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For Public Comment: ***Draft Rules Governing Judicial Conduct and Disability Proceedings***

On July 16, 2007, the Committee on Judicial Conduct and Disability of the Judicial Conference of the United States released its draft *Rules Governing Judicial Conduct and Disability Proceedings* for 90 days of public comment, **to conclude on October 15, 2007**. From this web page, you may review those rules and submit your comments by e-mail.

- [Review Draft Rules Governing Judicial Conduct and Disability Proceedings](#) (pdf)
- E-mail your comments to JudicialConductRules@ao.uscourts.gov

With any comments you submit, please specify your:

- Name,
- Mailing address,
- Organization, if any, and
- Occupation (federal judge, state judge, lawyer in private practice, government lawyer, professor, or non-lawyer).

Although submissions will not receive a response, those that are timely will be considered by the Judicial Conduct and Disability Committee as it prepares the draft rules for Judicial Conference consideration.

The draft rules were developed at the direction of the Judicial Conference as a means of ensuring that the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364, operates consistently throughout the federal court system. If adopted

by the Conference, they will constitute binding guidance for chief judges, circuit judicial councils, and circuit staff on the full spectrum of issues noted in *Implementation of the Judicial Conduct and Disability Act of 1980, A Report to the Chief Justice*, 239 F.R.D. 116 (September 2006) ("Breyer Committee Report"). Those issues, and the historical and policy context of these rules, are discussed fully in that report.

You may also comment on these rules at a public hearing being planned for that purpose, to commence at 10:00 a.m. on September 27, 2007, in the U.S. Courthouse at 225 Cadman Plaza East, Brooklyn, New York. Requests to appear and testify at the hearing must be e-mailed by August 27 to the Office of the General Counsel, Administrative Office of the U.S. Courts, at JudicialConductRules@ao.uscourts.gov. Those who submit such requests will be asked to give a written indication of the testimony they intend to provide.

This web page and its links are for use only in reviewing, and commenting upon, the draft Rules Governing Judicial Conduct and Disability Proceedings. No complaints and no communication on any other topic will be accepted here.

**RULES GOVERNING JUDICIAL CONDUCT AND
DISABILITY PROCEEDINGS UNDERTAKEN
PURSUANT TO 28 U.S.C. §§ 351-364**

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**RULES GOVERNING COMPLAINTS OF
JUDICIAL CONDUCT AND DISABILITY**

Preface

These Rules and accompanying Commentaries 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, or identified by chief circuit judges, under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364.

ARTICLE I. GENERAL PROVISIONS

Rule 1. Scope.

These Rules govern the conduct of proceedings undertaken pursuant to 28 U.S.C. §§ 351-364 regarding 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 by reason of mental or physical disability.

Commentary to Rule 1

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

The Breyer Committee found that it could not evaluate implementation of the Act without establishing interpretive standards, Breyer Report, 239 F.R.D. at 132, and that a major problem faced by chief circuit judges in implementing the Act was the lack of authoritative interpretive standards. See id. at 212-15. The Breyer Committee then established standards to guide its evaluations, some of which were new formulations and some of which were taken from the “Illustrative Rules Governing Complaints of Judicial Misconduct and Disability,” discussed below. The principal standards used by the Breyer Committee are in Appendix E of its Report. Id. at 238.

Based on the findings of the Breyer Committee, the Judicial Conference Committee on Judicial Conduct and Disability concluded that there was a need for the Judicial Conference to exercise its power under the Act to fashion standards to provide guidance to the various officers and bodies who must exercise responsibility under the Act. To that end, the Judicial Conference Committee proposed rules that were based largely on Appendix E of the Breyer Report and the Illustrative Rules.

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

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1 Under the Act, a “complaint” may be filed by “any person” or “identified” by a chief
2 circuit judge . See 28 U.S.C. § 351(a) and (b). Generally, the word “complaint” brings to mind
3 the commencement of an adversary proceeding in which the contending parties are left to
4 present the evidence and legal arguments, and judges play the role of an essentially passive
5 arbiter. The Act, however, establishes an administrative, inquisitorial process in which, even
6 absent a complaint under Rule 6, chief circuit judges are often expected to trigger the process --
7 “identify a complaint,” see Rule 5 -- and conduct an investigation without becoming a party. See
8 Breyer Report, 239 F.R.D. at 214; Illustrative Rule 2(j). Even when a complaint is filed by
9 someone other than the chief circuit judge, the complainant lacks many rights that a party to
10 litigation would have, and the chief circuit judge, instead of being limited to the “four corners of
11 the complaint,” must “identify a complaint” under Rule 5 where the complainant reveals
12 information of misconduct or disability but does not claim it as such. See Breyer Report, 239
13 F.R.D. at 183-84.

14
15 An allegation of misconduct or disability filed under Rule 6 is most assuredly a
16 “complaint,” and the Rule so provides in (a)(1). But both the nature of the process and the use of
17 the term “identify” suggest that the word “complaint” covers more than a document formally
18 triggering the process. The process relies on chief circuit judges considering known information
19 and triggering the process when appropriate. “Identifying” a “complaint,” therefore, is best
20 understood as concluding -- “identifying” -- that information known to a chief circuit judge
21 constitutes reasonable grounds for an inquiry into possible misconduct or disability -- a
22 “complaint” -- whether or not the information is framed as, or intended to be an accusation. This
23 definition is codified in (a)(2).

24
25 The term “prejudicial to the effective and expeditious administration of the business of
26 the courts” is not subject to precise definition, and the Rule therefore provides some specific
27 examples. The Code of Conduct for United States Judges may provide standards of conduct
28 applicable to proceedings under the Act, although it is not intended that disciplinary action be
29 appropriate for every violation of the Code’s provisions. As noted in the Introduction to the
30 Code:

31 “Whether disciplinary action is appropriate, and the degree of
32 discipline to be imposed, should be determined through a
33 reasonable application of the text and should depend on such
34 factors as the seriousness of the violation, the intent of the judge,
35 whether there is a pattern of improper activity, and the effect of the
36 improper activity on others or on the judicial system. Many of the
37 proscriptions in the Code are necessarily cast in general terms, and
38 it is not suggested that disciplinary action is appropriate where
39 reasonable judges might be uncertain as to whether or not the
40 conduct is proscribed. Furthermore, the Code is not designed or
41 intended as a basis for civil liability or criminal prosecution.
42 Finally, the purpose of the Code would be subverted if the Code

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1 were invoked by lawyers for mere tactical advantage in a
2 proceeding.”
3

4 Similarly, the regulations governing the receipt of gifts by judges, outside earned income,
5 and financial disclosure obligations provide guidance in proceedings under the Act, although
6 disciplinary action may not be appropriate for every violation of the regulations.
7

8 An allegation can meet the statutory standard even though the judge’s alleged conduct did
9 not occur in the course of the performance of official duties. The Code of Conduct for United
10 States Judges expressly covers a wide range of extra-official activities, and some of these
11 activities may constitute misconduct. For example, allegations that a judge participated in
12 fundraising for a charity or a partisan political event are cognizable under the Act.
13

14 On the other hand, judges are entitled to some leeway in extra-official activities. For
15 example, misconduct may not include a judge being repeatedly and publicly discourteous to a
16 spouse (not including physical abuse) even though this might be an embarrassment to other
17 judges.
18

19 Rule 3(b)(1)(A)(i) tracks the Act in excluding from the definition of misconduct
20 allegations “[d]irectly related to the merits of a decision or procedural ruling.” The complaint
21 procedure is not a means for a collateral attack on the substance of a judge’s rulings. This
22 exclusion also preserves the independence of judges in the exercise of judicial power. Any
23 allegation that calls into question the correctness of an official action of a judge -- without more
24 -- is merits-related. The phrase “decision or procedural ruling” is not limited to rulings issued in
25 deciding Article III cases or controversies. Thus, a complaint challenging the correctness of a
26 chief circuit judge’s determination to dismiss a prior misconduct complaint would be properly
27 dismissed as merits-related -- i.e., as challenging the substance of the judge’s administrative
28 determination to dismiss the complaint -- even though it does not concern the judge’s rulings in
29 Article III litigation. Similarly, an allegation that a judge had incorrectly declined to approve a
30 Criminal Justice Act voucher is merits-related under this standard.
31

32 Conversely, an allegation -- however unsupported -- that a judge conspired with a
33 prosecutor to make a particular ruling is not merits-related, even though it “relates” to a ruling in
34 a colloquial sense. Such an allegation attacks the propriety of conspiring with the prosecutor and
35 goes beyond a challenge to the correctness -- “the merits” -- of the ruling itself. Similarly, an
36 allegation that a judge ruled against the complainant because the complainant was a member of a
37 particular racial or ethnic group, or because the judge dislikes the complainant personally, is not
38 merits-related. Such an allegation attacks the propriety of arriving at rulings with an illicit or
39 improper motive.
40

41 The same standard applies to allegations concerning a judge’s failure to recuse. An
42 allegation that a judge should have recused is merits-related. The very different allegation that the

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1 judge failed to recuse for improper reasons is not merits-related. Similarly, an allegation that a
2 judge used an inappropriate term to refer to a class of people is not merits-related even if the
3 judge used it on the bench or in an opinion. The correctness of the judge's rulings is not at stake.
4 An allegation that a judge was rude to counsel or others while on the bench is also not merits-
5 related.

6
7 The existence of an appellate remedy is irrelevant to whether an allegation is merits-
8 related. The merits-related ground for dismissal exists to protect judges' independence in making
9 rulings, not to protect or promote the appellate process. A complaint alleging an incorrect ruling
10 is merits-related even though the complainant has no recourse from that ruling. By the same
11 token, an allegation that is otherwise cognizable under the Act should not be dismissed merely
12 because an appellate remedy appears to exist (e.g., vacating a ruling that resulted from an
13 improper ex parte communication).

14
15 Because of the special need to protect judges' independence in deciding what to say in an
16 opinion or ruling, a somewhat different standard applies to determine the merits-relatedness of a
17 non-frivolous allegation that a judge's language in a ruling reflected an improper motive. If the
18 judge's language was relevant to the case at hand -- for example a statement that a claim is
19 legally or factually "frivolous" -- then the judge's choice of language is presumptively merits-
20 related and excluded, absent evidence apart from the ruling itself suggesting an improper motive.
21 If, on the other hand, the challenged language does not seem relevant on its face, then an
22 additional inquiry under Rule 11 is necessary.

23
24 With regard to Rule 3(b)(1)(A)(ii), a complaint of delay in a single case is excluded as
25 merits-related. Such an allegation may be said to challenge the correctness of an official action of
26 the judge, i.e., assigning a low priority to deciding the particular case. But, by the same token, an
27 allegation of a habitual pattern of delay in a significant number of unrelated cases, or an
28 allegation of deliberate delay in a single case arising out of an illicit motive, is not merits-related.
29

30 Rule 3(c) relates to disability and provides only the most general definition, recognizing
31 that a fact-specific approach is the only one available.

