bench.
38. This means that if the chief circuit judge does communicate with the subject judge to consider the complaint however circumspectly, the former will go in with the need to believe the latter, who will be aware that the communication is pro forma and his role is simply to satisfy that favorable prejudice with a story believable on its face. After all, like the Act, "these rules do not give the complainant the rights of a party to litigation", p26, L38, where in an adversarial confrontation with the subject judge in public before an impartial arbiter determined to allow a clash of their respective version of the events the complainant would try

to establish his as true and actionable. Instead, the Act and the Rules require the complainant to let his complaint be revealed to the subject judge, while not requiring that he be informed whether the subject judge bothered to give any answer to it, let alone the content of any that he may have given to his friendly colleague, the chief circuit judge.

39. The role of the chief circuit judge is not to let ‘sunshine be the best revealer of truth’; but rather to maintain the confidentiality of not only the proceedings, p26, L29-31, but also of even the name of the subject judge, p15, L35-36, in order to “encourage informal disposition”, p42, L8-9, of the complaint at its earliest stage by her “suggesting”, p18, L33, easy terms of disposition to facilitate the subject judge’s acceptance of “voluntary corrective action”, p42, L6-7, involving no individual or institutional liability or compensation whatsoever. Does this have anything to do with traditional notions of fair play and substantial justice through due process of law, or is it a device crafted to let ‘friendship be the best cover up for infectious judicial conduct’?

## **Rule 10. Abuse of the Complaint Procedure, p13, L17**

40. “(b) Orchestrated Complaints. Where large numbers of essentially identical complaints from different complainants are received and appear to be part of an orchestrated campaign, the judicial council may, on the recommendation of the chief circuit judge, issue a written order instructing the clerk of the court of appeals to accept only one or more of such complaints for filing and to refuse to accept subsequent complaints. A copy of the order shall be sent to the complainants whose complaints were not accepted”, p13, L27-33
41. With this Rule, the judges protect themselves from the equivalent of a class action. No provision is made for the possibility that many people may have had the same cause for complaining against the subject judge or that their complaints may add evidentiary weight to the common tenor of the complaints. Nor is the likelihood considered that the review of similar complaints could allow the detection of a pattern of conduct on the part of the subject judge, much less the possibility that in addition to all the elements common to all complaints, each could contain particular elements so that “on the basis of the total mix of information”, p5, L24-25, a more detailed picture may be drawn of the subject judge, his conduct, personality, working conditions, and characteristics of complainants.
42. Moreover, how can all complainants regardless of their number, except “only one or more”, p13, L31, be deprived of their right to complain against a judge simply because to the latter’s peers it just “appears” that their complaints are “part of an orchestrated campaign”, p13, L29,? Where does the law permit the view that ‘orchestrating a campaign’ to recall a governor of a state or a member of the legislature is a permissible exercise of the right “to assemble, and to petition the Government for a redress of grievances”, U.S. Const, First

Amend., because limited to the Executive and Legislative Branches of Government, but if mounted to complain against a federal judge it becomes a conspiratorial act of people scheming an inherently meritless attack on an unfairly target judge and creating such clear and present danger to the Judiciary itself, the Branch above the Constitution, that both need to be protected by breaking the "orchestrated campaign" before the complaints are even filed, let alone reviewed?

