

**JUDICIAL CONFERENCE OF THE UNITED STATES**

JUDICIAL COUNCIL OF THE FIFTH CIRCUIT

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

(without commentary)

Including Fifth Circuit Rules, Fifth Circuit Comments and, Fifth Circuit Procedures

A copy of the Rules and Procedures, including the commentary as promulgated by the Judicial Conference of the United States, may be obtained free of charge from the Clerk at the United States Court of Appeals for the Fifth Circuit, 600 S. Maestri Place, New Orleans, LA 70130, or found at:

[www.uscourts.gov/library/judicialmisconduct/jud\\_conduct\\_disability\\_308app\\_B\\_rev.pdf](http://www.uscourts.gov/library/judicialmisconduct/jud_conduct_disability_308app_B_rev.pdf)

# RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS

## TABLE OF CONTENTS

Preface. . . . .	1
ARTICLE I. GENERAL PROVISIONS	
1. Scope. . . . .	2
2. Effect and Construction. . . . .	2
3. Definitions. . . . .	2
(a) Chief Judge. . . . .	2
(b) Circuit Clerk. . . . .	2
(c) Complaint. . . . .	2
(d) Court of Appeals, District Court, and District Judge. . . . .	2
(e) Disability. . . . .	2
(f) Judicial Council and Circuit. . . . .	3
(g) Magistrate Judge. . . . .	3
(h) Misconduct. . . . .	3
(i) Subject Judge. . . . .	3
<i>Fifth Circuit Comments 3.1, 3.2 . . . . .</i>	<i>4</i>
4. Covered Judges. . . . .	4
<i>Fifth Circuit Procedure 4: Judges Subject to the Procedure . . . . .</i>	<i>4</i>
ARTICLE II. INITIATION OF A COMPLAINT	
5. Identification of a Complaint. . . . .	5
(a) Identification. . . . .	5
(b) Noncompliance with Rule 6(d). . . . .	5
6. Filing a Complaint. . . . .	5
(a) Form. . . . .	5
(b) Brief Statement of Facts. . . . .	5
(c) Legibility. . . . .	6
(d) Complainant's Address and Signature; Verification. . . . .	6
(e) Number of Copies; Envelope Marking. . . . .	6
<i>Fifth Circuit Procedure 6: Number of Copies. . . . .</i>	<i>6</i>
7. Where to Initiate Complaints. . . . .	6
(a) Where to File. . . . .	6
(b) Misconduct in Another Circuit; Transfer. . . . .	6
<i>Fifth Circuit Procedure 7: Where to File . . . . .</i>	<i>7</i>
8. Action by Clerk. . . . .	7
(a) Receipt of Complaint. . . . .	7
(b) Distribution of Copies. . . . .	7
(c) Complaints Against Noncovered Persons. . . . .	7

(d)	Receipt of Complaint about a Judge and Another Noncovered Person.....	7
9.	Time for Filing or Identifying a Complaint.....	7
10.	Abuse of the Complaint Procedure.....	7
(a)	Abusive Complaints.....	7
(b)	Orchestrated Complaints.....	8
	<i>Delegation of authority</i> .....	8

ARTICLE III. REVIEW OF A COMPLAINT BY THE CHIEF JUDGE

11.	Review by the Chief Judge.....	9
(a)	Purpose of Chief Judge's Review.....	9
(b)	Inquiry by Chief Judge.....	9
(c)	Dismissal.....	9
(d)	Corrective Action.....	9
(e)	Intervening Events.....	10
(f)	Appointment of Special Committee.....	10
(g)	Notice of Chief Judge's Action; Petitions for Review.....	10
(h)	Public Availability of Chief Judge's Decision.....	10

ARTICLE IV. INVESTIGATION AND REPORT BY SPECIAL COMMITTEE

12.	Composition of Special Committee.....	11
(a)	Membership.....	11
(b)	Presiding Officer.....	11
(c)	Bankruptcy Judge or Magistrate Judge as Adviser.....	11
(d)	Provision of Documents.....	11
(e)	Continuing Qualification of Committee Members.....	11
(f)	Inability of Committee Member to Complete Service.....	11
(g)	Voting.....	11
13.	Conduct of an Investigation.....	11
(a)	Extent and Methods of Special-Committee Investigation.....	11
(b)	Criminal Conduct.....	12
(c)	Staff.....	12
(d)	Delegation of Subpoena Power; Contempt.....	12
14.	Conduct of Hearings by Special Committee.....	12
(a)	Purpose of Hearings.....	12
(b)	Committee Evidence.....	12
(c)	Counsel for Witnesses.....	12
(d)	Witness Fees.....	12
(e)	Oath.....	12
(f)	Rules of Evidence.....	12
(g)	Record and Transcript.....	12
15.	Rights of Subject Judge.....	12
(a)	Notice.....	12

(b)	Report of the Special Committee. . . . .	13
(c)	Presentation of Evidence. . . . .	13
(d)	Presentation of Argument. . . . .	13
(e)	Attendance at Hearings. . . . .	13
(f)	Representation by Counsel. . . . .	13
16.	Rights of Complainant in Investigation. . . . .	13
(a)	Notice. . . . .	13
(b)	Opportunity to Provide Evidence. . . . .	13
(c)	Presentation of Argument. . . . .	13
(d)	Representation by Counsel. . . . .	13
(e)	Cooperation. . . . .	13
17.	Special-Committee Report. . . . .	13

ARTICLE V. JUDICIAL-COUNCIL REVIEW

18.	Petitions for Review of Chief Judge Dispositions Under Rule 11(c), (d), or (e). . . . .	14
(a)	Petitions for Review. . . . .	14
(b)	When to File; Form; Where to File. . . . .	14
(c)	Receipt and Distribution of Petition. . . . .	14
(d)	Untimely Petition. . . . .	14
(e)	Timely Petition Not in Proper Form. . . . .	14

*Fifth Circuit Procedure 18: Where to file. . . . . 15*

19.	Judicial-Council Disposition of Petitions for Review. . . . .	15
(a)	Rights of Subject Judge. . . . .	15
(b)	Judicial-Council Action. . . . .	15
(c)	Notice of Council Decision. . . . .	15
(d)	Memorandum of Council Decision. . . . .	15
(e)	Review of Judicial-Council Decision. . . . .	15
(f)	Public Availability of Judicial-Council Decision. . . . .	16

