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- Statistical Reports
- Forms
- Court Fees

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Draft Rules Governing Judicial Conduct and Disability Proceedings Undertaken Pursuant to 28 U.S.C. §§ 351-364

This is the latest working draft of the Rules Governing Judicial Conduct and Disability Proceedings Undertaken Pursuant To 28 U.S.C. §§ 351-364, adopted by the Committee on Judicial Conduct and Disability. The draft is a substantial revision of the Rules sent out for Public Comment on July 16, 2007. It is the result of the Committee's efforts to respond to the comments received during the public comment period, including testimony and other submissions at the Public Hearing held on September 27, 2007.

The draft is not yet a final product to be recommended to the Judicial Conference for adoption at its March meeting. The draft has been sent for style editing to Bryan Garner, who for many years served as the principal staff in the style project undertaken by the Committee on Rules of Practice and Procedure. The draft does represent this Committee's present position on matters of substance, although the Committee reserves the right to alter the draft further as to substance and style based on any communications received in the near future. The deadline for submitting the Rules for adoption by the United States Judicial Conference is mid-January. Therefore, any communications to the Committee should occur well in advance of that time. Such communications may be addressed to the Office of the General Counsel, Administrative Office of the U.S. Courts, One Columbus Circle NE, Washington, DC 20544.

ref:1

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ref:2

Judicial Conference Committee on Judicial Conduct and Disability

Rules for Judicial-Conduct and Judicial-Disability Proceedings

Rules for Judicial-Conduct and Judicial-Disability Proceedings

TABLE OF CONTENTS

RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS

Preface

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

ARTICLE I. GENERAL PROVISIONS

1. Scope

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

Commentary on 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 Committee Report," 239 F.R.D. 116 (Sept. 2006), to Chief Justice Roberts that evaluated implementation of the Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§ 351-364. The Breyer 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 Committee Report, 239 F.R.D. at 132, and that a major problem faced by chief judges in implementing the Act was the lack of authoritative interpretive standards. Id. at 212-15. The Breyer Committee then established standards to guide its evaluation, 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 Section 358 of the Act to fashion standards guiding 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 Committee 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.

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

2. Effect and Construction

(a) Generally. These Rules are mandatory; they supersede any conflicting judicial-council rules. Judicial councils may promulgate additional rules to implement the Act as long as those rules do not conflict with these Rules.

(b) Exception. A Rule will not apply if, when performing duties authorized by the Act, a chief judge, a special committee, a judicial council, the Judicial Conference Committee on Judicial Conduct and Disability, or the Judicial Conference of the United States expressly finds that exceptional circumstances render application of that Rule in a particular proceeding manifestly unjust or contrary to the purposes of the Act or these Rules.

Commentary on Rule 2

Unlike the Illustrative Rules, these Rules provide mandatory and nationally uniform provisions governing the substantive and procedural aspects of misconduct and disability proceedings under the Act. The mandatory nature of these Rules is authorized by 28 U.S.C. § 358(a) and (c). Judicial councils retain the power to promulgate rules consistent with these Rules. For example, a local rule may authorize the electronic distribution of materials pursuant to Rule 8(b).

Rule 2(b) recognizes that unforeseen and exceptional circumstances may call for a different approach in particular cases.

3. Definitions

(a) Chief Judge. "Chief judge" means the chief judge of a United States Court of Appeals, of the United States Court of International Trade, or of the United States Court of Federal Claims.

(b) Circuit Clerk. "Circuit clerk" means a clerk of a United States court of appeals, the clerk of the United States Court of International Trade, the clerk of the United States Court of Federal Claims, or the circuit executive of the United States Court of Appeals for the Federal Circuit.

(c) Complaint. A complaint is:

(1) a document that, in accordance with Rule 6, is filed by any person in his or her individual capacity or on behalf of a professional organization; or

(2) information from any source, other than a document described in (c)(1), that gives a chief judge probable cause to believe that a covered judge, as defined in Rule 4, has engaged in misconduct or may have a disability, whether or not the information is framed as or is intended to be an allegation of misconduct or disability.

(d) Court of Appeals, District Court, and District Judge. "Courts of appeals," "district court," and "district judge," where appropriate, include the United States Court of Federal Claims, the United States Court of International Trade, and the judges thereof.

