

**The Rules For Processing Misconduct and Disability Complaints
Against Any Federal Judge Adopted By The Judicial Conference
On March 11, 2008, Will Continue To Allow The Judges
To Self-Exempt From Any Discipline Through
The Systematic Dismissal of Complaints Without Investigation**

On March 11, the Judicial Conference of the United States adopted the revised rules for processing misconduct and disability complaints against federal judges.¹ The Conference is the highest policy-making all-judge body of the federal judiciary, presided over by the chief justice of the Supreme Court. In addition to representative district judges, its other members are the chief judges of the 13 federal circuits and the two national courts.

I. In 10 years 7,462 complaints, but only 7 investigated and 9 judges disciplined

The chief judges are precisely the ones that adopted the current rules back in 1986. The official statistics on the application of the current rules show that between 1oct96 and 30sep06 there were filed 7,462 such complaints, yet the number of judges disciplined was 9!² Nevertheless, those complaints concerned grave allegations, for the judges classify them under categories such as conflict of interests, bribery, corruption, abuse of judicial power, prejudice, bias, incompetence, and mental or physical disability preventing the discharge of official duties.

Even so, the judges had only 7 complaints investigated by their appointed special committees. Hence, despite the seriousness of these complaints, they systematically and without any investigation dismissed 99.88% of them. Thereby they self-exempted from any discipline for their misconduct and disability and in practice arrogated the power to abrogate in their own interest an Act of Congress³ and to deprive the people of a right conferred upon them under it. In the land of the rule of law they carved for themselves a privileged fiefdom above law.

Such systematic dismissal of complaints is what the judges will continue to do. Indeed, Rule 2(b) provides that the rules are mandatory unless there is a finding of "exceptional circumstances," which is an easy finding to make since no two cases are ever identical. Through that pretext, "a chief judge, a special committee, a judicial council, the Committee on Judicial Conduct and Disability, or the Judicial Conference", that is, any judge or judicial body that handles complaints can suspend the application of any rule. In practice, the rules will be optional. The "mandatory" nature of the rules is illusory.

II. Same key elements of the old & new rules will allow self-exemption to continue

The judges will be able to apply the adopted rules as capriciously and inconsistently as they have the current rules because in order to preserve their abusive self-exemption from discipline they also saw to it that nothing changed in the system of judicial self-discipline. Thus, the adopted rules:⁴

1. Do not change the procedure or participants in the judicial complaint system.
2. Do not change the judge-protective secrecy that turns a complaint into a non-public document

and prohibits even the judge's name to be written on the envelope of the complaint, Rule 6(e), as well as the disclosure of the complaint's existence. Rules 23(a); 18(b); 19(d).⁵

3. Do not change the scope of discretion to dismiss complaints without investigation. R11.
4. Do not change the lack of a requirement for the complained-against judge to respond to the complaint, so she does not even have to bother reading it; but if she does and comments on it to the chief judge, her comments are not made available to the complainant.⁶ Rule 11(f), Commentary on Rule 16, page 24, line 19-28 = R16, p24:L19-28-; R19(a).
5. Do not change the inaccessibility to special investigative committee reports to even the complainant, let alone the public. Rule 16(a) and (e); Commentary p24:L5-7. Even though Rule 17 provides that the "The committee must file with the judicial council a comprehensive report", the fact is that committees are allowed not to file anything. Thereby the appointment of a committee can be a mere show that leaves no trace that it ever investigated the judge at all.
6. Do not change the review-seeking discretion of circuit councils, which the councils have abused by not submitting their decisions to the Judicial Conference Committee on Judicial Conduct and Disability, so that in the 28 years since the passage of the Judicial Conduct and Disability Act of 1980, the Committee has issued only 18 decisions⁷.
7. Do not change the indifference of the Judicial Conference, which includes the chief judges that dismiss complaints systematically and is the last appellate body under Rule 21(a). In the Act's 28-year history it has neither reviewed a decision of a judicial council or the Committee, nor issued any opinion, if only to resolve a dispute about the scope of its own jurisdiction⁸.
8. Do not change the unlawful practice of preventing complainants from appealing to the Judicial Conference despite the Act's clear provision allowing "A complainant or judge aggrieved by an action of [a] judicial council" to do so. Rule 21(a); 28 U.S.C. §357(a)⁹.

Since the substance of the adopted Rules is the same as that of the replaced ones, their revised wording will make no difference in their application. Judges that can handle the Tax and Bankruptcy Codes, and shareholders' derivative suits did not fail to apply correctly the current rules because they were overwhelmed by their "self-explanatory" language. Commentaries on Rules 6, p10:L8; R8, p11:L34; R17, p24:L4024; R19, p27:L27; R21, p32:L17; R22, p33:L31.

Rather, they realize that they can benefit from lifelong exercise of their vast power over people's property, liberty, and even life subject to no control and causing no harm to them for its abuse if only they cover for each other. Indeed, although thousands of judges have served in the 219 years since the creation of the Federal Judiciary in 1789 -2,189 were in office in 2007¹⁰ - the number of those who have been impeached and removed is 7.¹¹ It is simply inconceivable that ordinary men and women became incorruptible because they were nominated and confirmed to a judgeship precisely through a political process. If the DoJ Bureau of Justice Statistics' ratio of 1 in every 31 adults in the U.S. population is either in prison or jail or on probation or parole¹² were applied to those 2,189 federal judges, 71 of them should be correctional supervisees. But none is.