*Fifth Circuit Rule 19. . . . . 16*

*Order of the Judicial Council Effectuating Rule 19. . . . . 16*

20.	Judicial-Council Consideration of Reports and Recommendations of Special Committees. . . . .	17
(a)	Rights of Subject Judge. . . . .	17
(b)	Judicial-Council Action. . . . .	17
(c)	Inadequate Basis for Decision. . . . .	18
(d)	Council Vote. . . . .	18
(e)	Recommendation for Fee Reimbursement. . . . .	18
(f)	Council Action. . . . .	19

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

21.	Committee on Judicial Conduct and Disability. . . . .	19
(a)	Review by Committee. . . . .	19

(b)	Reviewable Matters. . . . .	19
(c)	Committee Vote. . . . .	19
(d)	Additional Investigation. . . . .	19
(e)	Oral Argument; Personal Appearance. . . . .	20
(f)	Committee Decisions. . . . .	20
(g)	Finality. . . . .	20
22.	Procedures for Review. . . . .	20
(a)	Filing a Petition for Review. . . . .	20
(b)	Form and Contents of Petition for Review. . . . .	20
(c)	Time. . . . .	20
(d)	Copies. . . . .	20
(e)	Action on Receipt of Petition for Review. . . . .	20

ARTICLE VII. MISCELLANEOUS RULES

23.	Confidentiality. . . . .	21
(a)	General Rule. . . . .	21
(b)	Files. . . . .	21
(c)	Disclosure in Decisions. . . . .	21
(d)	Availability to Judicial Conference. . . . .	21
(e)	Availability to District Court. . . . .	21
(f)	Impeachment Proceedings. . . . .	21
(g)	Subject Judge's Consent. . . . .	21
(h)	Disclosure in Special Circumstances. . . . .	21
(i)	Disclosure of Identity by Subject Judge. . . . .	22
(j)	Assistance and Consultation. . . . .	22
24.	Public Availability of Decisions. . . . .	22
(a)	General Rule; Specific Cases. . . . .	22
(b)	Manner of Making Public. . . . .	22
(c)	Orders of Judicial Conference Committee. . . . .	23
(d)	Complaints Referred to the Judicial Conference of the United States. . . . .	23
25.	Disqualification. . . . .	23
(a)	General Rule. . . . .	23
(b)	Subject Judge. . . . .	23
(c)	Chief Judge Not Disqualified from Considering a Petition for Review of a Chief Judge's Order. . . . .	23
(d)	Member of Special Committee Not Disqualified. . . . .	23
(e)	Subject Judge's Disqualification After Appointment of a Special Committee. . . . .	23
(f)	Substitute for Disqualified Chief Judge. . . . .	23
(g)	Judicial-Council Action When Multiple Judges Are Disqualified. . . . .	24
(h)	Disqualification of Members of the Judicial Conference Committee. . . . .	24
26.	Transfer to Another Judicial Council. . . . .	24
27.	Withdrawal of Complaints and Petitions for Review. . . . .	24
(a)	Complaint Pending Before Chief Judge. . . . .	24
(b)	Complaint Pending Before Special Committee or Judicial Council. . . . .	24
(c)	Petition for Review. . . . .	25

28.	Availability of Rules and Forms. . . . .	25
29.	Effective Date. . . . .	25

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

## **Preface**

These Rules were promulgated by the Judicial Conference of the United States, after public comment, pursuant to 28 U.S.C. §§ 331 and 358, to establish standards and procedures for addressing complaints filed by complainants or identified by chief judges, under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364.

*Fifth Circuit Rule 19 is taken from preexisting local Rule 7; it is not inconsistent with the rules promulgated by the Judicial Conference of the United States and remains in force as a result of the reaffirmation by the Judicial Council on May 4, 2008, of the order delegating petitions for review to five-judge panels. See rule 2(a).*

*The Fifth Circuit Comments and Procedures are adapted from the preexisting local rules not in conflict with the rules promulgated by the Judicial Conference of the United States. They are intended to provide additional information that may be useful to persons wishing to file complaints.*

*The former Fifth Circuit Rules Governing Complaints of Judicial Misconduct or Disability will hereinafter be cited as follows: 5th Cir. R. \_\_\_\_.*

Delegations of authority approved by the Judicial Council are also appended to the respective rules to which they pertain.

## **ARTICLE I. GENERAL PROVISIONS**

### **1. Scope**

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

### **2. Effect and Construction**

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

### **3. Definitions**

- (a) **Chief Judge.** “Chief judge” means the chief judge of a United States Court of Appeals, of the United States Court of International Trade, or of the United States Court of Federal Claims.
- (b) **Circuit Clerk.** “Circuit clerk” means a clerk of a United States court of appeals, the clerk of the United States Court of International Trade, the clerk of the United States Court of Federal Claims, or the circuit executive of the United States Court of Appeals for the Federal Circuit.
- (c) **Complaint.** A complaint is:
  - (1) a document that, in accordance with Rule 6, is filed by any person in his or her individual capacity or on behalf of a professional organization; or
  - (2) information from any source, other than a document described in (c)(1), that gives a chief judge probable cause to believe that a covered judge, as defined in Rule 4, has engaged in misconduct or may have a disability, whether or not the information is framed as or is intended to be an allegation of misconduct or disability.
- (d) **Court of Appeals, District Court, and District Judge.** “Courts of appeals,” “district court,” and “district judge,” where appropriate, include the United States Court of Federal Claims, the United States Court of International Trade, and the judges thereof.
- (e) **Disability.** “Disability” is a temporary or permanent condition rendering a judge unable to discharge the duties of the particular judicial office. Examples of disability