(e) Disability. "Disability" is a temporary or permanent condition rendering a judge unable to discharge the duties of the particular judicial office. Examples of disability include substance abuse, the inability to stay awake during court proceedings, or a severe impairment of cognitive abilities.

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

(g) Magistrate Judge. "Magistrate judge," where appropriate, includes a special master appointed by the Court of Federal Claims under 42 U.S.C. § 300aa-12(c).

(h) Misconduct. Cognizable misconduct:

(1) is conduct prejudicial to the effective and expeditious administration of the business of the courts. Misconduct includes, but is not limited to:
  (A) using the judge's office to obtain special treatment for friends or relatives;
  (B) accepting bribes, gifts, or other personal favors related to the judicial office;
  (C) having improper discussions with parties or counsel for one side in a case;
  (D) treating litigants or attorneys in a demonstrably egregious and hostile manner;
  (E) engaging in partisan political activity or making inappropriately partisan statements;
  (F) soliciting funds for organizations; or
  (G) violating other specific, mandatory standards of judicial conduct, such as those pertaining to restrictions on outside income and requirements for financial disclosure.

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

(3) does not include:
  (A) an allegation that is directly related to the merits of a decision or procedural ruling. An allegation that calls into question the correctness of a judge's ruling, including a failure to recuse, without more, is merits-related. If the decision or ruling is alleged to be the result of an improper motive, e.g., a bribe, ex parte contact, racial or ethnic bias, or improper conduct in rendering a decision or ruling, such as personally derogatory remarks irrelevant to the issues, the complaint is not cognizable to the extent that it attacks the merits.
  (B) an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.

(i) Subject Judge. "Subject judge" means any judge described in Rule 4 who is the subject of a complaint.

Commentary on Rule 3

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

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

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

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

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

The phrase "prejudicial to the effective and expeditious administration of the business of the courts" is not subject to precise definition, and subsection (h)(1) therefore provides some specific examples. Although the Code of Conduct for United States Judges may be informative, its main precepts are highly general; the Code is in many potential applications aspirational rather than a set of disciplinary rules. Ultimately, the responsibility for determining what constitutes misconduct under the statute is the province of the judicial council of the circuit subject to such review and limitations as are ordained by the statute and by these Rules.

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

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

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

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

Conversely, an allegation -- however unsupported -- that a judge conspired with a prosecutor to make a particular ruling is not merits-related, even though it "relates" to a ruling in a colloquial sense. Such an allegation attacks the propriety of conspiring with the prosecutor and goes beyond a challenge to the correctness -- "the merits" -- of the ruling itself. An allegation that a judge ruled against the complainant because the complainant is a member of a particular racial or ethnic group, or because the judge dislikes the complainant personally, is also not merits-related. Such an allegation attacks the propriety of arriving at rulings with an illicit or improper motive. Similarly, an allegation that a judge used an inappropriate term to refer to a class of people is not merits-related even if the judge used it on the bench or in an opinion; the correctness of the judge's rulings is not at stake. An allegation that a judge treated litigants or attorneys in a demonstrably egregious and hostile manner while on the bench is also not merits-related.

The existence of an appellate remedy is usually irrelevant to whether an allegation is merits-related. The merits-related ground for dismissal exists to protect judges' independence in making rulings, not to protect or promote the appellate process. A complaint alleging an incorrect ruling is merits-related even though the

complainant has no recourse from that ruling. By the same token, an allegation that is otherwise cognizable under the Act should not be dismissed merely because an appellate remedy appears to exist (for example, vacating a ruling that resulted from an improper ex parte communication). However, there may be occasions when appellate and misconduct proceedings overlap, and consideration and disposition of a complaint under these Rules may be properly deferred by a chief judge until the appellate proceedings are concluded in order to avoid, inter alia, inconsistent decisions.

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

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

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

4. Covered Judges

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

Commentary on Rule 4

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

ARTICLE II. INITIATION OF A COMPLAINT

5. Identification of a Complaint

(a) Identification. When a chief judge has information constituting reasonable grounds for inquiry into whether a covered judge has engaged in misconduct or has a disability, the chief judge may conduct an inquiry, as he or she deems appropriate, into the accuracy of the information even if no related complaint has been filed. A chief judge who finds probable cause to believe that misconduct has occurred or that a disability exists may seek an informal resolution that he or she finds satisfactory. If no informal resolution is achieved or is feasible, the chief judge may identify a complaint and, by written order stating the reasons, begin the review provided in Rule 11. If the evidence of misconduct is clear and convincing and no informal resolution is achieved or is feasible, the chief judge must identify a complaint. A chief judge must not decline to identify a complaint merely because the person making the allegation has not filed a complaint under Rule 6. This Rule is subject to Rule 7.