43. What logic, let alone principle of law, allows the drafters to conclude that if people use "the Internet or other technology", p14, L3-4, to search for other people with "essentially identical complaints against the same judge or judges", p14, L1-2, and "dozens or hundreds", p14, L1, respond and decide to assemble to petition for redress jointly, then they reveal themselves as "orchestrators" of complaints carrying the virus of mean-spiritedness and frivolousness requiring that they be deleted in bulk lest they infect the Judiciary?
44. Why not eliminate the thousands of complaints against ENRON and its financial backers, or Dow Corning, the manufacturer of leaky silicone breast implants, or the pharmaceutical company Pfizer that marketed the potentially fatal anti-arthritis Vioxx and Celebrex pills, by applying to them the drafters' rationale for blocking the filing of "orchestrated" complaints?: "If each complaint submitted as part of such a campaign were accepted for filing and processed according to these rules, there would be a serious drain on court resources without any benefit to the adjudication of the underlying merits", p14, L4-7.
45. If after "the first complaint or complaints have been dismissed on the merits,... further, essentially identical, submissions follow", p14, L11-12, why did the drafters not draw from that fact the conclusion that it was necessary for the chief circuit judge to 'take from among "We the People" out there "an objective view of the appearance of the judicial conduct in question", p18, L32-33, as improper, biased, or otherwise complainable, and that the "People"'s view should be dealt with by allowing their complaints to be filed and reviewing them in order to understand what gave rise to it? Such course of action would show that responsiveness is "preferable to sanctions", p18, L31, which "We the People", not only the subject judge, deserve to be spared because a judiciary that cares to understand public concerns and, if found valid, corrects the underlying problems and, if found invalid, educates the public on why they are so and should be dealt with through other means of action, promotes trust in the courts and in the integrity of their process to administer "Equal Justice Under Law".
46. It would appear from this Rule that the drafters too are judges who just overdid it with their orchestration of tunes for the protection of the vested interests of their above the law class of judges...but that's only a thought.

**ARTICLE III. REVIEW OF A COMPLAINT BY  
THE CHIEF CIRCUIT JUDGE, p14, L18**

**Rule 11. Review by the Chief Circuit Judge, p14, L20**

47. **Rule 11 “(c) Dismissal.** A complaint must be dismissed in whole or in part to the extent that the chief circuit judge concludes that the complaint:”, p14, L41-42, is what he prejudged many complaints to be, that is, ‘clearly’ dismissable. This impermissible bias on the part of a chief circuit judge against the merits of complaints about his peers is nevertheless validated by the drafters in their astonishing statement that “many complaints are clear candidates for dismissal even if their allegations are accepted as true, and there is no need for the subject judge to devote time to a defense”, p19, L31-33.
48. This means that out of expediency, a subject judge can skip filing any answer to a complaint against him by simply relying on the chance that it will be dismissed, for he knows that his silence will not be construed as an admission and that the complaint will not be investigated by default, contrary to what happens in lawsuits among people “Under Law” and FRCivP 4(a) and 8(d). Now consider that also out of expediency, a chief circuit judge together with his court routinely disposes of whole appeals by having a blank in a summary order form filled in with “Affirmed” and likewise disposes of motions by having a circle made around either the word “Denied”, mostly, or “Granted”, rarely, on the Motion Information Statement, which is another form for the movant to summarize her motion so that the judge does not have to read it. That same expediency has generated a bias in that same chief circuit judge toward prejudging as many complaints as he can “clear candidates for dismissal” and dismissing them without any inquiry or investigation.
49. The chief circuit judge must also dismiss the complaint if he concludes that it “(5) is otherwise not appropriate for consideration under the Act”, p15, L10. This is a vague and standardless catch-all that allows the chief circuit judge to dismiss a complaint for any reason and no reason. Indeed, Rule 11(g)(1) provides only this: “(g) Notice of Chief Circuit Judge’s Action; Petitions for Review. (1) If the complaint is disposed of under Rule 11(c), (d), or (e), the chief circuit judge must prepare a supporting memorandum that sets forth the reasons for the disposition”, p15, L32-35. This requirement can conceivably be satisfied by the chief circuit judge simply quoting the Rule in his memorandum, where he states that ‘the complaint is dismissed because it is no appropriate for consideration under the Act’.
50. By contrast, when a plaintiff files a complaint against a lesser defendant ‘Under Law’ and the FRCivP, her complaint can be dismissed summarily before discovery only if the defendant publicly files a motion or a pleading stating its reasons for requesting dismissal, such as those provided under FRCivP 12(b). Thereupon the plaintiff has the opportunity to argue against

dismissal, challenging in open court or in a publicly filed answer the factual and legal basis of the defendant's dismissal grounds.