- include substance abuse, the inability to stay awake during court proceedings, or a severe impairment of cognitive abilities.
- (f) **Judicial Council and Circuit.** “Judicial council” and “circuit,” where appropriate, include any courts designated in 28 U.S.C. § 363.
  - (g) **Magistrate Judge.** “Magistrate judge,” where appropriate, includes a special master appointed by the Court of Federal Claims under 42 U.S.C. § 300aa–12(c).
  - (h) **Misconduct. Cognizable misconduct:**
    - (1) is conduct prejudicial to the effective and expeditious administration of the business of the courts. Misconduct includes, but is not limited to:
      - (A) using the judge's office to obtain special treatment for friends or relatives;
      - (B) accepting bribes, gifts, or other personal favors related to the judicial office;
      - (C) having improper discussions with parties or counsel for one side in a case;
      - (D) treating litigants or attorneys in a demonstrably egregious and hostile manner;
      - (E) engaging in partisan political activity or making inappropriately partisan statements;
      - (F) soliciting funds for organizations; or
      - (G) violating other specific, mandatory standards of judicial conduct, such as those pertaining to restrictions on outside income and requirements for financial disclosure.
    - (2) is conduct occurring outside the performance of official duties if the conduct might have a prejudicial effect on the administration of the business of the courts, including a substantial and widespread lowering of public confidence in the courts among reasonable people.
    - (3) does not include:
      - (A) an allegation that is directly related to the merits of a decision or procedural ruling. An allegation that calls into question the correctness of a judge's ruling, including a failure to recuse, without more, is merits-related. If the decision or ruling is alleged to be the result of an improper motive, e.g., a bribe, ex parte contact, racial or ethnic bias, or improper conduct in rendering a decision or ruling, such as personally derogatory remarks irrelevant to the issues, the complaint is not cognizable to the extent that it attacks the merits.
      - (B) an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.
  - (i) **Subject Judge.** “Subject judge” means any judge described in Rule 4 who is the subject of a complaint.

### **FIFTH CIRCUIT COMMENT 3**

**3.1 Basis for Complaints.** *The law authorizes complaints against United States circuit, district, bankruptcy, and magistrate judges who have “engaged in conduct prejudicial to the effective and expeditious administration of business of the courts” , or who are “unable to discharge all the duties of office by reason of mental or physical disability.” The conduct to which the law is addressed does not include making wrong decisions—even very wrong decisions—for a complaint may be dismissed if it is “directly related to the merits of a decision or procedural ruling.” Disagreements with a judge’s rulings should be raised through the normal appellate review process because these judicial misconduct procedures are not a substitute for or supplement to a proper appeal under the Federal Rules of Appellate Procedure. “Mental or physical disability” may include temporary conditions as well as permanent disability. (Former 5th Cir. R. 1(B))*

**3.2 Limitations on use of the judicial misconduct procedures.** *The complaint procedures are not intended to provide a means of reviewing a judge’s decision or ruling in a case. The judicial council of the circuit, the body which takes action under the complaint procedure, does not have the power to change a decision or ruling. Only a court can do that. More specifically, the complaint procedures may not be ordinarily used to:*

- 1. Have a judge disqualified or recused from a case;*
- 2. Transfer a pending case from one judge or court to another;*
- 3. Compel a judge to make a ruling on a particular motion in a case;*
- 4. Have money damages awarded;*
- 5. Obtain release from custody.*

*(Former 5th Cir. R. 1(E))*

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

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

### **FIFTH CIRCUIT PROCEDURE 4**

#### **4. Judges subject to the procedure.**

- (a) The judicial misconduct and disability complaint procedure applies to judges of the United States courts of appeals, district and bankruptcy courts, and*

*magistrate judges of the Fifth Circuit. The rules therefore apply to judges of the Court of Appeals for the Fifth Circuit, bankruptcy, and magistrate judges of federal courts within the states of Texas, Louisiana, and Mississippi. (Former 5th Cir. R. 1(C)(1))*

- (b) *Complaints against other federal court officials within the Fifth Circuit should be made to their supervisors. If the complaints cannot be resolved satisfactorily at lower levels, they may be referred to the chief judge of the employing court whose decision will be final, subject to review only as the judicial council may prescribe. (Former 5th Cir. R. 1(C)(2))*

## **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) must be considered under this Rule.

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

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

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

#### ***FIFTH CIRCUIT PROCEDURE 6***

- 6. Number of copies. Only an original of the complaint should be filed. (Former 5th Cir. R 2(E))***

### **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.

## **FIFTH CIRCUIT PROCEDURE 7**

*7. **Where to file.** Complaints should be sent to the Clerk, United States Court of Appeals for the Fifth Circuit, 600 S. Maestri Place, New Orleans, LA 70130. The envelope should be marked "Complaint of Misconduct" or "Complaint of Disability." The name of the judge complained about should not appear on the envelope. (Former 5th Cir.R. 2(H))*

### **8. Action by Clerk**

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

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

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

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

- (a) **Abusive Complaints.** A complainant who has filed repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may be restricted from filing further complaints. After giving the complainant an opportunity to show cause in writing why his or her right to file further complaints should not be limited, a judicial council may prohibit, restrict, or impose conditions on the complainant's use of the complaint procedure. Upon written request of the complainant, the judicial council may revise or withdraw any prohibition, restriction, or condition previously imposed.

- (b) **Orchestrated Complaints.** When many essentially identical complaints from different complainants are received and appear to be part of an orchestrated campaign, the chief judge may recommend that the judicial council issue a written order instructing the circuit clerk to accept only a certain number of such complaints for filing and to refuse to accept further ones. The clerk must send a copy of any such order to anyone whose complaint was not accepted.

### THE JUDICIAL COUNCIL OF THE FIFTH CIRCUIT

In Re: Delegation to Chief Circuit Judge, or acting Judge Pursuant to rule 25(f) of the Rules For Judicial-Conduct and Judicial-Disability Proceedings

Before: JONES, Chief Judge, and Judges SMITH, KING, DAVIS, BARKSDALE, DENNIS, CLEMENT, OWEN, ELROD, SOUTHWICK, VANCE, BRADY, MELANCON, BIGGERS, GUIROLA, CUMMINGS, HEAD, HEARTFIELD, and BIERY.

### DELEGATION

In order to effectuate Rule 10(a) of the Rules for Judicial-Conduct and Judicial Disability Proceedings (made effective April 10, 2008) , the Judicial Council hereby delegates the following authority to the chief circuit judge or judge acting for the chief judge pursuant to rule 25(f)

*When a complainant has filed repetitive, harassing or frivolous complaints, or has otherwise abused the complaint procedure, the order dismissing the complaint under Rule 11 (c) may include a provision suspending the right of the complainant to file further complaints without written permission from the chief judge or judge acting for him or her*

*A complainant upon whom such a suspension is imposed may show cause, through a petition for review submitted pursuant to Rule 18, why his or her right to file further complaints should not be so limited. If, under Rule 19 (b) (1), the order of the chief judge is affirmed, the suspension shall become a permanent restriction prohibiting the filing of complaints, subject to its own terms and to the power of the Judicial Council under Rule 10(a) to revise or withdraw any prohibition, restriction or condition previously imposed.*