32
33 **Rule 4. Covered Judges.**

34
35 **A complaint under these Rules may concern the actions or capacity only of judges of**
36 **United States courts of appeals, judges of United States district courts, judges of United**
37 **States bankruptcy courts, United States magistrate judges, and judges of the courts**
38 **specified in 28 U.S.C. § 363.**

39
40 **Commentary on Rule 4**

41
42 This Rule tracks the statute. Rule 8(c) and (d) contain provisions as to the handling of

1 complaints against persons not covered by the Act, such as other court personnel, or against both
2 covered judges and non-covered persons.
3
4

5 **ARTICLE II. INITIATION OF A COMPLAINT**
6

7 **Rule 5. Identification of a Complaint.**
8

9 **(a) Identifying a Complaint.**

10 **(1) Subject to Rule 7, where information known to a chief circuit judge meets the**
11 **standard of Rule 3(a)(2) and no complaint containing such information has been**
12 **filed under Rule 6, a chief circuit judge must identify a complaint and, by**
13 **written order stating the reasons, begin the review provided in Rule 11. Where a**
14 **complaint filed under Rule 6 contains information constituting an identifiable**
15 **complaint of misconduct or disability but the complainant does not claim it as**
16 **such, the chief circuit judge must identify a complaint.**

17 **(2) A chief circuit judge:**

18 **(A) may not decline to identify a complaint:**

19 **(i) because the chief circuit judge deems otherwise cognizable allegations**
20 **not to be credible, unless the sole source of information has been**
21 **unreliable in the past; or**

22 **(ii) because the person or persons making such allegations have not filed**
23 **a complaint under Rule 6.**

24 **(B) need not identify a complaint if it is clear on the basis of the total mix of**
25 **information available to the chief circuit judge that the review provided in**
26 **Rule 11 will result in a dismissal under Rule 11(c), (d), or (e). However, a**
27 **chief circuit judge may identify a complaint in such circumstances in order to**
28 **assure the public that highly visible allegations have been investigated. In**
29 **such a case, appointment of a special committee under Rule 11(f) may not be**
30 **necessary.**

31 **(C) may decline to identify a complaint if the matter has been resolved by**
32 **informal means.**

33 **(3) Complaints filed under Rule 6 that do not comply with Rule 6(d) must be**
34 **considered under this Rule.**
35

36 **Commentary to Rule 5**
37

38 This Rule is adapted from the Breyer Report. See Breyer Report, 239 F.R.D. at 245-46.
39

40 The phrase "Subject to Rule 7" in (a)(1) is intended to establish that only: (i) the chief
41 circuit judge of the home circuit of a potential subject judge, or (ii) the chief circuit judge of a
42 circuit in which misconduct is alleged to have occurred in the course of official business while

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1 the potential subject judge was sitting by designation, shall have power or a duty under this Rule
2 to identify a complaint.

3
4 The Act authorizes the chief circuit judge, by written order stating reasons, to identify a
5 complaint and thereby dispense with the filing of a written complaint. A chief circuit judge who
6 has identified a complaint will not be considered a complainant and need not automatically
7 recuse from further proceedings on the complaint. The identification of a complaint merely
8 begins the process described in Rule 11, leaving the chief circuit judge with the same options
9 available in the case of a complaint filed under Rule 6. Where a complaint has been filed under
10 Rule 6, the ordinary doctrines of waiver do not apply, and a chief circuit judge must identify as a
11 complaint any misconduct or disability issues implicitly presented even if the complainant makes
12 no claim with regard to those issues. For example, a claim limited to misconduct in fact-finding
13 that mentions periods during a trial when the judge was asleep must be identified as a complaint
14 regarding disability. The identification may occur as a new complaint under Rule 5 or as a
15 formal expansion by written order of an inquiry under Rule 11, but some formal order giving
16 notice of the expanded scope of the proceeding to the subject judge and reviewing tribunal is
17 necessary.

18
19 The chief circuit judge's decision whether to identify a complaint under Rule 5 is
20 fundamentally different from the decision whether to appoint a special committee under Rule 11.
21 The threshold under Rule 5 is much lower. If an identified complaint is ultimately dismissed
22 without appointment of a special committee, this does not mean that the complaint should not
23 have been identified. However, a chief circuit judge may determine not to identify a complaint
24 under circumstances in which the total mix of information available to the chief circuit judge
25 makes it clear that such a complaint would be dismissed under Rule 11(c), (d), or (e). For
26 example, when the sole source of information's identity or even existence is unknown, a chief
27 circuit judge may, depending on the entire circumstances and the seriousness of the issues,
28 decline to identify a complaint.

29
30 A chief circuit judge should not decline to identify a complaint solely on the basis that
31 allegations that appear cognizable under the statute, for which there appears to be some potential
32 evidentiary support, are not deemed by the chief circuit judge to be credible. However, when
33 allegations are based solely on the word of one who has been unreliable in prior misconduct or
34 disability proceedings, a chief circuit judge may decline to act without more. Nor should a chief
35 circuit judge decline to identify a complaint solely on the basis that the unfiled allegations could
36 be raised by one or more persons in a filed complaint, but none of these persons has opted to do
37 so.

38
39 A chief circuit judge may properly treat identifying a complaint as a resort to be
40 considered after informal approaches at a resolution, if feasible, have failed. However, in high-
41 visibility situations, it may be particularly desirable for the chief circuit judge to identify a
42 complaint (and then, if the circumstances warrant, dismiss or conclude the identified complaint

1 without appointment of a special committee) in order to assure the public that the allegations
2 have not been ignored.

3
4 Rule 11 provides that once the chief circuit judge has identified a complaint, the chief
5 circuit judge, subject to the disqualification provisions of Rule 25, will perform, with respect to
6 that complaint, all functions assigned to the chief circuit judge for the determination of
7 complaints filed by a complainant.

8
9 **Rule 6. Filing a Complaint.**

10
11 **(a) Brief Statement of Facts.**

12 **A complaint must contain a concise statement setting forth with particularity the**
13 **facts on which the claim of misconduct or disability is based. The statement should not be**
14 **longer than five standard pages. The statement of facts should include:**

- 15 (1) a statement of what occurred;
16 (2) the time and place of the occurrence or occurrences;
17 (3) all available information that would assist an investigator in checking the
18 facts, including, but not limited to, relevant documents and the names and
19 addresses of witnesses. If documents are submitted, the statement of facts
20 should refer to the specific pages in the documents on which relevant material
21 appears; and
22 (4) in the case of an allegation of disability, any facts forming the basis of that
23 allegation not included in the above.

24 **(b) Form.**

25 (1) Complaints may be filed on a form reproduced in the appendix to these
26 rules or a form designated by the rules of the circuit in which the complaint is
27 filed. The complaint form is to be made available on each court of appeals
28 website, and may be obtained from the clerk of the court of appeals, district
29 court, or bankruptcy court within the circuit. Failure to use the complaint form
30 is not grounds for rejecting or dismissing the complaint so long as the
31 information described in (a) is provided.

32 **(c) Legibility; Number of Copies.**

33 **Complaints should be typewritten if possible. If not typewritten, they must be**
34 **legible. An illegible complaint will be returned to the complainant with a request to**
35 **resubmit it in legible form, failing which the complaint will not be considered. If the**
36 **complaint is about a single judge of the court of appeals, the complainant must provide**
37 **three copies of the complaint, the statement of facts, and any documents submitted. If it is**
38 **about a single district judge or magistrate judge, four copies must be provided; if about a**
39 **single bankruptcy judge, five copies. If the complaint is about more than one judge, copies**
40 **must be provided for the clerk of the court, the chief judge of the circuit, each subject**
41 **judge, and each judge to whom the clerk must send a copy under Rule 8(b). Complaints**
42 **under this Rule should be in an envelope marked “Complaint of Misconduct” or**

1 **“Complaint of Disability.” The name of the subject judge should not appear on the**
2 **envelope.**

3 **(d) Signature.**

4 **The form must be signed and the truth of the statements verified in writing under**
5 **penalty of perjury. The complainant’s address must also be provided. Failure to comply**
6 **with this subsection will not be grounds for rejecting a complaint, but no further review**
7 **shall take place unless the chief circuit judge identifies a complaint under Rule 5.**

8
9 **Commentary to Rule 6**

10
11 **The Rule is adapted from the Illustrative Rules and is self-explanatory.**

12
13 **Rule 7. Where to Initiate Complaints.**

14
15 **(a) Where to File.**

16 **Complaints against judges of United States courts of appeals, judges of United**
17 **States district courts, judges of United States bankruptcy courts, or United States**
18 **magistrate judges must be filed with the clerk of the United States Court of Appeals for**
19 **the judicial circuit in which the subject judge holds office. Complaints against judges of**
20 **the United States Court of International Trade or United States Court of Claims must be**
21 **filed with the respective clerks of those courts. Complaints against judges of the United**
22 **States Court of Appeals for the Federal Circuit must be filed with the Circuit Executive of**
23 **that court. Where appropriate, the term “clerk of the court of appeals” or “clerk,” as used**
24 **in these Rules, includes all the officers mentioned.**

25 **(b) Transfer; Misconduct in Another Circuit.**

26 **If a complaint alleges misconduct in the course of official business while the**
27 **subject judge was sitting on a court by designation under 28 U.S.C. §§ 291-93 and 294(d),**
28 **the complaint may be filed or identified with the clerk of the court of appeals of that circuit**
29 **or the subject judge’s home circuit. The proceeding will continue in the circuit of the first**
30 **filed or identified complaint. However, the judicial council of the circuit in which the**
31 **complaint was first filed or identified may transfer the complaint to the subject judge’s**
32 **home circuit or circuit where the alleged misconduct occurred, as the case may be.**

33
34 **Commentary to Rule 7**

35
36 **Section 351 uses the term “the circuit” in a way that suggests that either the home circuit**
37 **of the subject judge or the circuit in which misconduct is alleged to have occurred is the proper**
38 **venue for complaints. With an exception for judges sitting by designation, the Rule requires the**
39 **identifying or filing of a misconduct or disability complaint in the circuit in which the judge**
40 **holds office, largely based on the administrative perspective of the Act. Given the Act’s**
41 **emphasis on the future conduct of the business of the courts, the circuit in which the judge holds**
42 **office is the appropriate forum because that circuit is likely best able to influence a judge’s future**

1 behavior in constructive ways.
2

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

10
11 **Rule 8. Action by Clerk.**
12

13 **(a) Receipt of Complaint.**

14 **On receipt of a complaint against a judge filed under Rules 5 or 6, the clerk of the**
15 **court of appeals must open a file, assign a docket number, and acknowledge receipt.**

16 **(b) Distribution of Copies.**

17 **The clerk must promptly send copies of a complaint filed under Rule 6 to the chief**
18 **circuit judge of the circuit or the judge authorized to act as chief circuit judge under Rule**
19 **25(f), and complaints filed under Rules 5 or 6 to each subject judge. Such complaints must**
20 **also be sent to the Judicial Conference Committee on Judicial Conduct and Disability. The**
21 **original complaint must be retained by the clerk. If a district judge or magistrate judge is**
22 **the subject of a complaint, the clerk must also send a copy of the complaint to the chief**
23 **judge of the district court in which the judge or magistrate judge holds his or her**
24 **appointment. If a bankruptcy judge is the subject of a complaint, the clerk must send**
25 **copies to the chief judges of the district court and the bankruptcy court. However, if the**
26 **chief judge of a district court or bankruptcy court is a subject of the complaint, the chief**
27 **judge's copy must be sent to the judge of such court in regular active service who is most**
28 **senior in date of commission among those who are not subjects of the complaint.**

29 **(c) Complaints Against Non-Covered Persons.**

30 **If the clerk receives a complaint about a person not holding an office described in**
31 **Rule 4, the clerk must not accept the complaint for filing under these Rules.**

32 **(d) Receipt of Complaint about a Judge and Another Non-Covered Person.**

33 **If a complaint is received about a judge described in Rule 4 and a person not**
34 **holding an office described in Rule 4, the clerk must accept the complaint for filing under**
35 **these Rules only with regard to the judge and must advise the complainant accordingly.**
36

37 **Commentary to Rule 8**
38

39 This Rule is adapted from the Illustrative Rules and is largely self-explanatory.
40 Complaints against non-covered persons are not to be accepted for processing under these Rules
41 but may, of course, be accepted under other circuit rules or procedures for grievances.
42

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1 submissions of dozens or hundreds of essentially identical complaints against the same judge or
2 judges, all submitted by different complainants. In many of these instances, persons with
3 grievances against a particular judge or judges used the Internet or other technology to
4 orchestrate mass complaint-filing campaigns against them. If each complaint submitted as part
5 of such a campaign were accepted for filing and processed according to these rules, there would
6 be a serious drain on court resources without any benefit to the adjudication of the underlying
7 merits.

8
9 A circuit may respond to such mass filings under Rule 10(b) by declining to accept
10 repetitive complaints for filing, regardless of the fact that the complaints are nominally submitted
11 by different complainants. Where the first complaint or complaints have been dismissed on the
12 merits, when further, essentially identical, submissions follow, the judicial council may issue a
13 second order noting that these are identical or repetitive complaints, directing the clerk not to
14 accept these complaints or any further such complaints for filing, and directing the clerk or the
15 circuit executive to send each putative complainant copies of both orders.