51. It can happen that the district judge dismisses the complaint but fails to perform his duty to state his findings of facts or conclusions of law with sufficient detail to satisfy the purpose of such duty. In such event, the complainant can on appeal at least point to the defendant's reason for dismissal in its motion or pleading, where they would presumably be as detailed and well grounded as the defendant was capable to provide with a view to prevailing in the context of a public adversarial proceeding. However, 'subject' judges are not subject to such proceedings, for they are above the law and entitled to the best defense possible, namely, his peer chief circuit judge, who can summarily dismiss the complaint because it is just "not appropriate for consideration under the Act", p15, :10.
52. **Rule 11 "(d) Corrective Action.** The chief circuit judge may conclude the complaint proceeding in whole or in part if the chief circuit judge determines that appropriate corrective action that acknowledges and remedies the problems raised by the complaint has been voluntarily taken by the subject judge;" p15, L14-18.
53. This section of Rule 11 provides no standard for determining what is "appropriate" or what action 'corrects' the complained-about conduct of the subject judge, particularly since the subject judge 'volunteers' a remedy that suits him but that has nothing to do with any remedy that the complainant may have requested in his complaint.
54. This means that all is needed from the penitent judge is for him to choose his own penance through his "participation [with the chief circuit judge] in formulating the directive...of remedial action', p18, L36-37, and the chief circuit judge will grant him absolution; in other words: "-O.K., O.K, I won't do it again. -Then go in peace, my son, and be good". After all, the chief circuit judge is only interested in doing something that is "best able to influence a judge's future behavior in constructive ways", p11, L42, not in providing a remedy for the harm that his peer inflicted upon the complainant in the past. That harm can be considerable, for it can include the loss of rights and the expense of an enormous amount of effort, time, and money trying to recover them and the suffering of tremendous intentional emotional distress caused by the subject judge due to, for example, his bias against out of town pro se litigants that do not play by the rules of 'local practice' and insist on applying the law of the land of Congress.
55. That harm constitutes injury in fact. Hence, to offer only to "redress the harm, if possible, such as by an apology, recusal from a case, and a pledge to refrain from similar conduct in the future", p19, L3-4, is nothing but insincere lip-service. Moreover, to say in the same breath that "any corrective action should, to the extent possible, serve to

correct a specific harm to an individual, if such harm can reasonably be remedied”, p19, L5-6, is disingenuous. By not including among the remedies the payment of compensation to the complainant by the subject judge or his institutional employer, the Judiciary, for the injury that either or both have caused the complainant, the drafters exempt the judge and the institution from all liability. Apologetic words by a subject judge are cheap, as are those of “a private or public reprimand”, p19, L13-14, of him by the chief circuit judge. Why is it, by contrast, that the “extent possible” of the remedy that a company can be required to provide is so vast that it may even force the company into bankruptcy to compensate the victims of its officers’ conduct?, e.g. Pan Am had to file for bankruptcy after being ordered to compensate the victims of the downing of its Boeing 747 on Flight 103 at Lockerbie, Scotland.

56. This divergent ‘extent of the possible’ reveals a double standard of justice: a compensatory one for “We the People Under Law” and an exonerating one for the judicial class above the law. Just as is the sanction of the subject judge by a mere reprimand, a remedy for the complainant of a mere apology is a mockery of justice.
57. There is no “Equal Justice Under Law” when the subject judge can voluntarily choose his remedy for the future and leave the complaint holding the bag of damages that the judge caused the complainant in the past. Nor is the chief circuit judge under the same law and its tort principles that would require him to hold the Judiciary to its institutional responsibility for the harm caused to a party to a lawsuit by one of its employees during the performance of his duties in the course of business.
58. The fact is that judges are not employees of the Federal Judiciary; rather, they are independent contractors that hold office in their own right “during good Behaviour”, U.S. Const., Art. III, Sec. 1. Not even the Chief Justice of the Supreme Court of the United States can remove from the bench a judge due to his ‘bad Behaviour’, not to mention that “Neither the chief circuit judge nor an appellate court has authority under the Act to impose a formal remedy or sanction”, p18, L38-39, and a judicial council cannot be used as proxy to dock his compensation, “which shall not be diminished during [his] Continuance in Office”, Const., id.
59. The only real sanction that has any meaningful impact on the subject judge is a referral for impeachment to the House of Representatives...a very risky move, indeed. It may lead to the subject judge adopting the retaliatory position “*If you bring me down, I take you with me!*” and to that end, pointing the finger in turn at the judges higher up in the judicial hierarchy either for the wrongdoing that they actively participated in for their benefit or quietly tolerated out of fear of being ostracized as treasonous pariahs, which could cause them to point the finger at those even higher up. Thereby a domino effect could be triggered that would threaten the Judiciary’s reputational interests and the independence that through the Act and the Rules’ mechanism of self-discipline it enjoys from effective control by law enforcement agencies or