**FOR THE COUNCIL:**

May 4, 2008

/s/Edith H. Jones

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

### 11. Review by the Chief Judge

- (a) **Purpose of Chief Judge's Review.** When a complaint is identified by the chief judge or is filed, the chief judge must review it unless the chief judge is disqualified under Rule 25. If the complaint contains information constituting evidence of misconduct or disability, but the complainant does not claim it as such, the chief judge must treat the complaint as if it did allege misconduct or disability and give notice to the subject judge. After reviewing the complaint, the chief judge must determine whether it should be:
  - (1) dismissed;
  - (2) concluded on the ground that voluntary corrective action has been taken;
  - (3) concluded because intervening events have made action on the complaint no longer necessary; or
  - (4) referred to a special committee.
- (b) **Inquiry by Chief Judge.** In determining what action to take under Rule 11(a), the chief judge may conduct a limited inquiry. The chief judge, or a designee, may communicate orally or in writing with the complainant, the subject judge, and any others who may have knowledge of the matter, and may review transcripts or other relevant documents. In conducting the inquiry, the chief judge must not determine any reasonably disputed issue.
- (c) **Dismissal.**
  - (1) **Allowable grounds.** A complaint must be dismissed in whole or in part to the extent that the chief judge concludes that the complaint:
    - (A) alleges conduct that, even if true, is not prejudicial to the effective and expeditious administration of the business of the courts and does not indicate a mental or physical disability resulting in inability to discharge the duties of judicial office;
    - (B) is directly related to the merits of a decision or procedural ruling;
    - (C) is frivolous;
    - (D) is based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred or that a disability exists;
    - (E) is based on allegations which are incapable of being established through investigation;
    - (F) has been filed in the wrong circuit under Rule 7; or
    - (G) is otherwise not appropriate for consideration under the Act.
  - (2) **Disallowed grounds.** A complaint must not be dismissed solely because it repeats allegations of a previously dismissed complaint if it also contains material information not previously considered and does not constitute harassment of the subject judge.
- (d) **Corrective Action.** The chief judge may conclude the complaint proceeding in whole or in part if:
  - (1) an informal resolution under Rule 5 satisfactory to the chief judge was reached before the complaint was filed under Rule 6, or

- (2) the chief judge determines that the subject judge has taken appropriate voluntary corrective action that acknowledges and remedies the problems raised by the complaint.
- (e) **Intervening Events.** The chief judge may conclude the complaint proceeding in whole or in part upon determining that intervening events render some or all of the allegations moot or make remedial action impossible.
- (f) **Appointment of Special Committee.** If some or all of the complaint is not dismissed or concluded, the chief judge must promptly appoint a special committee to investigate the complaint or any relevant portion of it and to make recommendations to the judicial council. Before appointing a special committee, the chief judge must invite the subject judge to respond to the complaint either orally or in writing if the judge was not given an opportunity during the limited inquiry. In the chief judge's discretion, separate complaints may be joined and assigned to a single special committee. Similarly, a single complaint about more than one judge may be severed and more than one special committee appointed.
- (g) **Notice of Chief Judge's Action; Petitions for Review.**
  - (1) **When special committee is appointed.** If a special committee is appointed, the chief judge must notify the complainant and the subject judge that the matter has been referred to a special committee and identify the members of the committee. A copy of the order appointing the special committee must be sent to the Judicial Conference Committee on Judicial Conduct and Disability.
  - (2) **When chief judge disposes of complaint without appointing special committee.** If the chief judge disposes of the complaint under Rule 11(c), (d), or (e), the chief judge must prepare a supporting memorandum that sets forth the reasons for the disposition. Except as authorized by 28 U.S.C. § 360, the memorandum must not include the name of the complainant or of the subject judge. The order and the supporting memorandum, which may be one document, must be provided to the complainant, the subject judge, and the Judicial Conference Committee on Judicial Conduct and Disability.
  - (3) **Right of petition for review.** If the chief judge disposes of a complaint under Rule 11(c), (d), or (e), the complainant and subject judge must be notified of the right to petition the judicial council for review of the disposition, as provided in Rule 18. If a petition for review is filed, the chief judge must promptly transmit all materials obtained in connection with the inquiry under Rule 11(b) to the circuit clerk for transmittal to the judicial council.
- (h) **Public Availability of Chief Judge's Decision.** The chief judge's decision must be made public to the extent, at the time, and in the manner provided in Rule 24.



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

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

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

### **13. Conduct of an Investigation**

- (a) **Extent and Methods of Special-Committee Investigation.** Each special committee must determine the appropriate extent and methods of the investigation in light of the

allegations of the complaint. If, in the course of the investigation, the committee has cause to believe that the subject judge may have engaged in misconduct or has a disability that is beyond the scope of the complaint, the committee must refer the new matter to the chief judge for action under Rule 5 or Rule 11.

- (b) **Criminal Conduct.** If the committee's investigation concerns conduct that may be a crime, the committee must consult with the appropriate prosecutorial authorities to the extent permitted by the Act to avoid compromising any criminal investigation. The committee has final authority over the timing and extent of its investigation and the formulation of its recommendations.
- (c) **Staff.** The committee may arrange for staff assistance to conduct the investigation. It may use existing staff of the judicial branch or may hire special staff through the Director of the Administrative Office of the United States Courts.
- (d) **Delegation of Subpoena Power; Contempt.** The chief judge may delegate the authority to exercise the committee's subpoena powers. The judicial council or special committee may institute a contempt proceeding under 28 U.S.C. § 332(d) against anyone who fails to comply with a subpoena.

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

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

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

- (a) **Notice.**
  - (1) **Generally.** The subject judge must receive written notice of:
    - (A) the appointment of a special committee under Rule 11(f);
    - (B) the expansion of the scope of an investigation under Rule 13(a);
    - (C) any hearing under Rule 14, including its purposes, the names of any witnesses the committee intends to call, and the text of any statements that have been taken from those witnesses.

- (2) **Suggestion of additional witnesses.** The subject judge may suggest additional witnesses to the committee.
- (b) **Report of the Special Committee.** The subject judge must be sent a copy of the special committee's report when it is filed with the judicial council.
- (c) **Presentation of Evidence.** At any hearing held under Rule 14, the subject judge has the right to present evidence, to compel the attendance of witnesses, and to compel the production of documents. At the request of the subject judge, the chief judge or the judge's designee must direct the circuit clerk to issue a subpoena to a witness under 28 U.S.C. § 332(d)(1). The subject judge must be given the opportunity to cross-examine committee witnesses, in person or by counsel.
- (d) **Presentation of Argument.** The subject judge may submit written argument to the special committee and must be given a reasonable opportunity to present oral argument at an appropriate stage of the investigation.
- (e) **Attendance at Hearings.** The subject judge has the right to attend any hearing held under Rule 14 and to receive copies of the transcript, of any documents introduced, and of any written arguments submitted by the complainant to the committee.
- (f) **Representation by Counsel.** The subject judge may choose to be represented by counsel in the exercise of any right enumerated in this Rule. As provided in Rule 20(e), the United States may bear the costs of the representation.