16
17
18 **ARTICLE III. REVIEW OF A COMPLAINT BY THE CHIEF CIRCUIT JUDGE**

19
20 **Rule 11. Review by the Chief Circuit Judge.**

21
22 **(a) Purpose of Chief Circuit Judge's Review.**

23 **When a complaint is filed or is identified by the chief circuit judge, the chief circuit**
24 **judge, subject to Rule 25, must review the complaint and determine whether it should be:**

- 25 **(1) dismissed;**
26 **(2) concluded on the ground that corrective action has been taken;**
27 **(3) concluded because intervening events have made action on the complaint no**
28 **longer necessary; or**
29 **(4) referred to a special committee.**

30 **(b) Inquiry by Chief Circuit Judge.**

31 **In determining what action to take under Rule 11(a), the chief circuit judge may**
32 **conduct a limited inquiry. In conducting such an inquiry, the chief circuit judge may not**
33 **make findings of fact about any matter that is reasonably in dispute or determinations**
34 **concerning the credibility of the complainant or putative witnesses. The chief circuit judge,**
35 **or a designee, may communicate orally or in writing with the complainant, the subject**
36 **judge, and any others who may have knowledge of the matter and review transcripts or**
37 **other relevant documents. The chief circuit judge may make findings of fact to the extent**
38 **that the limited inquiry shows that the factual allegations are frivolous under (c)(3) of this**
39 **Rule.**

40 **(c) Dismissal.**

41 **A complaint must be dismissed in whole or in part to the extent that the chief circuit**
42 **judge concludes that the complaint:**

1 **(1) alleges conduct that, even if true, is not prejudicial to the effective and**
2 **expeditious administration of the business of the courts and does not indicate a**
3 **mental or physical disability resulting in inability to discharge the duties of**
4 **judicial office;**

5 **(2) is directly related to the merits of a decision or procedural ruling;**

6 **(3) is frivolous because it is based on allegations that are wholly unsupported,**
7 **plainly untrue, refuted by objective evidence, or incapable of being established**
8 **through investigation;**

9 **(4) has been filed in the wrong circuit under Rule 7; or**

10 **(5) is otherwise not appropriate for consideration under the Act.**

11 **A complaint may not be dismissed solely because it repeats allegations of a previously**
12 **dismissed complaint if it contains material information not previously considered and does**
13 **not constitute harassment of the subject judge.**

14 **(d) Corrective Action.**

15 **The chief circuit judge may conclude the complaint proceeding in whole or in part if**
16 **the chief circuit judge determines that appropriate corrective action that acknowledges and**
17 **remedies the problems raised by the complaint has been voluntarily taken by the subject**
18 **judge.**

19 **(e) Intervening Events.**

20 **The chief circuit judge may conclude the complaint proceeding in whole or in part if**
21 **the chief circuit judge determines that intervening events render some or all allegations of**
22 **the complaint moot or remedial action impossible.**

23 **(f) Appointment of Special Committee.**

24 **If some or all of the complaint is not dismissed or concluded, the chief circuit judge**
25 **must promptly appoint a special committee to investigate the complaint or relevant portion**
26 **thereof and to make recommendations to the judicial council. Before appointing a special**
27 **committee, the chief circuit judge must invite the subject judge to respond to the complaint**
28 **either orally or in writing if such an opportunity was not given during the limited inquiry.**
29 **In the discretion of the chief circuit judge, separate complaints may be joined and assigned**
30 **to a single special committee; similarly, a single complaint about more than one judge may**
31 **be severed and more than one special committee appointed.**

32 **(g) Notice of Chief Circuit Judge's Action; Petitions for Review.**

33 **(1) If the complaint is disposed of under Rule 11(c), (d), or (e), the chief circuit**
34 **judge must prepare a supporting memorandum that sets forth the reasons for**
35 **the disposition. The memorandum must not include the name of the**
36 **complainant or of the subject judge. The order and the supporting**
37 **memorandum must be provided to the complainant, the subject judge, any judge**
38 **entitled to receive a copy of the complaint pursuant to Rule 8(b), and the**
39 **Judicial Conference Committee on Judicial Conduct and Disability. The**
40 **complainant and subject judge must be notified of the right to petition the**
41 **judicial council for review of the decision under (g)(2) of this Rule. If a petition**
42 **for review is filed as provided in Rule 18(a), the chief circuit judge must**

1 promptly transmit all materials obtained in connection with the inquiry under
2 Rule 11(b) to the clerk of the court of appeals for transmittal to the judicial
3 council.

4 (2) If the chief circuit judge disposes of a complaint under Rule 11(c), (d), or (e),
5 the complainant or subject judge may petition the judicial council of the circuit
6 for review of that disposition, as provided in Rule 18.

7 (3) If a special committee is appointed, the chief circuit judge must notify the
8 complainant, the subject judge, and any judge entitled to receive a copy of the
9 complaint pursuant to Rule 8(b) that the matter has been referred to a special
10 committee, and must inform them of the membership of the committee.

11 **(h) Public Availability of Chief Circuit Judge's Decision.**

12 The chief circuit judge's decision must be made public at the time and in the manner
13 provided in Rule 24.

14 **(i) Report to the Judicial Council.**

15 The chief circuit judge must report to the judicial council of the circuit on all actions
16 taken under this Rule.

17
18 **Commentary to Rule 11**

19
20 Subsection (a) lists the actions available to a chief circuit judge in reviewing a complaint.

21
22 Subsection (b) describes the nature of the chief circuit judge's inquiry. It is based largely
23 on the Breyer Committee Report. See Breyer Report, 239 F.R.D. at 243-45. The Act states that
24 dismissal is appropriate "when a limited inquiry ... demonstrates that the allegations in the
25 complaint lack any factual foundation or are conclusively refuted by objective evidence."
26 Section 352(b)(1)(B). At the same time, however, section 352(a) states that "[t]he chief judge
27 shall not undertake to make findings of fact about any matter that is reasonably in dispute."
28 These two statutory standards should be read together, so that a matter is not "reasonably" in
29 dispute if a limited inquiry shows the allegations to lack any factual foundation or to be
30 conclusively refuted by objective evidence.

31
32 In conducting a limited inquiry, the chief circuit judge must avoid credibility
33 determinations, which are ordinarily left to a special committee and the judicial council. An
34 allegation is not "conclusively refuted by objective evidence" simply because the subject judge
35 denies it. The limited inquiry must reveal something more in the way of refutation before it is
36 appropriate to dismiss a complaint that is not inherently incredible. If it is literally the
37 complainant's word against the subject judge's -- there is simply no other significant evidence --
38 then there must be a special committee investigation. Such a credibility issue is a matter
39 "reasonably in dispute" within the meaning of the Act.

40
41 However, dismissal following a limited inquiry may occur where the complaint refers to
42 transcripts or to witnesses and when the chief circuit judge determines that the transcripts and

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1 witnesses all support the subject judge. For example, consider a complaint alleging that the
2 subject judge said X, where the complaint mentions, or it is independently clear, that five people
3 may have heard what the judge said. The chief circuit judge is told by the judge complained
4 against and one witness that the judge did not say X, and the chief circuit judge dismisses the
5 complaint without questioning the other four possible witnesses. In this example, the matter
6 remains reasonably in dispute. If all five witnesses say the judge did not say X, dismissal is called
7 for. But if potential witnesses, reasonably accessible, have not been questioned, then the matter
8 remains reasonably in dispute.
9

10 The chief circuit judge is not required to act solely on the face of the complaint. The
11 power to conclude a complaint proceeding on the basis that corrective action has been taken
12 implies some power to determine whether the facts alleged are true. But the boundary line of that
13 power -- the point at which a chief circuit judge invades the territory reserved for special
14 committees -- is unclear. Rule 11(b) allows the chief circuit judge to determine whether the facts
15 alleged in a complaint are “frivolous” as the term is used in Subsection (c)(3), but also states that
16 the chief circuit judge will not undertake to make findings of fact about any matter that is
17 reasonably in dispute.
18

19 Subsection (c) describes the grounds on which a complaint may be dismissed. These are
20 adapted from the Act and the Breyer Committee Report. 28 U.S.C. § 352(b); Breyer Report, 239
21 F.R.D. at 239-45. Subsection (c)(1) permits dismissal of an allegation that, even if true, does not
22 constitute misconduct or disability under the statutory standard. The proper standards are set out
23 in Rule 3 and discussed in the Commentary to that Rule. Subsection (c)(2) permits dismissal of
24 complaints related to the merits of a decision by a subject judge, also governed by Rule 3 and
25 accompanying Commentary.
26

27 Subsection (c)(3) implements the statutory standard allowing dismissal of complaints that
28 are “frivolous, lacking sufficient evidence to raise an inference that misconduct has occurred.”
29 The standard is intended to cover situations where the only source of evidence is unidentified or
30 unavailable. For example, a complaint alleges that an unnamed attorney told the complainant that
31 the judge did X. The subject judge denies it. The chief circuit judge requests that the complainant
32 (who does not purport to have observed the judge do X) identify the unnamed witness, or that the
33 unnamed witness come forward so that the chief circuit judge can learn the unnamed witness’s
34 account. The complainant responds that he has spoken with the unnamed witness, that the
35 unnamed witness is an attorney who practices in federal court, and that the unnamed witness is
36 unwilling to be identified or to come forward. The allegation is then properly dismissed as
37 incapable of being established through investigation.
38

39 Another example would be a complainant who alleges an impropriety and asserts that he
40 knows of it because it was observed and reported to him by a person who is identified. The
41 judge denies that the event occurred. When contacted, the source also denies it. In such a case,
42 the chief circuit judge’s proper course of action may well turn on whether the source had any role

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1 in the allegedly improper conduct. If the complaint were based on a lawyer’s statement that he or
2 she had had an improper *ex parte* contact with a judge, the lawyer’s denial of the impropriety
3 might not be taken as wholly persuasive, and it would be appropriate to conclude that a real
4 factual issue is raised. On the other hand, if the complaint quoted a disinterested third party and
5 the disinterested party denied that the statement had been made, there would be no value in
6 opening a formal investigation. In such a case, it would be appropriate to dismiss the complaint
7 as frivolous because there is no support for the allegation of misconduct.

8
9 If, however, the situation involves a simple credibility conflict, the matter should proceed.
10 For example, the complainant alleges an impropriety and alleges that he or she observed it and
11 there were no other witnesses; the subject judge denies that the event occurred. Unless the
12 complainant’s allegations are inherently incredible, it would appear that a special committee
13 must be appointed because there is a factual question that is reasonably in dispute.

14
15 Similar situations may arise when a complaint is filed so long after an alleged event that
16 memory loss, death, or changes to unknown residences prevent a proper investigation.

17
18 Subsection (c) also indicates that the investigative nature of the process prevents the
19 application of claim preclusion principles where new and material evidence becomes available.
20 However, it also recognizes that at some point a renewed investigation may constitute
21 harassment of the subject judge and should be foregone, depending of course on the seriousness
22 of the issues and the weight of the new evidence.

23
24 Rule 11(d) implements the Act’s provision for dismissal if “appropriate corrective action”
25 has been taken. It is adapted from the Breyer Committee Report. Breyer Report, 239 F.R.D.
26 244-45. The Act authorizes the chief circuit judge to conclude the proceedings if “appropriate
27 corrective action has been taken.” Under Rule 11(d), action taken is “appropriate” when it serves
28 to acknowledge and remedy the problem raised by the complaint. Because the Act deals with the
29 conduct of judges, the emphasis is on correction of the judicial conduct that was the subject of
30 the complaint. Terminating a complaint based on corrective action is premised on the implicit
31 understanding that voluntary self-correction of misconduct is preferable to sanctions. The chief
32 circuit judge may facilitate this process by giving the subject judge an objective view of the
33 appearance of the judicial conduct in question and by suggesting appropriate corrective measures.