Congressional judicial committees. Given such dismal prospect, some conciliatory and appeasing words, uttered against the continued bass of self-preservation, such as “Then go in peace, my son, and let you and me be good to each other”, sound, oh!, so much more reasonable and promising.

60. In light of those circumstances, the best a chief circuit judge can do is forgive and forget and hope that the subject judge will behave better in future...and tough luck for the complainant, for his injuries are in the past and nobody is here now to ensure that “appropriate corrective action....remedies” them, p15, L15-16. “Because the Act deals with the conduct of judges, the emphasis is on correction of the judicial conduct that was the subject of the complaint”, p18, L28-30. The Rules have been drafted to ensure self-preservation, not to establish checks and balances between “We the People Under Law” and the class of federal judges above the law, let alone to provide “Equal Justice” for both.
61. **“Commentary to Rule 11:** The chief circuit judge is not required to act solely on the face of the complaint. The power to conclude a complaint proceeding on the basis that corrective action has been taken implies some power to determine whether the facts alleged are true. But the boundary line of that power -- the point at which a chief circuit judge invades the territory reserved for special committees -- is unclear.” P17, L10-14.
62. What a pertinent opportunity the drafting of this Rules was to render “clear” such boundary line by providing “authoritative interpretive standards” together with examples in order to cure the “lack of” them found by the Breyer Committee, p2, L22-25. If the drafters did not have the authority or will to provide such needed clarification, what exactly could and did they provide other than cosmetic touch-ups?
63. So rare and inconsequential for complainants are the Rules’ ‘new’ provisions that when the drafters did provide something of some relevant novelty, they had to celebrate their accomplishment by pointing it out. This is what they did with a provision concerning, not complainants and the effectiveness of their complaints, but rather a committee for the administration of the Rules: “The provision requiring clerks to send copies of all complaints to the Judicial Conference Committee on Judicial Conduct and Disability is new. It is necessary to enable the Committee to monitor administration of the Act, to anticipate upcoming issues, and to carry out its new jurisdictional responsibilities under Article VI”; p13, L1-4.
64. **Rule 11 “(e) Intervening Events.** The chief circuit judge may conclude the complaint proceeding in whole or in part if the chief circuit judge determines that intervening events render some or all allegations of the complaint moot or remedial action impossible”; p15, L19-22.

65. This provision is illustrative of how the federal judiciary has managed to place itself above the law applicable to the rest of “We the People”: The latter’s complainants in civil lawsuits may seek damages against a party even after the party’s death by suing its estate and may even recover against the estate. This means that not even the death of the defendant renders ‘impossible’ a remedy claimed against people “Under Law” and thus, of lesser statute than a subject judge.
66. By contrast, this Rule allows the chief circuit judge to dismiss a complaint whenever the chief circuit judge deems that “remedial action [is] impossible”, without having to state specifically what remedial action the chief circuit judge considered to be impossible, let alone why it is “impossible”. Nor does the chief circuit judge have to give the complainant the opportunity to state how that ‘impossible remedial action’ could be rendered possible or what alternative remedial action is possible.
67. Moreover, the absence of any obligation on the chief circuit judge to identify specifically what “remedial action” she considered in connection with the complaint and why she deemed it “impossible” deprives the complainant of the possibility to challenge in a petition for review to the judicial council the chief circuit judge’s application of that ground of dismissal to dismiss the complaint. Consequently, how could a judicial council reviewing an order of dismissal effectively determine whether an undetermined “remedial action” was possible or “impossible”? Lacking such information, the judicial council has nothing on which to base its determination other than its bias toward its peer.

Sincerely,

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