The Rules will not change the judges' need for abusive self-exemption from discipline to cover up their coordinated wrongdoing.¹³ Judges judging judges will continue to protect each other through what they know the adopted rules are: a pretense intended to give the impression to Congress that the Judiciary can apply the statutory judicial self-discipline system so that there is no need for the adoption of bills S.2678 and H.R.5219 "Judicial Transparency and Ethics Enhancement Act of 2006" creating an inspector general for the Judiciary.¹⁴ By scuttling the bill they preserve their privileged status in our country: Judges Above the Law. Is that ethical?

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- ¹ Rules for Processing Judicial Conduct and Disability Proceedings, http://www.uscourts.gov/library/judicialmisconduct/jud_conduct_and_disability_308_app_B_rev.pdf; with useful bookmarks at http://Judicial-Discipline-Reform.org/docs/Rules_complaints.pdf
- ² The graphical representation of the official statistics showing the judges' systematic dismissal of complaints is at http://Judicial-Discipline-Reform.org/judicial_complaints/DrCordero_CJRoberts_8feb8.pdf.
- ³ Judicial Conduct and Disability Act of 1980; http://Judicial-Discipline-Reform.org/docs/28usc351_Conduct_complaints.pdf.
- ⁴ Detailed analysis of the rules is available at http://Judicial-Discipline-Reform.org/judicial_complaints/DrCordero_revised_rules.pdf.
- ⁵ As a result, a subsequent complainant cannot research the judge to determine whether she has engaged in a pattern of misconduct or disability; and the public is limited in its ability to determine whether it is receiving the honest service from a public servant to which it is entitled and, if so, whether to exercise its First Amendment right to "petition the Government for a redress of grievances". Such secrecy is anathema to a democracy founded on a citizenry that is well informed so as to be able to give itself the government that it wants and pass judgment on those that govern it, including the officers of the Third Branch of Government. Cf. point 5 above.
- ⁶ By contrast, a copy of the complaint is transmitted to the complained-against judge by the clerk of court upon receiving it and simultaneously with his transmittal to the chief judge. Rule 8(b). This means that the judge can make any contrary-to-fact allegations in her defense without the complainant knowing about them and having the opportunity to refute them. While the chief judge may never have heard of the complainant, he may have known the judge for 5, 10, 15, 20 years. He is also aware that if the complained-against judge is a district or circuit judge, the chief judge is stuck with her for the rest of his career; and if she is a bankruptcy judge, then the chief judge participated in her appointment for a renewable 14-year term. 28 U.S.C. §152. This means that the chief judge is most likely to trust implicitly the undisputable word of his friend over that of the complainant and is most unlikely not to accept her defensive allegations at face value, thereby giving rise to the complained-against judge and her friends bearing a grudge against him for life. There can be no doubt that this one-way disclosure of the two sides of the story to a non-neutral chief judge with a vested interest in disbelieving the complainant offends against the due process of law notion of fairness and its fundamental tenet of "Equal Justice Under Law".
- ⁷ [Http://Judicial-Discipline-Reform.org/judicial_complaints/1Comm_JCond_decisions.pdf](http://Judicial-Discipline-Reform.org/judicial_complaints/1Comm_JCond_decisions.pdf) and http://Judicial-Discipline-Reform.org/judicial_complaints/2Comm_JCond_decisions.pdf.
- ⁸ [Http://Judicial-Discipline-Reform.org/docs/DrCordero_to_Jud_Conference_18nov4.pdf](http://Judicial-Discipline-Reform.org/docs/DrCordero_to_Jud_Conference_18nov4.pdf).
- ⁹ [Http://Judicial-Discipline-Reform.org/JNinfo/25Committee/2DrCordero-petition_25feb9.pdf](http://Judicial-Discipline-Reform.org/JNinfo/25Committee/2DrCordero-petition_25feb9.pdf) >N:117 et seq.
- ¹⁰ [Http://www.uscourts.gov/judicialfactsfigures/2006/Table101.pdf](http://www.uscourts.gov/judicialfactsfigures/2006/Table101.pdf); also at http://Judicial-Discipline-Reform.org/statistics&tables/number_jud_officers.pdf.
- ¹¹ [Http://www.fjc.gov/history/home.nsf](http://www.fjc.gov/history/home.nsf) >Judges of the U.S. Courts>Impeachments of Federal Judges.
- ¹² [Http://www.ojp.usdoj.gov/bjs/pub/pdf/ppus06.pdf](http://www.ojp.usdoj.gov/bjs/pub/pdf/ppus06.pdf) in box on p.2.
- ¹³ [Http://Judicial-Discipline-Reform.org/Follow_money/DrCordero-journalists.pdf](http://Judicial-Discipline-Reform.org/Follow_money/DrCordero-journalists.pdf)
- ¹⁴ [Http://Judicial-Discipline-Reform.org/Follow_money/S2678_HR5219.pdf](http://Judicial-Discipline-Reform.org/Follow_money/S2678_HR5219.pdf) and http://Judicial-Discipline-Reform.org/docs/Sensenbrenner_Judicial_IG.pdf