34
35 “Corrective action” means voluntary action taken by the subject judge. A remedial action
36 directed by the chief circuit judge or by an appellate court without the participation of the subject
37 judge in formulating the directive or by the subject judge’s subsequent agreeing to such action
38 does not constitute the requisite voluntary corrective action. Neither the chief circuit judge nor
39 an appellate court has authority under the Act to impose a formal remedy or sanction; only the
40 judicial council can impose a formal remedy or sanction under 28 U.S.C. § 354(a)(2).
41 Compliance with a previous council order may serve as corrective action allowing conclusion of
42 a later complaint about the same behavior.

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

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

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

24
25 If a complaint is not disposed of pursuant to Rule 11(c), (d), or (e), a special committee
26 must be appointed. Rule 11(f) states that a subject judge will be invited to respond to the
27 complaint before a special committee is appointed, if no earlier response was invited.

28
29 Subject judges, of course, receive copies of complaints at the same time that they are
30 referred to the chief circuit judge, and they are free to volunteer responses to them. Under Rule
31 11(b), the chief circuit judge may request a response if it is thought necessary. However, many
32 complaints are clear candidates for dismissal even if their allegations are accepted as true, and
33 there is no need for the subject judge to devote time to a defense.

34
35 The Act requires that the order dismissing a complaint or concluding the proceeding
36 contain a statement of reasons and that a copy of the order be sent to the complainant. Rule 24,
37 dealing with availability of information to the public, contemplates that the order will be made
38 public, usually without disclosing the names of the complainant or the judge involved. If desired
39 for administrative purposes, more identifying information can be included in a non-public
40 version of the order.

41
42 When complaints are disposed of by chief circuit judges, the statutory purposes are best

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1 served by providing the complainant with a full, particularized, but concise explanation, giving
2 reasons for the conclusions reached. See also the Commentary to Rule 24, dealing with public
3 availability.
4

5 Rule 11(g) also provides that the complainant and subject judge must be notified, in the
6 case of a disposition by the chief circuit judge, of the right to petition the judicial council for
7 review. A copy of a chief circuit judge's order and memorandum disposing of a complaint must
8 be sent by the clerk to the Judicial Conference Committee on Judicial Conduct and Disability.
9

10
11 **ARTICLE IV. INVESTIGATION AND REPORT BY SPECIAL COMMITTEE**
12

13 **Rule 12. Composition of Special Committees.**
14

15 **(a) Membership.**

16 **Except as provided in (e), a special committee appointed pursuant to Rule 11(f)**
17 **must consist of the chief circuit judge and equal numbers of circuit and district judges. If**
18 **the complaint is about a district judge, bankruptcy judge, or magistrate judge, the district**
19 **judge members of the committee must be from districts other than the district of the**
20 **subject judge.**

21 **(b) Presiding Officer.**

22 **At the time of appointing the committee, the chief circuit judge must designate one**
23 **of its members (who may be the chief circuit judge) as the presiding officer. When**
24 **designating another member of the committee as the presiding officer, the chief circuit**
25 **judge may also delegate to such member the authority to direct the clerk of the court of**
26 **appeals to issue subpoenas related to proceedings of the committee.**

27 **(c) Bankruptcy Judge or Magistrate Judge as Adviser.**

28 **If the judicial officer complained about is a bankruptcy judge or magistrate judge,**
29 **the chief circuit judge may designate a bankruptcy judge or magistrate judge, as the case**
30 **may be, to serve as an adviser to the committee. The chief circuit judge must designate**
31 **such an adviser if, within ten days of notification of the appointment of the committee, the**
32 **subject bankruptcy judge or magistrate judge requests that an adviser be designated. The**
33 **adviser must be from a district other than the district of the subject bankruptcy judge or**
34 **subject magistrate judge. The adviser will not vote but will have the other privileges of a**
35 **member of the committee.**

36 **(d) Provision of Documents.**

37 **The chief circuit judge must certify to each other member of the committee and to**
38 **the adviser, if any, copies of the complaint form and statement of facts in whole or relevant**
39 **part, and any other documents on file pertaining to the complaint or to the relevant part**
40 **referred to the special committee.**

41 **(e) Continuing Qualification of Committee Members.**

42 **A member of a special committee who was qualified to serve at the time of**

1 **appointment may continue to serve on the committee even though the member relinquishes**
2 **the position of chief circuit judge, active circuit judge, or active district judge, as the case**
3 **may be, but only if the member continues to hold office under Article III, Section 1, of the**
4 **Constitution of the United States.**

5 **(f) Inability of Committee Member to Complete Service.**

6 **In the event that a member of a special committee can no longer serve because of**
7 **death, disability, disqualification, resignation, retirement from office, or other reason, the**
8 **chief circuit judge must determine whether to appoint a replacement member, either a**
9 **circuit or district judge as needed under (a). However, no special committee appointed**
10 **under these rules may function with only a single member, and the voting requirements for**
11 **a two-member committee must be applied as if the committee had three members.**

12 **(g) Voting.**

13 **All actions by a committee shall be by vote of a majority of all members of the**
14 **committee.**

15
16 **Commentary on Rule 12**

17
18 This Rule is adapted from the Act and the Illustrative Rules.

19
20 Rule 12 leaves the size of a special committee flexible, to be determined on a case-by-
21 case basis. The question of committee size is one that should be weighed with care in view of
22 the potential for consuming the members' time; a large committee should be appointed only if
23 there is a special reason to do so.

24
25 Although the Act requires that the chief circuit judge be a member of each special
26 committee, it does not require that the chief circuit judge preside.

27
28 The Act provides that a special committee will have subpoena powers as provided in 28
29 U.S.C. § 332(d). This section provides that subpoenas will be issued on behalf of judicial
30 councils by the clerk of the court of appeals "at the direction of the chief judge of the circuit or
31 his designee." Rule 12(b) allows the chief circuit judge, when designating someone else as
32 presiding officer, to make an explicit delegation of the authority to direct the issuance of
33 subpoenas related to committee proceedings.

34
35 Rule 12(c) provides that the chief circuit judge may appoint a bankruptcy judge or
36 magistrate judge as an adviser to a special committee, either sua sponte or at the request of the
37 subject judge.

38
39 The Rule provides that the adviser will have all the privileges of a member of a
40 committee except a vote. The adviser may therefore participate in all deliberations of the
41 committee, may question witnesses at hearings, and may write a separate statement to accompany
42 the report of the special committee to the judicial council.

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1
2 Rule 12(e) provides that a member of a special committee who remains an Article III
3 judge may continue to serve on the committee even though the member's status otherwise
4 changes. Thus, a committee that originally consisted of the chief circuit judge and an equal
5 number of circuit and district judges, as required by the law, may continue to function even
6 though changes of status alter that composition. This provision reflects the belief that stability of
7 membership will contribute to the quality of the work of such committees.
8

9 Stability of membership is also the principal concern animating Rule 12(f), which deals
10 with the case in which a special committee loses a member before its work is complete. The rule
11 would permit the chief circuit judge to determine whether a replacement member should be
12 appointed. Generally, appointment of a replacement member is desirable in these situations
13 unless the committee has conducted evidentiary hearings before the vacancy occurs. However,
14 cases may arise in which a committee is in the late stages of its work, and in which it would be
15 difficult for a new member to play a meaningful role. The Rule preserves the collegial character
16 of the committee process by prohibiting a single surviving member from serving as a committee
17 and by providing that a committee of two surviving members will, in essence, operate under a
18 unanimity rule.
19

20 Rule 12(g) provides that actions of a special committee will be by vote of a majority of all
21 the members. All the members of a committee should participate in committee decisions. In that
22 circumstance, it seems reasonable to require that committee decisions be made by a majority of
23 the membership, rather than a majority of some smaller quorum.
24

25 **Rule 13. Conduct of an Investigation.**

26
27 **(a) Extent and Methods of Special Committee Investigation.**

28 **Each special committee must determine the extent and methods of the investigation**
29 **as it deems appropriate in light of the allegations of the complaint. If, in the course of the**
30 **investigation, the committee has cause to believe that the subject judge may have engaged**
31 **in misconduct or has a disability that is beyond the scope of the complaint, the committee**
32 **must, with written notice to the subject judge, expand the scope of the investigation or refer**
33 **the new matter to the chief circuit judge for action under Rule 5 or Rule 11.**

34 **(b) Criminal Conduct.**

35 **In the event the complaint alleges criminal conduct or the committee becomes aware**
36 **of possible criminal conduct, the committee must consult with the appropriate**
37 **prosecutorial authorities to the extent permitted by 28 U.S.C. §§ 351-364 in an effort to**
38 **avoid compromising any criminal investigation. However, the committee has final**
39 **authority regarding the timing and extent of its investigation and formulation of its**
40 **recommendations.**

41 **(c) Staff.**

42 **The committee may arrange for staff assistance in the conduct of the investigation.**

1 **It may use existing staff of the judicial branch or may arrange, through the Director of the**
2 **Administrative Office of the United States Courts, for the hiring of special staff to assist in**
3 **the investigation.**

4 **(d) Delegation.**

5 **The authority to exercise the committee’s subpoena powers may be delegated to the**
6 **presiding officer. In the case of failure to comply with such subpoena, the judicial council**
7 **or special committee may institute a contempt proceeding consistent with 28 U.S.C. §**
8 **332(d).**

9
10 **Commentary on Rule 13**

11
12 **This Rule is adapted from the Illustrative Rules.**

13
14 **Rule 13 and the three rules that follow are concerned with the way in which a special**
15 **committee carries out its mission. They reflect the view that a special committee has two roles**
16 **that are separated in ordinary litigation. First, the committee has an investigative role of the kind**
17 **that is characteristically left to executive branch agencies or discovery by civil litigants. Second,**
18 **it has a formalized fact-finding and recommendation-of-disposition role that is characteristically**
19 **left to juries, judges, or arbitrators. Rule 13 generally governs the investigative stage. Even**
20 **though the same body has responsibility for both roles under the Act, it is important to**
21 **distinguish between them in order to ensure that appropriate rights are afforded at appropriate**
22 **times to the subject judge.**

23
24 **One of the difficult questions that can arise under the Act is the relationship between**
25 **proceedings under this statute and criminal investigations. Rule 13(b) assigns coordinating**
26 **responsibility to the special committee in cases in which criminal conduct is suspected but gives**
27 **the committee the authority to determine the appropriate pace of its activity in light of any**
28 **criminal investigation. A special committee may be barred from disclosing some information to**
29 **a prosecutor or grand jury under the Act. This provision is discussed in the Commentary to Rule**
30 **23.**

31
32 **Rule 13(d) permits the committee, in its discretion, to delegate any of its duties to**
33 **subcommittees, individual committee members, or staff. This is consistent with the general**
34 **principle, expressed in Rule 13(a), that each special committee will determine the methods of**
35 **conducting the investigation that are appropriate in light of the allegations of the complaint. The**
36 **ultimate duty of adopting a report may not be delegated. Rule 13(d) suggests that, where the**
37 **chief circuit judge designates someone else as presiding officer of a special committee, the**
38 **presiding officer also be delegated the authority to direct the clerk of the court of appeals to issue**
39 **subpoenas related to committee proceedings. That is not intended to imply, however, that the**
40 **decision to use the subpoena power is exercisable by the presiding officer alone. Under Rule**
41 **13(d), the committee must decide whether to delegate that decision-making authority.**
42

1 **Rule 14. Conduct of Hearings by Special Committee.**

2
3 **(a) Purpose of Hearings.**

4 **The committee may hold hearings to take testimony and receive other evidence, to**
5 **hear argument, or both. If the committee is investigating allegations against more than one**
6 **judge, it may, in its discretion, hold joint or separate hearings.**

7 **(b) Committee Witnesses.**

8 **All persons who are believed to have material, non-redundant evidence must be**
9 **called as witnesses. Such witnesses may include the complainant and the subject judge. In**
10 **the committee's discretion, the witnesses may be questioned by committee members, staff,**
11 **or both.**

12 **(c) Counsel for Witnesses.**

13 **Whether witnesses may have counsel present when they testify is left to the**
14 **discretion of the special committee.**

15 **(d) Witness Fees.**

16 **Witness fees must be paid as provided in 28 U.S.C. § 1821.**

17 **(e) Oath.**

18 **All testimony taken at such a hearing must be given under oath or affirmation.**

19 **(f) Rules of Evidence.**

20 **The Federal Rules of Evidence do not apply to special committee hearings.**

21 **(g) Record and Transcript.**

22 **A record and transcript must be made of any hearing held.**

23
24 **Commentary on Rule 14**

25
26 **This Rule is adapted from the Act and the Illustrative Rules.**

27
28 **Rule 14 is concerned with the conduct of fact-finding hearings. Special committee**
29 **hearings will normally be held only after the investigative work has been completed and the**
30 **committee has concluded that there is sufficient evidence to warrant a formal fact-finding**
31 **proceeding. Special committee proceedings are primarily inquisitorial rather than adversarial.**
32 **Accordingly, the Federal Rules of Evidence do not apply to such hearings. Inevitably, a hearing**
33 **will have something of an adversary character. Nevertheless, that tendency should be moderated**
34 **to the extent possible. Even though a proceeding will commonly have investigative and hearing**
35 **stages, committee members should not regard themselves as prosecutors one day and judges the**
36 **next. Their duty -- and that of their staff -- is at all times to be impartial seekers of the truth.**

37
38 **Rule 14(b) contemplates that all witnesses with material evidence will be called by the**
39 **committee. Staff or others who are organizing the hearings should regard it as their role to**
40 **present the entire picture, and not to act as prosecutors. The subject judge should normally be**
41 **called as a committee witness. Cases may arise in which the judge will not testify voluntarily. In**
42 **such cases, subpoena powers are available, subject to the normal testimonial privileges.**

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1 Although Rule 15(b) affords the statutory right of the subject judge to call witnesses on his or her
2 own behalf, exercise of this right should not usually be necessary.