## **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 committee determines that the complainant may have evidence that does not already exist in writing, 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.

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

The committee must file with the judicial council a comprehensive report of its investigation, including findings and recommendations for council action. The report must be accompanied by a statement of the vote by which it was adopted, any separate or dissenting statements of committee members, and the record of any hearings held under Rule 14. A copy of the report

and accompanying statement must be sent to the Judicial Conference Committee on Judicial Conduct and Disability.

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

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

- (a) **Petitions for Review.** After the chief judge issues an order under Rule 11(c), (d), or (e), a complainant or subject judge may petition the judicial council of the circuit to review the order. By rules promulgated under 28 U.S.C. § 358, the judicial council may refer a petition for review filed under this Rule to a panel of no fewer than five members of the council, at least two of whom must be district judges.
- (b) **When to File; Form; Where to File.** A petition for review must be filed in the office of the circuit clerk within 35 days of the date on the clerk's letter informing the parties of the chief judge's order. The petition should be in letter form, addressed to the circuit clerk, and in an envelope marked "Misconduct Petition" or "Disability Petition." The name of the subject judge must not be shown on the envelope. The letter should be typewritten or otherwise legible. It should begin with "I hereby petition the judicial council for review of . . ." and state the reasons why the petition should be granted. It must be signed.
- (c) **Receipt and Distribution of Petition.** A circuit clerk who receives a petition for review filed within the time allowed and in proper form must:
  - (1) acknowledge its receipt and send a copy to the complainant or subject judge, as the case may be;
  - (2) promptly distribute to each member of the judicial council, or its relevant panel, except for any member disqualified under Rule 25, or make available in the manner provided by local rule, the following materials:
    - (A) copies of the complaint;
    - (B) all materials obtained by the chief judge in connection with the inquiry;
    - (C) the chief judge's order disposing of the complaint;
    - (D) any memorandum in support of the chief judge's order;
    - (E) the petition for review; and
    - (F) an appropriate ballot;
  - (3) send the petition for review to the Judicial Conference Committee on Judicial Conduct and Disability. Unless the Judicial Conference Committee requests them, the clerk will not send copies of the materials obtained by the chief judge.
- (d) **Untimely Petition.** The clerk must refuse to accept a petition that is received after the deadline in (b).
- (e) **Timely Petition Not in Proper Form.** When the clerk receives a petition filed within the time allowed but in a form that is improper to a degree that would substantially impair

its consideration by the judicial council — such as a document that is ambiguous about whether it is intended to be a petition for review — the clerk must acknowledge its receipt, call the filer's attention to the deficiencies, and give the filer the opportunity to correct the deficiencies within 21 days of the date of the clerk's letter about the deficiencies or within the original deadline for filing the petition, whichever is later. If the deficiencies are corrected within the time allowed, the clerk will proceed according to paragraphs (a) and (c) of this Rule. If the deficiencies are not corrected, the clerk must reject the petition.

### ***FIFTH CIRCUIT PROCEDURE 18***

***18 Where to file.*** *Petitions should be sent to the Clerk, United States Court of Appeals for the Fifth Circuit, 600 S. Maestri Place, New Orleans, LA 70130. The envelope should be marked “Misconduct Petition” or “Disability Petition.” The name of the judge complained about should not appear on the envelope. (Former 5th Cir. R. 5 (H))*

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

- (a) **Rights of Subject Judge.** At any time after a complainant files a petition for review, the subject judge may file a written response with the circuit clerk. The clerk must promptly distribute copies of the response to each member of the judicial council or of the relevant panel, unless that member is disqualified under Rule 25. Copies must also be distributed to the chief judge, to the complainant, and to the Judicial Conference Committee on Judicial Conduct and Disability. The subject judge must not otherwise communicate with individual council members about the matter. The subject judge must be given copies of any communications to the judicial council from the complainant.
- (b) **Judicial-Council Action.** After considering a petition for review and the materials before it, a judicial council may:
  - (1) affirm the chief judge's disposition by denying the petition;
  - (2) return the matter to the chief judge with directions to conduct a further inquiry under Rule 11(b) or to identify a complaint under Rule 5;
  - (3) return the matter to the chief judge with directions to appoint a special committee under Rule 11(f); or
  - (4) in exceptional circumstances, take other appropriate action.
- (c) **Notice of Council Decision.** Copies of the judicial council's order, together with any accompanying memorandum in support of the order or separate concurring or dissenting statements, must be given to the complainant, the subject judge, and the Judicial Conference Committee on Judicial Conduct and Disability.
- (d) **Memorandum of Council Decision.** If the council's order affirms the chief judge's disposition, a supporting memorandum must be prepared only if the judicial council concludes that there is a need to supplement the chief judge's explanation. A memorandum supporting a council order must not include the name of the complainant or the subject judge.
- (e) **Review of Judicial-Council Decision.** If the judicial council's decision is adverse to the petitioner, and if no member of the council dissented on the ground that a special

committee should be appointed under Rule 11(f), the complainant must be notified that he or she has no right to seek review of the decision. If there was a dissent, the petitioner must be informed that he or she can file a petition for review under Rule 21(b) solely on the issue of whether a special committee should be appointed.

- (f) **Public Availability of Judicial-Council Decision.** Materials related to the council's decision must be made public to the extent, at the time, and in the manner set forth in Rule 24.