3
4 **Rule 15. Rights of Subject Judge.**

5
6 **(a) Notice.**

7 **The subject judge is entitled to written notice of the appointment of a special**
8 **committee under Rule 11(f) and, written notice of expansion of the scope of an investigation**
9 **under Rule 13(a). The subject judge must be given notice in writing of any hearing under**
10 **Rule 14, its purposes, the names of any witnesses whom the committee intends to call, and**
11 **the text of any statements that have been taken from such witnesses. The subject judge**
12 **may suggest additional witnesses to the committee. The subject judge must be sent the**
13 **report of the special committee at the time it is filed with the judicial council.**

14 **(b) Presentation of Evidence.**

15 **At any hearing held pursuant to Rule 14, the subject judge has the right to present**
16 **evidence, and to compel the attendance of witnesses and the production of documents. At**
17 **the request of the subject judge, the chief circuit judge or his designee must direct the clerk**
18 **of the court of appeals to issue a subpoena to a witness in accordance with 28 U.S.C.**
19 **§ 332(d)(1). The subject judge must be afforded the opportunity to cross-examine**
20 **committee witnesses, in person or by counsel.**

21 **(c) Presentation of Argument.**

22 **The subject judge may submit written argument to the special committee, and must**
23 **be given a reasonable opportunity to present oral argument at an appropriate stage of the**
24 **investigation.**

25 **(d) Attendance at Hearings.**

26 **The subject judge must have the right to attend any hearing held pursuant to Rule**
27 **14 and to receive copies of the transcript and any documents introduced, as well as to**
28 **receive copies of any written arguments submitted by the complainant to the committee.**

29 **(e) Representation by Counsel.**

30 **The subject judge may choose to be represented by counsel in the exercise of any of**
31 **the rights enumerated in this Rule. The costs of such representation may be borne by the**
32 **United States as provided in Rule 20(e).**

33
34 **Commentary on Rule 15**

35
36 **This Rule is adapted from the Act and the Illustrative Rules.**

37
38 **The Act states that these rules must contain provisions requiring that “the judge whose**
39 **conduct is the subject of a complaint . . . be afforded an opportunity to appear (in person or by**
40 **counsel) at proceedings conducted by the investigating panel, to present oral and documentary**
41 **evidence, to compel the attendance of witnesses or the production of documents, to cross-**
42 **examine witnesses, and to present argument orally or in writing.” 28 U.S.C. § 358(b)(2). To**

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1 implement this provision, Rule 15(d) gives the judge the right to attend any hearing for the
2 purpose of receiving evidence of record or hearing argument under Rule 14.
3

4 The Act does not require that the subject judge be permitted to attend all proceedings of
5 the special committee. Accordingly, the rules do not give a right to attend other proceedings, e.g.,
6 meetings at which the committee is engaged in investigative activity, such as interviewing a
7 possible witness or examining for relevance purposes documents delivered pursuant to a
8 subpoena duces tecum, or meetings in which the committee is deliberating on the evidence or its
9 recommendations.
10

11 **Rule 16. Rights of Complainant in Investigation.**
12

13 **(a) Notice.**

14 **The complainant is entitled to written notice of the investigation as provided in Rule**
15 **11(g)(3). When the special committee's report to the judicial council is filed, the**
16 **complainant must be notified of the filing. The judicial council may, in its discretion,**
17 **provide a copy of the report of a special committee to the complainant.**

18 **(b) Opportunity to Provide Evidence.**

19 **The complainant must be interviewed by a representative of the committee. If the**
20 **complainant has material evidence, the complainant must be called as a witness.**

21 **(c) Presentation of Argument.**

22 **The complainant may submit written argument to the special committee. In the**
23 **discretion of the special committee, the complainant may be permitted to offer oral**
24 **argument.**

25 **(d) Representation by Counsel.**

26 **A complainant may submit written argument through counsel and, if permitted to**
27 **offer oral argument, may do so through counsel.**

28 **(e) Cooperation.**

29 **In the exercise of discretion under this Rule, a special committee may take into**
30 **account the degree of the complainant's cooperation in preserving the confidentiality of the**
31 **proceedings, including the identity of the subject judge.**
32

33 **Commentary on Rule 16**
34

35 This Rule is adapted from the Act and the Illustrative Rules.
36

37 In accordance with the view of the process as fundamentally administrative and
38 inquisitorial, these rules do not give the complainant the rights of a party to litigation, and leave
39 the complainant's role largely to the discretion of the special committee. However, Rule 16(b)
40 provides that, where a special committee has been appointed, the complainant will be
41 interviewed by a representative of the committee. Such an interview may, of course, be in person
42 or by telephone, and the representative of the committee may be either a member or staff.

1
2 Rule 16 does not contemplate that the complainant will ordinarily be permitted to attend
3 proceedings of the special committee except when testifying or presenting oral argument. A
4 special committee may exercise its discretion to permit the complainant to be present at its
5 proceedings, or to permit the complainant, individually or through counsel, to participate in the
6 examination or cross-examination of witnesses.
7

8 The Act authorizes an exception to the normal confidentiality provisions where the
9 judicial council in its discretion provides a copy of the report of the special committee to the
10 complainant and to the subject judge. The rules do not accord the complainant the rights of a
11 litigant and do not entitle the complainant to a copy of the report of the special committee.
12

13 In exercising their discretion regarding the role of the complainant, the special committee
14 and the judicial council should protect the confidentiality of the complaint process. As a
15 consequence, Subsection (e) provides that a special committee may consider the degree to which
16 a complainant has cooperated in preserving the confidentiality of the proceedings in determining
17 what role beyond the minimum required by these Rules should be given to that complainant.
18

19 **Rule 17. Special Committee Report.**

20
21 **(a) Report.**

22 **The committee must file with the judicial council a comprehensive report of its**
23 **investigation, including findings and recommendations for council action. The report must**
24 **be accompanied by a statement of the vote by which it was adopted, any separate or**
25 **dissenting statements of committee members, and the record of any hearings held pursuant**
26 **to Rule 14. A copy of the report and accompanying statement must be sent to the Judicial**
27 **Conference Committee on Judicial Conduct and Disability.**
28

29 **Commentary to Rule 17**

30
31 This Rule is adapted from the Illustrative Rules and is self-explanatory. The provision for
32 sending a copy of the special committee report and accompanying statement to the Judicial
33 Conference Committee is new.
34

35
36 **ARTICLE V. JUDICIAL COUNCIL REVIEW**
37

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

40
41 **(a) Petitions for Review.**

42 **A complainant or subject judge aggrieved by an order of the chief circuit judge**

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1 under Rule 11(c), (d), or (e) may petition the judicial council of the circuit for review of the
2 order. A judicial council may, by rules promulgated under 28 U.S.C. § 358, refer a petition
3 for review filed under this Rule to a panel of no less than 5 members of the council, at least
4 2 of whom must be district judges.

5 **(b) Time; Form; Where to File.**

6 A petition for review must be filed in the office of the clerk of the court of appeals
7 within 30 days of the date of the clerk's letter to the complainant and subject judge
8 transmitting the chief circuit judge's order. The petition should be in letter form,
9 addressed to the clerk of the court of appeals, and in an envelope marked "Misconduct
10 Petition" or "Disability Petition" but without the name of the subject judge. The letter
11 should begin "I hereby petition the judicial council for review of . . .," should be
12 typewritten or otherwise legible, and be signed. The letter should state the reasons why the
13 petition should be granted.

14 **(c) Receipt and Distribution of Petition.**

15 On receipt of a petition for review filed within the time allowed and in proper form
16 under these Rules, the clerk of the court of appeals must acknowledge receipt of the
17 petition and send copies to all persons entitled to notice under Rule 8(b). The clerk must
18 promptly send to each member of the judicial council, except for any member disqualified
19 under Rule 25, copies of the complaint, all materials obtained by the chief circuit judge in
20 connection with the chief circuit judge's inquiry, the chief circuit judge's order disposing of
21 the complaint, any memorandum in support of the chief circuit judge's order, the petition
22 for review, and an appropriate ballot. The clerk must send copies of the materials obtained
23 by the chief circuit judge and the petition for review to the Judicial Conference Committee
24 on Judicial Conduct and Disability.

25 **(d) Receipt of Untimely Petition.**

26 The clerk must refuse to accept a petition that is received after the deadline set forth
27 in (b).

28 **(e) Receipt of Timely Petition not in Proper Form.**

29 On receipt of a petition filed within the time allowed but in a form that is improper
30 to a degree that would substantially impair its consideration by the judicial council,
31 including a document that is ambiguous about whether a petition for review is intended,
32 the clerk must acknowledge receipt of the petition, call the petitioner's attention to the
33 deficiencies, and give the petitioner the opportunity to correct the deficiencies within fifteen
34 days of the date of the clerk's letter or within the original deadline for filing the petition,
35 whichever is later. If the deficiencies are corrected within the time allowed, the clerk will
36 proceed in accordance with paragraphs (a) and (c) of this Rule. If the deficiencies are not
37 corrected, the clerk must reject the petition.

38
39 **Commentary on Rule 18**

40
41 Rule 18 is adapted largely from the Illustrative Rules.
42

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1 Rule 18(b) contains a time limit of 30 days to file a petition for review. It is important to
2 establish a time limit on petitions for review of chief circuit judges' dispositions in order to
3 provide finality to the process. If the complaint requires an investigation, the investigation
4 should proceed; if it does not, the subject judge should know that the matter is closed.
5

6 The standards for timely filing under the Federal Rules of Appellate Procedure should be
7 applied to petitions for review. See F.R.A.P. 25(a)(2)(A) and 25(a)(2)(C).
8

9 Rule 18(e) provides for an automatic extension of the time if a person files a petition that
10 is rejected for failure to comply with formal requirements.
11

12 **Rule 19. Judicial Council Disposition of Petitions for Review.**
13

14 **(a) Rights of Subject Judge.**

15 **(1) At any time after the filing of a petition for review by a complainant, the**
16 **subject judge may file a written response with the clerk of the court of appeals.**
17 **The clerk must promptly distribute copies of the response to each member of the**
18 **judicial council who is not disqualified under Rule 25, to the chief circuit judge,**
19 **to the complainant, and to the Judicial Conference Committee on Judicial**
20 **Conduct and Disability. The judge may not otherwise communicate with**
21 **individual council members about the matter.**

22 **(2) The subject judge must be provided with copies of any communications to**
23 **the judicial council by the complainant.**

24 **(b) Judicial Council Action.**

25 **Upon consideration of a petition for review and after consideration of the materials**
26 **before it, a judicial council may:**

27 **(1) affirm the chief circuit judge's disposition;**

28 **(2) return the matter to the chief circuit judge with directions to conduct a**
29 **further inquiry under Rule 11(b) or to identify a complaint under Rule 5;**

30 **(3) return the matter to the chief circuit judge with directions to appoint a**
31 **special committee under Rule 11(f); or**

32 **(4) in exceptional circumstances, take other appropriate action.**

33 **(c) Notice of Council Decision.**

34 **The order of the judicial council, together with any accompanying memorandum in**
35 **support of the order or separate concurring or dissenting statements, must be provided to**
36 **the complainant, the subject judge, any judge entitled to receive a copy of the complaint**
37 **pursuant to Rule 8(b), and the Judicial Conference Committee on Judicial Conduct and**
38 **Disability.**

39 **(d) Memorandum of Council Decision.**

40 **If the order of the council affirms the chief circuit judge's disposition, a supporting**
41 **memorandum must be prepared only if the judicial council concludes that there is a need to**
42 **supplement the chief circuit judge's explanation. A memorandum supporting a council**

1 order must not include the name of the complainant or the subject judge.

2 **(e) Review of Judicial Council Decision.**

3 If the judicial council's decision is adverse to the petitioner and no member of the
4 council dissented on the ground that a special committee should be appointed pursuant to
5 Rule 11(f), the complainant must be notified that there is no right of review of the decision.
6 If there was such a dissent, the petitioner must be informed that he or she can file a petition
7 for review under Rule 21(b) solely of the issue of whether a special committee should be
8 appointed.

9 **(f) Public Availability of Judicial Council Decision.**

10 Materials related to the council's decision must be made public at the time and in
11 the manner set forth in Rule 24.

12
13 **Commentary to Rule 19**

14
15 This Rule is largely adapted from the Act and is self-explanatory.

16
17 The council should ordinarily review the decision of the chief circuit judge on the merits,
18 treating the petition for review for all practical purposes as an appeal. The judicial council may
19 respond to a petition by affirming the chief circuit judge's order, remanding the matter, or, in
20 exceptional cases, taking other appropriate action. The "exceptional cases" language would,
21 inter alia, permit the council to deny review rather than affirm in a case in which the process was
22 obviously being abused.

23
24 **Rule 20. Judicial Council Consideration of Reports and Recommendations of Special**
25 **Committees.**

26
27 **(a) Rights of Subject Judge.**

28 Within twenty-one days after the filing of the report of a special committee, the
29 subject judge may send a written response to the members of the judicial council. The
30 judge must also be given an opportunity to present oral argument to the council, personally
31 or through counsel. The judge may not otherwise communicate with council members
32 about the matter.

33 **(b) Judicial Council Actions.**

34 Subject to the rights of the subject judge in Subsection (a), the judicial council,
35 acting on the basis of the report and recommendations of, and record before, the special
36 committee, may:

37 **(1) dismiss the complaint because:**

38 **(A) the claimed conduct, even if the claim is true, is not conduct prejudicial**
39 **to the effective and expeditious administration of the business of the courts**
40 **and does not indicate a mental or physical disability resulting in inability to**
41 **discharge the duties of office;**

42 **(B) the complaint is directly related to the merits of a decision or procedural**

1 ruling;

2 (C) the facts on which the complaint is based have not been established; or

3 (D) the complaint is otherwise not appropriate for consideration under 28
4 U.S.C. §§ 351-364.

5 (2) conclude the proceeding because appropriate action has already been taken
6 to remedy the problem identified in the complaint, or intervening events make
7 such action unnecessary.

8 (3) in its discretion, refer the complaint to the Judicial Conference of the United
9 States with the council's recommendations for action. A judicial council must
10 refer a complaint to the Judicial Conference if the council determines that a
11 circuit judge or district judge may have engaged in conduct:

12 (A) that might constitute ground for impeachment; or

13 (B) that, in the interest of justice, is not amenable to resolution by the judicial
14 council.

15 (4) take remedial action to ensure the effective and expeditious administration of
16 the business of the courts, including but not limited to:

17 (A) censuring or reprimanding the subject judge, either by private
18 communication or by public announcement;

19 (B) ordering that, for a fixed temporary period, no new cases be assigned to
20 the subject judge;

21 (C) in the case of a magistrate judge, ordering the chief judge of the district
22 court to take action specified by the council, including the initiation of
23 removal proceedings pursuant to 28 U.S.C. § 631(i);

24 (D) in the case of a bankruptcy judge, removing the judge from office
25 pursuant to 28 U.S.C. § 152(e);

26 (E) in the case of a circuit or district judge, requesting the judge to retire
27 voluntarily with the provision (if necessary) that ordinary length-of-service
28 requirements will be waived; and

29 (F) in the case of a circuit or district judge who is eligible to retire but does
30 not do so, certifying the disability of the judge under 28 U.S.C. § 372(b) so
31 that an additional judge may be appointed.

32 (5) take any combination of actions described in (b)(1)-(4) of this Rule that is
33 within its power.

34 (c) Inadequate Basis for Decision.

35 If the judicial council finds that the report, recommendations, and record of a
36 special committee provide an inadequate basis for decision, it may return the matter to the
37 committee for further investigation and a new report or conduct such further investigation
38 as it deems appropriate. If the judicial council decides to conduct additional investigation,
39 the subject judge must be given adequate prior notice in writing of that proposed decision
40 and of the general scope and purpose of the additional investigation. The conduct of the
41 additional investigation must be generally in accordance with the procedures and powers
42 set forth in Rules 13 through 16 for the conduct of an investigation by a special committee.

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1 accordance with the procedures set forth in Rules 13 through 16 for the conduct of an
2 investigation by a special committee. However, if hearings are held, the council may limit
3 testimony or the presentation of evidence to avoid unnecessary repetition of testimony and
4 evidence before the special committee.
5

6 Council action must be taken by a majority of those members of the council who are not
7 disqualified, except that a decision to remove a bankruptcy judge from office requires a majority
8 of all the members of the council as required by 28 U.S.C. § 152(e). However, it is inappropriate
9 to apply a similar rule to the less severe actions that a judicial council may take under the Act. If
10 some members of the council are disqualified in the matter, their disqualification should not be
11 given the effect of a vote against council action.
12

13 With regard to Rule 20(e), the judicial council, on the request of the subject judge, may
14 recommend to the Director of the Administrative Office of the United States Courts that the
15 subject judge be reimbursed for reasonable expenses, including attorneys' fees, incurred. The
16 judicial council has the authority to recommend such reimbursement where, after investigation
17 by a special committee, the complaint has been finally dismissed or concluded under Subsection
18 (b)(1) or (2) of this Rule. It is contemplated that such reimbursement may be provided for the
19 successful prosecution or defense of a proceeding under Rule 21(a) or (b), i.e., one that results in
20 a Rule 20(b)(1) or (2) dismissal or conclusion.
21

22 Rule 20(f) requires that council action normally be supported with a memorandum of
23 factual determinations and reasons and that notice of the action be given to the complainant and
24 the subject judge. Rule 20(f) also requires that the notification to the complainant and the subject
25 judge include notice of any right to petition for review of the council's decision under Rule 21(b).
26
27

28 **ARTICLE VI. REVIEW BY JUDICIAL CONFERENCE COMMITTEE ON CONDUCT**
29 **AND DISABILITY**
30

31 **Rule 21. Committee on Judicial Conduct and Disability.**
32

33 **(a) Review by Committee.**

34 **The Committee on Judicial Conduct and Disability will consist of seven members. It**
35 **will consider and dispose of all petitions for review under (b) of this Rule, in conformity**
36 **with the Committee's jurisdictional statement. The Committee's disposition of petitions for**
37 **review will ordinarily be final. However, the Judicial Conference of the United States, in**
38 **its sole discretion, may review any such Committee decision. The Judicial Conference's**
39 **authority in this regard does not give a complainant or subject judge a right to such review.**

40 **(b) Reviewable Matters.**

41 **(1) A complainant or subject judge may petition the Committee for review of an**
42 **order of a judicial council entered:**

1 **(A) pursuant to Rule 20(b)(1), (2), (4) or (5); or**

2 **(B) pursuant to Rule 19(b)(1) or (4), if one or more members of the judicial**
3 **council dissented from the order on the ground that a special committee**
4 **should be appointed under Rule 11(f). In such a case, the Committee's**
5 **review will be limited to the issue of whether a special committee should be**
6 **appointed.**

7 **(2) The Committee may, at its initiative and in its sole discretion, review any**
8 **order of a judicial council entered pursuant to Rule 19(b)(1) or (4), but only as to**
9 **whether a special committee should be appointed. Before undertaking such a**
10 **review, the Committee must invite that judicial council to explain why it believes**
11 **the appointment of a special committee unnecessary, unless the reasons are**
12 **clearly stated in the judicial council's order denying the petition for review. If**
13 **the Committee believes that it would benefit from a submission by the subject**
14 **judge, it may issue an appropriate request. If the Committee determines that a**
15 **special committee should be appointed, the Committee must issue a written**
16 **decision giving its reasons.**

17 **(c) Committee Vote.**

18 **Committee decisions under (b) of this Rule shall be by majority vote of the members**
19 **of the Committee not from the same circuit as the subject judge. If only six members are**
20 **qualified to vote on a petition for review, the decision shall be made by a majority of a**
21 **panel of five members drawn from a randomly selected list that rotates after each decision**
22 **by a panel drawn from the list. If only four members are qualified to vote, the Chief**
23 **Justice must appoint an ex-member of the Committee, if available, or other United States**
24 **judge, if not, to consider the petition.**

25 **(d) Additional Investigation.**

26 **Absent extraordinary circumstances, the Committee will not conduct an additional**
27 **investigation. However, the Committee may return the matter to the judicial council with**
28 **directions to undertake an additional investigation. Should the Committee conduct an**
29 **additional investigation, it will exercise the powers of the Judicial Conference under 28**
30 **U.S.C. § 331.**

31 **(e) Oral Argument; Personal Appearance.**

32 **There will ordinarily be no oral arguments or personal appearances before the**
33 **Committee. In its discretion, the Committee may permit written submissions from the**
34 **petitioner, complainant, or subject judge.**

35 **(f) Committee Decisions.**

36 **Committee decisions under this Rule shall be transmitted promptly to the Judicial**
37 **Conference of the United States. Other distribution will be by the Administrative Office at**
38 **the direction of the Committee chair. Such orders must be maintained as public documents**
39 **by the Administrative Office and by the clerk of the court for the circuit in which the**
40 **complaint arose.**

41 **(g) Finality.**

42 **All orders of the Judicial Conference or of the Committee (when the Conference**

1 **does not exercise its power of review) are final and conclusive.**

2
3 **Commentary on Rule 21**

4
5 This Rule is largely self-explanatory.

6
7 Rule 21(a) is intended to clarify that the delegation of power to the Judicial Conference
8 Committee on Judicial Conduct and Disability to dispose of petitions does not preclude review of
9 such dispositions by the Conference. However, there is no right to such review in any party.

10
11 Rules 21(b)(1)(B) and (2) are intended to fill a jurisdictional gap as to review of
12 dismissals or conclusions of complaints under Rule 19(b)(1) or (4). Where one or more members
13 of a judicial council reviewing a petition have dissented on the ground that a special committee
14 should have been appointed, the complainant or subject judge has the right to petition for review
15 by the Committee but only as to that issue. Under Rule 21(b)(2), the Judicial Conference
16 Committee on Judicial Conduct and Disability may review such a dismissal or conclusion in its
17 sole discretion, whether or not such a dissent occurred, and only as to appointment of a special
18 committee. No party has a right to such review, and such review will be rare.

19
20 Rule 21(c) provides for review only by Committee members from circuits other than that
21 of the subject judge. To avoid tie votes, the Committee will decide petitions for review by
22 rotating panels of five when only six members are qualified. If only four members are qualified,
23 the Chief Justice must appoint an additional judge to consider that petition for review.