### ***FIFTH CIRCUIT RULE 19***

***19 Review by the judicial council.*** The judicial council may, consistent with 28 U. S. C. § 352 (d), delegate the review process to rotating panels drawn at random with power to act on behalf of the full council. (Former 5th Cir. R. 7)

*Order of the Judicial Council effectuating rule 19:*

### ***JUDICIAL COUNCIL OF THE FIFTH CIRCUIT***

*Before: Chief Judge Henry A. Poliz; Circuit Judges Carolyn Dineen King, Will Garwood, E. Grady Jolly, W. Eugene Davis, Edith H. Jones, Jerry E. Smith, Jacques L. Wiener, Jr., Rhesa H Barksdale, and Emilio M. Garza; District Judges Morey L. Sear, John v. Parker, F.A. Little, Jr., L.T. Senter, Jr., William H. Barbour, Jr., Barefoot Sanders, George P. Kazen, Howell Cobb, and Edward C. Prado.*

#### **Resolution**

*BE IT RESOLVED that the Judicial Council review of orders of the chief judge of the circuit dismissing 28 U.S. C. 372 (c) complaints shall be processed as follows:*

*The members of the Judicial Council excluding the chief judge of the circuit and the circuit judge next senior in service, shall be assigned by random selection to three panels, each composed of five judges. The two remaining members will remain as backup in the event of absence or recusal of any panel member.*

*The panels shall be known as Appellate Review Panels and shall be separately identified. Panel assignments will be made annually, effective January 1 of each year, except for the inaugurative panel which is to serve for the period of September 1, 1994 through December 31, 994.*

*Each panel shall perform the review functions for four consecutive calendar months, and may do so by communicating in person, by telephone, and/or by electronic and postal mail.*

*Panels are empowered to act on behalf of and in the name of the Judicial Council to affirm an appealed order, provided at least four members agree to an affirmance and no panelist suggests*

*full Council review. All other matters are to be referred to the full Council for disposition, together with any recommendation(s) the panel may deem appropriate.*

*August 29, 1994*

*For the Council  
/s/Henry A. Politz  
Henry A. Politz, Chief Judge*

## **20. Judicial-Council Consideration of Reports and Recommendations of Special Committees**

- (a) Rights of Subject Judge.** Within 21 days after the filing of the report of a special committee, the subject judge may send a written response to the members of the judicial council. The judge must also be given an opportunity to present argument through counsel, written or oral, as determined by the council. The judge must not otherwise communicate with council members about the matter.
- (b) Judicial-Council Action.**
  - (1) Discretionary actions.** Subject to the judge's rights set forth in subsection (a), the judicial council may:
    - (A) dismiss the complaint because:**
      - (i) even if the claim is true, the claimed conduct is not conduct prejudicial to the effective and expeditious administration of the business of the courts and does not indicate a mental or physical disability resulting in inability to discharge the duties of office;**
      - (ii) the complaint is directly related to the merits of a decision or procedural ruling;**
      - (iii) the facts on which the complaint is based have not been established; or**
      - (iv) the complaint is otherwise not appropriate for consideration under 28 U.S.C. §§ 351–364.**
    - (B) conclude the proceeding because appropriate corrective action has been taken or intervening events have made the proceeding unnecessary.**
    - (C) refer the complaint to the Judicial Conference of the United States with the council's recommendations for action.**
    - (D) take remedial action to ensure the effective and expeditious administration of the business of the courts, including:**
      - (i) censuring or reprimanding the subject judge, either by private communication or by public announcement;**
      - (ii) ordering that no new cases be assigned to the subject judge for a limited, fixed period;**
      - (iii) in the case of a magistrate judge, ordering the chief judge of the district court to take action specified by the council, including the initiation of removal proceedings under 28 U.S.C. § 631(i) or 42 U.S.C. § 300aa–12(c)(2);**
      - (iv) in the case of a bankruptcy judge, removing the judge from office under 28 U.S.C. § 152(e);**

- (v) in the case of a circuit or district judge, requesting the judge to retire voluntarily with the provision (if necessary) that ordinary length-of-service requirements will be waived; and
  - (vi) in the case of a circuit or district judge who is eligible to retire but does not do so, certifying the disability of the judge under 28 U.S.C. § 372(b) so that an additional judge may be appointed.
- (E) take any combination of actions described in (b)(1)(A)–(D) of this Rule that is within its power.
- (2) **Mandatory actions.** A judicial council must refer a complaint to the Judicial Conference if the council determines that a circuit judge or district judge may have engaged in conduct that:
  - (A) might constitute ground for impeachment; or
  - (B) in the interest of justice, is not amenable to resolution by the judicial council.
- (c) **Inadequate Basis for Decision.** If the judicial council finds that a special committee's report, recommendations, and record provide an inadequate basis for decision, it may return the matter to the committee for further investigation and a new report, or it may conduct further investigation. If the judicial council decides to conduct further investigation, the subject judge must be given adequate prior notice in writing of that decision and of the general scope and purpose of the additional investigation. The judicial council's conduct of the additional investigation must generally accord with the procedures and powers set forth in Rules 13 through 16 for the conduct of an investigation by a special committee.
- (d) **Council Vote.** Council action must be taken by a majority of those members of the council who are not disqualified. A decision to remove a bankruptcy judge from office requires a majority vote of all the members of the council.
- (e) **Recommendation for Fee Reimbursement.** If the complaint has been finally dismissed or concluded under (b)(1)(A) or (B) of this Rule, and if the subject judge so requests, the judicial council may recommend that the Director of the Administrative Office of the United States Courts use funds appropriated to the Judiciary to reimburse the judge for reasonable expenses incurred during the investigation, when those expenses would not have been incurred but for the requirements of the Act and these Rules. Reasonable expenses include attorneys' fees and expenses related to a successful defense or prosecution of a proceeding under Rule 21(a) or (b).
- (f) **Council Action.** Council action must be by written order. Unless the council finds that extraordinary reasons would make it contrary to the interests of justice, the order must be accompanied by a memorandum setting forth the factual determinations on which it is based and the reasons for the council action. The order and the supporting memorandum must be provided to the complainant, the subject judge, and the Judicial Conference Committee on Judicial Conduct and Disability. The complainant and the subject judge must be notified of any right to review of the judicial council's decision as provided in Rule 21(b).