24
25 **Rule 22. Procedures for Review.**

26
27 **(a) Filing a Petition for Review.**

28 **A petition for review of a decision of the judicial council may be filed by sending a**
29 **brief written statement to the Judicial Conference Committee on Judicial Conduct and**
30 **Disability, addressed to:**

31 **Judicial Conference Committee on Judicial Conduct and Disability**
32 **Attn: Office of General Counsel**
33 **Administrative Office of the United States Courts**
34 **Washington, D.C. 20544**

35 **(b) Form and Contents of Petition for Review.**

36 **No particular form is required. The petition must contain a short statement of the**
37 **basic facts underlying the complaint, the history of its consideration before the appropriate**
38 **judicial council, a copy of the decision of the judicial council, and the grounds on which the**
39 **petitioner seeks review. The petition for review must specify the date and docket number**
40 **of the order of the judicial council for which review is sought. The petitioner may attach**
41 **any documents or correspondence arising in the course of the proceeding before the**
42 **judicial council or its special committee that the petitioner deems essential or useful to the**

1 **prompt disposition of the review petition. A petition should not normally exceed 20 pages,**
2 **plus necessary attachments.**

3 **(c) Time.**

4 **A petition must be submitted within 60 days of the date of the order for which**
5 **review is sought.**

6 **(d) Copies.**

7 **Five copies of the petition for review must be submitted, at least one of which must**
8 **be signed by the petitioner or his or her attorney. If the petitioner submits a signed**
9 **declaration of inability to pay the expense of duplicating the petition, the Administrative**
10 **Office must accept the original petition and must reproduce copies at its expense.**

11 **(e) Action on Receipt of Petition for Review.**

12 **The Administrative Office must acknowledge receipt of a petition for review**
13 **submitted under this Rule, and must notify the chair of the Judicial Conference Committee**
14 **on Judicial Conduct and Disability. The Administrative Office must distribute the petition**
15 **to the members of the Committee for their deliberation.**

16
17 **Commentary on Rule 22**

18
19 **Rule 22 is self-explanatory.**

20
21
22 **ARTICLE VII. MISCELLANEOUS RULES**

23
24 **Rule 23. Confidentiality.**

25
26 **(a) General Rule.**

27 **The consideration of a complaint by the chief circuit judge, a special committee, the**
28 **judicial council, or the Judicial Conference Committee on Judicial Conduct and Disability**
29 **is confidential. Information about such consideration must not be disclosed by any judge**
30 **or employee of the judicial branch or by any person who records or transcribes testimony**
31 **except in accordance with these rules.**

32 **(b) Files.**

33 **All files related to complaints must be separately maintained with appropriate**
34 **security precautions to ensure confidentiality.**

35 **(c) Disclosure in Decisions.**

36 **Written decisions of the chief circuit judge, the judicial council, or Judicial**
37 **Conference Committee on Judicial Conduct and Disability, and dissenting opinions or**
38 **separate statements of members of the council or Committee, may contain such**
39 **information and exhibits as the authors deem appropriate, and such information and**
40 **exhibits may be made public pursuant to Rule 24.**

41 **(d) Availability to Judicial Conference.**

42 **On request of the Judicial Conference or its Committee on Judicial Conduct and**

1 Disability, the clerk of a court of appeals must furnish any records related to a complaint
2 that are requested.

3 (e) Availability to District Court.

4 In the event that the judicial council directs the initiation of proceedings for removal
5 of a magistrate judge under Rule 20(b)(4)(C), the clerk of the court of appeals must provide
6 to the chief judge of the district court copies of the report of the special committee and any
7 other documents and records that were before the judicial council at the time of its
8 determination. On request of the chief judge of the district court, the judicial council may
9 authorize release to that chief judge of any other records relating to the investigation.

10 (f) Impeachment Proceedings.

11 If the Judicial Conference determines that consideration of impeachment may be
12 warranted, it must transmit the record of all relevant proceedings to the Speaker of the
13 House of Representatives.

14 (g) Consent of Subject Judge.

15 Any materials from the files may be disclosed to any person on the written consent
16 of both the subject judge and the chief circuit judge. In any such disclosure, the chief
17 circuit judge may require that the identity of the complainant, or of witnesses in an
18 investigation conducted by a special committee or the judicial council, not be revealed.

19 (h) Disclosure in Special Circumstances.

20 The Judicial Conference, its Committee on Judicial Conduct and Disability, or a
21 judicial council may authorize disclosure of information about the consideration of a
22 complaint, including the papers, documents, and transcripts relating to the investigation, to
23 the extent that such disclosure is justified by special circumstances and is not prohibited by
24 the Act. Such disclosure may be made to Judiciary researchers engaged in the study or
25 evaluation of experience under the Act and related modes of judicial discipline, but only
26 where such study or evaluation has been specifically approved by the Judicial Conference
27 or by the Judicial Conference Committee on Judicial Conduct and Disability. Appropriate
28 steps must be taken to protect the identities of the judge complained against, the
29 complainant, and witnesses from public disclosure, and other appropriate safeguards to
30 protect against the dissemination of confidential information may be imposed.

31 (i) Disclosure of Identity by Subject Judge.

32 Nothing in this Rule precludes the subject judge from acknowledging that he or she
33 is the judge referred to in documents made public pursuant to Rule 24.

34 (j) Assistance and Consultation.

35 Nothing in this Rule precludes the chief circuit judge or judicial council, for
36 purposes of acting on a complaint filed under the Act, from seeking the assistance of
37 qualified staff, or from consulting other judges who may be helpful in the process of
38 complaint disposition.

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Rule 23 was adapted from the Illustrative Rules.

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1 The Act applies a rule of confidentiality to “papers, documents, and records of
2 proceedings related to investigations conducted under this chapter” and states that they may not
3 be disclosed “by any person in any proceeding,” with enumerated exceptions. Three questions
4 arise: Who is bound by the confidentiality rule, what proceedings are subject to the rule, and
5 who is within the circle of people who may have access to information without breaching the
6 rule?
7

8 With regard to the first question, Rule 23(a) provides that judges, employees of the
9 judicial branch, and those persons involved in recording proceedings and preparing transcripts
10 are obliged to respect the confidentiality requirement. This of course includes subject judges
11 who do not consent to identification under Rule 23(i).
12

13 With regard to the second question, Rule 23(a) applies the rule of confidentiality broadly
14 to consideration of a complaint at any stage.
15

16 With regard to the third question, there is no barrier of confidentiality among a chief
17 circuit judge, judicial council, the Judicial Conference, and the Judicial Conference Committee
18 on Judicial Conduct and Disability. Each may have access to any of the confidential records for
19 use in their consideration of a referred matter, a petition for review, or monitoring the
20 administration of the Act. It is clear that a district court may have similar access if the judicial
21 council orders the district court to initiate proceedings to remove a magistrate judge from office,
22 and Rule 23(e) so provides.
23

24 The confidentiality requirement does not prevent the chief circuit judge from
25 “communicat[ing] orally or in writing with . . . [persons] who may have knowledge of the
26 matter,” as part of a limited inquiry conducted by the chief circuit judge under Rule 11(b).
27

28 In addition, chief circuit judges and judicial councils may seek staff assistance or consult
29 with other judges who may be helpful in the process of complaint disposition. Rule 23(j)
30 provides that the confidentiality requirement does not preclude this. The chief circuit judge, for
31 example, may properly seek the advice and assistance of another judge who the chief circuit
32 judge deems to be in the best position to communicate with the subject judge in an attempt to
33 bring about corrective action. As another example, a new chief circuit judge may wish to confer
34 with a predecessor to learn how similar complaints have been handled. In consulting with other
35 judges, of course, the chief circuit judge should disclose information regarding the complaint
36 only to the extent the chief circuit judge deems necessary under the circumstances.
37

38 On the other hand, the Act makes it clear that there is a barrier of confidentiality between
39 the judicial branch and the legislative. It provides that material may be disclosed to Congress
40 only if it is believed necessary to an impeachment investigation or trial of a judge.
41

42 The Act provides that confidential materials may be disclosed if authorized in writing by

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1 the subject judge and by the chief circuit judge.
2

3 Rule 23 recognizes that there must be some exceptions to the Act's confidentiality
4 requirement. For example, the Act requires that certain orders and the reasons for them must be
5 made public. Rule 23(c) makes it explicit that memoranda supporting chief circuit judge and
6 council orders, as well as dissenting opinions and separate statements, may contain references to
7 information that would otherwise be confidential and that such information may be made public.
8

9 Section 355(b) of the Act requires the Judicial Conference to transmit the record of the
10 proceeding to the House of Representatives if the Conference believes that impeachment of a
11 subject judge may be appropriate. Rule 23(f) implements this requirement.
12

13 Rule 23(h) permits disclosure of additional information in circumstances not enumerated.
14 For example, disclosure may be appropriate to permit a prosecution for perjury based on
15 testimony given before a special committee. Another example might involve evidence of
16 criminal conduct by a judge discovered by a special committee.
17

18 Rule 23(h) specifically permits the authorization of disclosure of information about the
19 consideration of a complaint, including the papers, documents, and transcripts relating to the
20 investigation, to Judiciary researchers engaged in the study or evaluation of experience under the
21 Act and related modes of judicial discipline.
22

23 The Rule envisions disclosure of information from the official record of complaint
24 proceedings to a limited category of persons for appropriately authorized research purposes only,
25 and with appropriate safeguards to protect individual identities in any published research results
26 that ensue. In authorizing disclosure, the judicial council may refuse to release particular
27 materials when such release would be contrary to the interests of justice, or that constitute purely
28 internal communications. The Rule does not envision any disclosure of purely internal
29 communications between judges and their colleagues and staff.
30

31 Once the subject judge has consented to the disclosure of confidential materials related to
32 a complaint, the chief circuit judge ordinarily will refuse consent only to the extent necessary to
33 protect the confidentiality interests of the complainant or of witnesses who have testified in
34 investigatory proceedings or who have provided information in response to a limited inquiry
35 undertaken pursuant to Rule 11. It will generally be necessary, therefore, for the chief circuit
36 judge to require that the identities of the complainant or of such witnesses, as well as any
37 identifying information, be shielded in any materials disclosed, except insofar as the chief circuit
38 judge has secured the consent of the complainant or of a particular witness to disclosure, or there
39 is a demonstrated need for disclosure of the information that, in the judgment of the chief circuit
40 judge, outweighs the confidentiality interest of the complainant or of a particular witness (as may
41 be the case where the complainant was delusional or where the complainant or a particular
42 witness has already demonstrated a lack of concern about maintaining the confidentiality of the

1 proceedings).

2
3 **Rule 24. Public Availability of Decisions.**

4
5 **(a) General Rule; Specific Cases.**

6 When final action on a complaint has been taken and is no longer subject to review,
7 all orders entered by the chief circuit judge and judicial council, including any supporting
8 memoranda and any dissenting opinions or separate statements by members of the judicial
9 council, must be made public. However:

10 (1) If the complaint is finally dismissed under Rule 11(c) without appointment of
11 a special committee, or if it is concluded because of voluntary corrective action,
12 the publicly available materials must not disclose the name of the subject judge
13 without his or her consent.

14 (2) If the complaint is concluded because of intervening events, or dismissed at
15 any time after the appointment of a special committee, the judicial council must
16 determine whether the name of the subject judge is to be disclosed.

17 (3) If the complaint is finally disposed of by a privately communicated censure
18 or reprimand, the publicly available materials must not disclose either the name
19 of the subject judge or the text of the reprimand.

20 (4) If the complaint is finally disposed of by any action other than private
21 censure or reprimand taken pursuant to Rule 20(b)(4), the text of the dispositive
22 order must be included in the materials made public, and the name of the
23 subject judge must be disclosed.

24 (5) The name of the complainant must not be disclosed in materials made public
25 under this rule unless the chief circuit judge orders such disclosure.

26 **(b) Manner of Making Public.**

27 The orders described in (a) must be made public by placing them in a publicly
28 accessible file in the office of the clerk of the court of appeals or by placing such orders on
29 the court's public website. In cases in which such orders appear to have precedential
30 value, the chief circuit judge may cause them to be published. In addition, the Judicial
31 Conference Committee on Judicial Conduct and Disability must make available on the
32 judiciary website, www.uscourts.gov, selected illustrative orders described in paragraph
33 (a), appropriately redacted, to provide additional information to the public on how
34 complaints are addressed under the Act.

35 **(c) Orders of Judicial Conference Committee.**

36 To the extent consistent with the policy of the Judicial Conference Committee on
37 Judicial Conduct and Disability, orders of that Committee relating to complaints arising
38 from a particular circuit must also be made available to the public in the office of the clerk
39 of the relevant court of appeals. The Committee also must make its public orders available
40 on the judiciary website, www.uscourts.gov.

41 **(d) Complaints Referred to the Judicial Conference of the United States.**

42 If a complaint is referred to the Judicial Conference pursuant to Rule 20(b)(3),

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

3
4 **Commentary on Rule 24**

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

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

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

40
41 If a complaint is dismissed as moot, or because intervening events have made action on
42 the complaint unnecessary, after appointment of a special committee, Rule 24(a)(2) allows the

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1 judicial council to determine whether the subject judge will be identified. In such a case, no final
2 decision has been rendered on the merits, but it may be in the public interest -- particularly if a
3 judicial officer resigns in the course of an investigation -- to make the identity of the judge
4 known.
5

6 Rule 24(a)(1) provides that where a proceeding is concluded by the chief circuit judge on
7 the basis of voluntary corrective action, the name of the subject judge must not be disclosed.
8 Shielding the name of the subject judge in this circumstance should encourage informal
9 disposition. Once a special committee has been appointed, and a proceeding is concluded by the
10 full council on the basis of a remedial order of the council, Rule 24(a)(4) provides for disclosure
11 of the name of the subject judge.
12

13 Finally, the Rule provides that the identity of the complainant will be disclosed only if the
14 chief circuit judge so orders. Identifying the complainant when the subject judge is not identified
15 would increase the likelihood that the identity of the subject judge would become publicly
16 known, thus circumventing the policy of nondisclosure. It may not always be practicable to
17 shield the complainant's identity while making public disclosure of the judicial council's order
18 and supporting memoranda; in some circumstances, moreover, the complainant may consent to
19 public identification.
20

21 **Rule 25. Disqualification.**
22

23 **(a) Complainant.**

24 **If the complaint is filed by a judge, that judge will be disqualified from participation**
25 **in any consideration of the complaint except to the extent that these rules provide for**
26 **participation by a complainant. A chief circuit judge who has identified a complaint under**
27 **Rule 5 will not be automatically disqualified from participating in the consideration of the**
28 **complaint but may consider in his or her discretion whether the circumstances warrant**
29 **disqualification.**

30 **(b) Subject Judge.**

31 **A subject judge will be disqualified from participating in any consideration of the**
32 **complaint except to the extent that these rules provide for participation by a subject judge.**

33 **(c) Disqualification of Chief Circuit Judge on Consideration of a Petition for**
34 **Review of a Chief Circuit Judge's Order.**

35 **If a petition for review of a chief circuit judge's order entered under Rule 11(c), (d),**
36 **or (e) is filed with the judicial council pursuant to Rule 18, the chief circuit judge must not**
37 **participate in the council's consideration of the petition. In such a case, the chief circuit**
38 **judge may address a written communication to all of the members of the judicial council,**
39 **with copies provided to the complainant and to the subject judge. The chief circuit judge**
40 **may not otherwise communicate with council members about the matter.**

41 **(d) Member of Special Committee not Disqualified.**

42 **A member of the judicial council who serves on a special committee, including the**

1 **chief circuit judge, will not be disqualified from participating in council consideration of**
2 **the committee's report.**

3 **(e) Subject Judge Following Appointment of a Special Committee.**

4 **On appointment of a special committee, the subject judge will automatically be**
5 **disqualified from participation in any proceeding arising under the Act or these Rules by**
6 **servicing on any special committee, the judicial council of the circuit, the Judicial Conference**
7 **of the United States, and the Judicial Conference Committee on Judicial Conduct and**
8 **Disability. The disqualification will continue until all proceedings regarding the complaint**
9 **against the subject judge are finally terminated, with no further right of review.**

10 **(f) Substitute for Disqualified Chief Circuit Judge.**

11 **If the chief circuit judge is disqualified from participating in consideration of the**
12 **complaint, the duties and responsibilities of the chief circuit judge under these rules must**
13 **be assigned to the circuit judge in regular active service who is the most senior in date of**
14 **commission of those who are not disqualified. If all circuit judges in regular active service**
15 **are disqualified, the judicial council may determine whether to request a transfer under**
16 **Rule 26, or whether, in the interest of sound judicial administration, to permit the chief**
17 **circuit judge to dispose of the complaint on the merits. Members of the judicial council**
18 **who are named in the complaint may participate in this determination if necessary to**
19 **obtain a quorum of the judicial council.**

20 **(g) Judicial Council Action where Multiple Judges are Disqualified.**

21 **Notwithstanding any other provision in these rules to the contrary, a member of the**
22 **judicial council who is a subject of the complaint may participate in the disposition thereof**
23 **if:**

- 24 **(1) participation by subject judge(s) is necessary to obtain a quorum of the**
25 **judicial council;**
26 **(2) the judicial council finds that the lack of a quorum is due to the naming of**
27 **one or more judges in the complaint for the purpose of disqualifying that judge or judges**
28 **or to the naming of one or more judges based on their participation in a decision excluded**
29 **from the definition of misconduct under Rule 3(b)(1)(A); and**
30 **(3) the judicial council votes that it is necessary, appropriate and in the interest**
31 **of sound judicial administration that such subject judges be eligible to act.**

32
33 **Commentary on Rule 25**

34
35 **Rule 25 is adapted from the Illustrative Rules.**

36
37 **Rule 25(e) makes it clear that the disqualification of the subject judge relates only to the**
38 **subject judge's participation in any proceeding arising under the Act or these Rules as a member**
39 **of a special committee, judicial council, Judicial Conference, or the Judicial Conference**
40 **committee. The Illustrative Rule, based on Section 359(a), was ambiguous and could have been**
41 **read to disqualify a subject judge from any service of any kind on each of the bodies mentioned.**
42 **This was undoubtedly not the intent of the Act. Such a disqualification would be anomalous in**

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1 light of the Act’s allowing a subject judge to continue to decide cases and to continue to exercise
2 the powers of chief circuit or district judge. It would also create a substantial deterrence to the
3 appointment of special committees, particularly where a special committee is needed solely
4 because the chief circuit judge may not decide matters of credibility in his or her review under
5 Rule 11. The subject judge is barred by Rule 25(b) from participating in the disposition of that
6 complaint. Rule 25(e) recognizes that participation in proceedings arising under the Act or these
7 Rules by a judge who is the subject of a special committee investigation may lead to an
8 appearance of self-interest in creating substantive and procedural precedents governing such
9 proceedings, and Rule 25 (e) bars such participation.

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

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

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

41
42 In recognition that these multiple-judge complaints are virtually always meritless, the

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1 judicial council should be given discretion to determine (1) whether it is necessary, appropriate,
2 and in the interest of sound judicial administration to permit the chief circuit judge to dispose of
3 a complaint where it would otherwise be impossible for any active circuit judge in the circuit to
4 act, and (2) whether it is necessary, appropriate, and in the interest of sound judicial
5 administration, after appropriate findings as to need and justification are made, to permit
6 complained-against members of the judicial council to participate in the disposition of a petition
7 for review where it would otherwise be impossible to obtain a quorum.

8
9 Applying a rule of necessity in these situations is consistent with the appearance of
10 justice. See, e.g., In re Complaint of Doe, 2 F.3d 308 (8th Cir. Jud. Council 1993) (invoking the
11 rule of necessity); In re Complaint of Judicial Misconduct, No. 91-80464 (9th Cir. Jud. Council
12 6/24/92) (same). There is no unfairness in permitting the chief circuit judge to dispose of a
13 patently insubstantial complaint that names all active circuit judges in the circuit.

14
15 Similarly, there is no unfairness in permitting subject judges, in these circumstances, to
16 participate in the review of a chief circuit judge's dismissal of an insubstantial complaint. The
17 remaining option is to assign the matter to another body. Among other alternatives, the council
18 may request a transfer of the petition under Rule 26. Given the administrative inconvenience and
19 delay involved in these alternatives, it is desirable to request a transfer only if the judicial
20 council determines that the petition is substantial enough to warrant such action.

21
22 In the unlikely event that a quorum of the judicial council cannot be obtained to consider
23 the report of a special committee, it would normally be necessary to request a transfer under Rule
24 26.

25
26 **Rule 26. Transfer to Another Judicial Council.**

27
28 **(a) Transfer of a Proceeding.**

29 **In exceptional circumstances, a chief circuit judge or a judicial council may request**
30 **the Chief Justice to transfer a proceeding based on a complaint identified under Rule 5 or**
31 **filed under Rule 6 to the judicial council of another circuit. The request for a transfer may**
32 **be made at any stage of the proceeding before a reference to the Judicial Conference**
33 **pursuant to Rule 20(b)(3) or a petition for review filed under Rule 22. Upon receiving such**
34 **a request, the Chief Justice may refuse the request or select the transferee judicial council,**
35 **which may then exercise the powers of a judicial council under these Rules.**

36
37 **Commentary to Rule 26**

38
39 Rule 26 is new but implements the Breyer Committee's recommended use of transfers.
40 Breyer Report, 239 F.R.D. at 214-15.

41
42 Rule 26 authorizes the transfer of a complaint proceeding to another judicial council

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1 the chief circuit judge consents. Where the complaint clearly lacked merit, the chief circuit judge
2 may accordingly be saved the burden of preparing a formal order and supporting memorandum.
3 However, the chief circuit judge may, or be obligated under Rule 5 to, identify a complaint based
4 on allegations in a withdrawn complaint.
5

6 If the chief circuit judge appoints a special committee, Rule 27(b) provides that the
7 complaint may be withdrawn only with the consent of both the body before which it is pending
8 (the special committee or the judicial council) and the subject judge. Once a complaint has
9 reached the stage of appointment of a special committee, a resolution of the issues may be
10 necessary to preserve public confidence. Moreover, the subject judge is given the right to insist
11 that the matter be resolved on the merits, thereby eliminating any ambiguity that might remain if
12 the proceeding were terminated by withdrawal of the complaint.
13

14 With regard to all petitions for review, Rule 27(c) grants the petitioner unrestricted
15 authority to withdraw the petition. It is thought that the public's interest in the proceeding is
16 adequately protected, because there will necessarily have been a decision by the chief circuit
17 judge and often by the judicial council as well in such a case.
18

19 **Rule 28. Availability of Rules and Forms.**

20
21 **These rules and copies of the complaint form as provided in Rule 6(b) must be**
22 **available without charge in the office of the clerk of each court of appeals, district court,**
23 **bankruptcy court, or other federal court whose judges are subject to the Act. Each court**
24 **must also make these rules and the complaint form available on the court's website, or**
25 **provide an internet link to the rules and complaint form that are available on the**
26 **judiciary's national website, www.uscourts.gov.**
27

28 **Rule 29. Effective Date.**

29
30 **These rules will become effective 30 days after promulgation by the Judicial**
31 **Conference of the United States.**
32
33
34

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Case Number:

Docket numbers of any appeals to the ____th Circuit:

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

Party Lawyer Neither

If a party, give the name, address, and telephone number of your lawyer:

4. Have you filed any lawsuits against the judge?

Yes No

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

Court:

Docket Number:

Present status of suit:

Name, address, and telephone number of your lawyer:

Court to which any appeal has been taken:

Docket number of the appeal:

Present status of appeal:

5. On separate sheets of paper, please provide a statement of the facts that the claim of misconduct or disability is based on. The statement should not be longer than five standard pages. For further information about what to include in your statement of facts, see Rule 6(a).

Declaration and signature:

I declare under penalty of perjury that:

(1) I have reviewed the Rules Governing Judicial Misconduct and Disability Proceedings,
and;

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9

(2) The statements made in this complaint are true and correct to the best of my knowledge.

(Signature) _____

(Date) _____