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

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

- (a) Review by Committee.** The Committee on Judicial Conduct and Disability, consisting of seven members, considers and disposes of all petitions for review under (b) of this Rule, in conformity with the Committee's jurisdictional statement. Its disposition of petitions for review is ordinarily final. The Judicial Conference of the United States may, in its sole discretion, review any such Committee decision, but a complainant or subject judge does not have a right to this review.
- (b) Reviewable Matters.**
  - (1) Upon petition.** A complainant or subject judge may petition the Committee for review of a judicial-council order entered in accordance with:
    - (A) Rule 20(b)(1)(A), (B), (D), or (E); or**
    - (B) Rule 19(b)(1) or (4) if one or more members of the judicial council dissented from the order on the ground that a special committee should be appointed under Rule 11(f); in that event, the Committee's review will be limited to the issue of whether a special committee should be appointed.**
  - (2) Upon Committee's initiative.** At its initiative and in its sole discretion, the Committee may review any judicial-council order entered under Rule 19(b)(1) or (4), but only to determine whether a special committee should be appointed. Before undertaking the review, the Committee must invite that judicial council to explain why it believes the appointment of a special committee is unnecessary, unless the reasons are clearly stated in the judicial council's order denying the petition for review. If the Committee believes that it would benefit from a submission by the subject judge, it may issue an appropriate request. If the Committee determines that a special committee should be appointed, the Committee must issue a written decision giving its reasons.
- (c) Committee Vote.** Any member of the Committee from the same circuit as the subject judge is disqualified from considering or voting on a petition for review. Committee decisions under (b) of this Rule must be by majority vote of the qualified Committee members. If only six members are qualified to vote on a petition for review, the decision must be made by a majority of a panel of five members drawn from a randomly selected list that rotates after each decision by a panel drawn from the list. The members who will determine the petition must be selected based on committee membership as of the date on which the petition is received. Those members selected to hear the petition should serve in that capacity until final disposition of the petition, whether or not their term of committee membership has ended. If only four members are qualified to vote, the Chief Justice must appoint, if available, an ex-member of the Committee or, if not, another United States judge to consider the petition.
- (d) Additional Investigation.** Except in extraordinary circumstances, the Committee will not conduct an additional investigation. The Committee may return the matter to the judicial council with directions to undertake an additional investigation. If the

Committee conducts an additional investigation, it will exercise the powers of the Judicial Conference under 28 U.S.C. § 331.

- (e) **Oral Argument; Personal Appearance.** There is ordinarily no oral argument or personal appearance before the Committee. In its discretion, the Committee may permit written submissions from the complainant or subject judge.
- (f) **Committee Decisions.** Committee decisions under this Rule must be transmitted promptly to the Judicial Conference of the United States. Other distribution will be by the Administrative Office at the direction of the Committee chair.
- (g) **Finality.** All orders of the Judicial Conference or of the Committee (when the Conference does not exercise its power of review) are final.

## **22. Procedures for Review**

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

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

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

- (b) **Form and Contents of Petition for Review.** No particular form is required. The petition must contain a short statement of the basic facts underlying the complaint, the history of its consideration before the appropriate judicial council, a copy of the judicial council's decision, and the grounds on which the petitioner seeks review. The petition for review must specify the date and docket number of the judicial-council order for which review is sought. The petitioner may attach any documents or correspondence arising in the course of the proceeding before the judicial council or its special committee. A petition should not normally exceed 20 pages plus necessary attachments.
- (c) **Time.** A petition must be submitted within 63 days of the date of the order for which review is sought.
- (d) **Copies.** Seven copies of the petition for review must be submitted, at least one of which must be signed by the petitioner or his or her attorney. If the petitioner submits a signed declaration of inability to pay the expense of duplicating the petition, the Administrative Office must accept the original petition and must reproduce copies at its expense.
- (e) **Action on Receipt of Petition for Review.** The Administrative Office must acknowledge receipt of a petition for review submitted under this Rule, notify the chair of the Judicial Conference Committee on Judicial Conduct and Disability, and distribute the petition to the members of the Committee for their deliberation.

## ARTICLE VII. MISCELLANEOUS RULES

### 23. Confidentiality

- (a) **General Rule.** The consideration of a complaint by the chief judge, a special committee, the judicial council, or the Judicial Conference Committee on Judicial Conduct and Disability is confidential. Information about this consideration must not be disclosed by any judge or employee of the judicial branch or by any person who records or transcribes testimony except as allowed by these Rules. In extraordinary circumstances, a chief judge may disclose the existence of a proceeding under these Rules when necessary to maintain public confidence in the federal judiciary's ability to redress misconduct or disability.
- (b) **Files.** All files related to complaints must be separately maintained with appropriate security precautions to ensure confidentiality.
- (c) **Disclosure in Decisions.** Except as otherwise provided in Rule 24, written decisions of the chief judge, the judicial council, or the Judicial Conference Committee on Judicial Conduct and Disability, and dissenting opinions or separate statements of members of the council or Committee may contain information and exhibits that the authors consider appropriate for inclusion, and the information and exhibits may be made public.
- (d) **Availability to Judicial Conference.** On request of the Judicial Conference or its Committee on Judicial Conduct and Disability, the circuit clerk must furnish any requested records related to a complaint. For auditing purposes, the circuit clerk must provide access to the Committee to records of proceedings under the Act at the site where the records are kept.
- (e) **Availability to District Court.** If the judicial council directs the initiation of proceedings for removal of a magistrate judge under Rule 20(b)(1)(D)(iii), the circuit clerk must provide to the chief judge of the district court copies of the report of the special committee and any other documents and records that were before the judicial council at the time of its decision. On request of the chief judge of the district court, the judicial council may authorize release to that chief judge of any other records relating to the investigation.
- (f) **Impeachment Proceedings.** If the Judicial Conference determines that consideration of impeachment may be warranted, it must transmit the record of all relevant proceedings to the Speaker of the House of Representatives.
- (g) **Subject Judge's Consent.** If both the subject judge and the chief judge consent in writing, any materials from the files may be disclosed to any person. In any such disclosure, the chief judge may require that the identity of the complainant, or of witnesses in an investigation conducted by a chief judge, a special committee, or the judicial council, not be revealed.
- (h) **Disclosure in Special Circumstances.** The Judicial Conference, its Committee on Judicial Conduct and Disability, or a judicial council may authorize disclosure of information about the consideration of a complaint, including the papers, documents, and transcripts relating to the investigation, to the extent that disclosure is justified by special circumstances and is not prohibited by the Act. Disclosure may be made to

judicial researchers engaged in the study or evaluation of experience under the Act and related modes of judicial discipline, but only where the study or evaluation has been specifically approved by the Judicial Conference or by the Judicial Conference Committee on Judicial Conduct and Disability. Appropriate steps must be taken to protect the identities of the subject judge, the complainant, and witnesses from public disclosure. Other appropriate safeguards to protect against the dissemination of confidential information may be imposed.

- (i) **Disclosure of Identity by Subject Judge.** Nothing in this Rule precludes the subject judge from acknowledging that he or she is the judge referred to in documents made public under Rule 24.
- (j) **Assistance and Consultation.** Nothing in this Rule precludes the chief judge or judicial council acting on a complaint filed under the Act from seeking the help of qualified staff or from consulting other judges who may be helpful in the disposition of the complaint.

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

- (a) **General Rule; Specific Cases.** When final action has been taken on a complaint and it is no longer subject to review, all orders entered by the chief judge and judicial council, including any supporting memoranda and any dissenting opinions or separate statements by members of the judicial council, must be made public, with the following exceptions:
  - (1) if the complaint is finally dismissed under Rule 11(c) without the appointment of a special committee, or if it is concluded under Rule 11(d) because of voluntary corrective action, the publicly available materials must not disclose the name of the subject judge without his or her consent.
  - (2) if the complaint is concluded because of intervening events, or dismissed at any time after a special committee is appointed, the judicial council must determine whether the name of the subject judge should be disclosed.
  - (3) if the complaint is finally disposed of by a privately communicated censure or reprimand, the publicly available materials must not disclose either the name of the subject judge or the text of the reprimand.
  - (4) if the complaint is finally disposed of under Rule 20(b)(1)(D) by any action other than private censure or reprimand, the text of the dispositive order must be included in the materials made public, and the name of the subject judge must be disclosed.
  - (5) the name of the complainant must not be disclosed in materials made public under this Rule unless the chief judge orders disclosure.
- (b) **Manner of Making Public.** The orders described in (a) must be made public by placing them in a publicly accessible file in the office of the circuit clerk or by placing the orders on the court's public website. If the orders appear to have precedential value, the chief judge may cause them to be published. In addition, the Judicial Conference Committee on Judicial Conduct and Disability will make available on the Federal Judiciary's website, [www.uscourts.gov](http://www.uscourts.gov), selected illustrative orders described in

paragraph (a), appropriately redacted, to provide additional information to the public on how complaints are addressed under the Act.

- (c) **Orders of Judicial Conference Committee.** Orders of this Committee constituting final action in a complaint proceeding arising from a particular circuit will be made available to the public in the office of the clerk of the relevant court of appeals. The Committee will also make such orders available on the Federal Judiciary's website, [www.uscourts.gov](http://www.uscourts.gov). When authorized by the Committee, other orders related to complaint proceedings will similarly be made available.
- (d) **Complaints Referred to the Judicial Conference of the United States.** If a complaint is referred to the Judicial Conference under Rule 20(b)(1)(C) or 20(b)(2), materials relating to the complaint will be made public only if ordered by the Judicial Conference.

## **25. Disqualification**

- (a) **General Rule.** Any judge is disqualified from participating in any proceeding under these Rules if the judge, in his or her discretion, concludes that circumstances warrant disqualification. If the complaint is filed by a judge, that judge is disqualified from participating in any consideration of the complaint except to the extent that these Rules provide for a complainant's participation. A chief judge who has identified a complaint under Rule 5 is not automatically disqualified from considering the complaint.
- (b) **Subject Judge.** A subject judge is disqualified from considering the complaint except to the extent that these Rules provide for participation by a subject judge.
- (c) **Chief Judge Not Disqualified from Considering a Petition for Review of a Chief Judge's Order.** If a petition for review of a chief judge's order entered under Rule 11(c), (d), or (e) is filed with the judicial council in accordance with Rule 18, the chief judge is not disqualified from participating in the council's consideration of the petition.
- (d) **Member of Special Committee Not Disqualified.** A member of the judicial council who serves on a special committee, including the chief judge, is not disqualified from participating in council consideration of the committee's report.
- (e) **Subject Judge's Disqualification After Appointment of a Special Committee.** Upon appointment of a special committee, the subject judge is automatically disqualified from participating in any proceeding arising under the Act or these Rules as a member of any special committee, the judicial council of the circuit, the Judicial Conference of the United States, and the Judicial Conference Committee on Judicial Conduct and Disability. The disqualification continues until all proceedings on the complaint against the subject judge are finally terminated with no further right of review.
- (f) **Substitute for Disqualified Chief Judge.** If the chief judge is disqualified from participating in consideration of the complaint, the duties and responsibilities of the chief judge under these Rules must be assigned to the most-senior active circuit judge not disqualified. If all circuit judges in regular active service are disqualified, the judicial council may determine whether to request a transfer under Rule 26, or, in the interest of sound judicial administration, to permit the chief judge to dispose of the complaint on the merits. Members of the judicial council who are named in the

complaint may participate in this determination if necessary to obtain a quorum of the judicial council.

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

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

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

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

- (a) **Complaint Pending Before Chief Judge.** With the chief judge's consent, a complainant may withdraw a complaint that is before the chief judge for a decision under Rule 11. The withdrawal of a complaint will not prevent a chief judge from identifying or having to identify a complaint under Rule 5 based on the withdrawn complaint.
- (b) **Complaint Pending before Special Committee or Judicial Council.** After a complaint has been referred to a special committee for investigation and before the committee

files its report, the complainant may withdraw the complaint only with the consent of both the subject judge and either the special committee or the judicial council.

- (c) **Petition for Review.** A petition for review addressed to a judicial council under Rule 18, or the Judicial Conference Committee on Judicial Conduct and Disability under Rule 22 may be withdrawn if no action on the petition has been taken.

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

These Rules and copies of the complaint form as provided in Rule 6(a) must be available without charge in the office of the clerk of each court of appeals, district court, bankruptcy court, or other federal court whose judges are subject to the Act. Each court must also make these Rules and the complaint form available on the court's website, or provide an Internet link to the Rules and complaint form that are available on the appropriate court of appeals' website.

## **29. Effective Date**

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

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

## **COMPLAINT FORM**

A two-page complaint form follows.



Judicial Council of the Fifth Judicial Circuit

**COMPLAINT OF JUDICIAL MISCONDUCT OR DISABILITY**

To begin the complaint process, complete this form and prepare the brief statement of facts described in item 4 (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. Requests for copies of the rules should be directed to: Clerk, United States Court of Appeals for the Fifth Circuit, 600 S. Maestri Place, New Orleans, LA 70130. The rules are also available at [www.ca5.uscourts.gov](http://www.ca5.uscourts.gov).

Your complaint (this form and the statement of facts) should be typewritten and must be legible. Only an original of the complaint must be filed. Enclose the copy of the complaint in an envelope marked "COMPLAINT OF MISCONDUCT" or "COMPLAINT OF DISABILITY" and submit it to: Clerk, United States Court of Appeals for the Fifth Circuit, 600 S. Maestri Place, New Orleans, LA 70130. **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. **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.

5. **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)\_\_\_\_\_