(b) Noncompliance with Rule 6(d). Rule 6 complaints that do not comply with the requirements of Rule 6(d) must be considered under this Rule.

Commentary on Rule 5

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

The Act authorizes the chief judge, by written order stating reasons, to identify a complaint and thereby dispense with the filing of a written complaint. See 28 U.S.C. § 351(b). Under Rule 5, when a chief judge becomes aware of information constituting reasonable grounds to inquire into possible misconduct or disability on the part of a covered judge, and no formal complaint has been filed, the chief judge has the power in his or her discretion to begin an appropriate inquiry. A chief judge's decision

whether to informally seek a resolution and/or to identify a complaint is guided by the results of that inquiry. If the chief judge concludes that there is probable cause to believe that misconduct has occurred or a disability exists, the chief judge may seek an informal resolution, if feasible, and if failing in that, may identify a complaint. Discretion is accorded largely for the reasons police officers and prosecutors have discretion in making arrests or bringing charges. The matter may be trivial and isolated, based on marginal evidence, or otherwise highly unlikely to lead to a misconduct or disability finding. On the other hand, if the inquiry leads the chief judge to conclude that there is clear and convincing evidence of misconduct or a disability, and no satisfactory informal resolution has been achieved or is feasible, the chief judge is required to identify a complaint.

An informal resolution is one agreed to by the subject judge and found satisfactory by the chief judge. Because an informal resolution under Rule 5 reached before a complaint is filed under Rule 6 will generally cause a subsequent Rule 6 complaint alleging the identical matter to be concluded, see Rule 11(d), the chief judge must be sure that the resolution is fully appropriate before endorsing it. In doing so, the chief judge must balance the seriousness of the matter against the particular judge's alacrity in addressing the issue. The availability of this procedure should encourage attempts at swift remedial action before a formal complaint is filed.

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

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

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

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

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

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

6. Filing a Complaint

(a) Form. A complainant may use the form reproduced in the appendix to these Rules or a form designated by the rules of the judicial council in the circuit in which the complaint is filed. A complaint form is also available on each court of appeals' website or may be obtained from the circuit clerk or any district court or bankruptcy court within the circuit. A form is not necessary to file a complaint, but the complaint must be written and must include the information described in (b).

(b) Brief Statement of Facts. A complaint must contain a concise statement that details the specific facts on which the claim of misconduct or disability is based. The statement of facts should include a description of:

(1) what happened;

(2) when and where the relevant events happened;

(3) any information that would help an investigator check the facts; and

(4) for an allegation of disability, any additional facts that form the basis of that allegation.

(c) Legibility. A complaint should be typewritten if possible. If not typewritten, it must be legible. An illegible complaint will be returned to the complainant with a request to resubmit it in legible form. If a resubmitted complaint is still illegible, it will not be accepted for filing.

(d) Complainant's Address and Signature; Verification. The complainant must provide a contact address and sign the complaint. The truth of the statements made in the complaint must be verified in writing under penalty of perjury. If any of these requirements are not met, the complaint will be accepted for filing, but it will be reviewed under only Rule 5(b).

(e) Number of Copies; Envelope Marking. The complainant shall provide the number of copies of the complaint required by local rule. Each copy should be in an envelope marked "Complaint of Misconduct" or "Complaint of Disability." The envelope must not show the name of any subject judge.

Commentary on Rule 6

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

7. Where to Initiate Complaints

(a) Where to File. Except as provided in (b),

(1) a complaint against a judge of a United States court of appeals, a United States district court, a United States bankruptcy court, or a United States magistrate judge must be filed with the circuit clerk in the jurisdiction in which the subject judge holds office.

(2) a complaint against a judge of the United States Court of International Trade or the United States Court of Federal Claims must be filed with the respective clerk of that court.

(3) a complaint against a judge of the United States Court of Appeals for the Federal Circuit must be filed with the circuit executive of that court.

(b) Misconduct in Another Circuit; Transfer. If a complaint alleges misconduct in the course of official business while the subject judge was sitting on a court by designation under 28 U.S.C. §§ 291-293 and 294(d), the

complaint may be filed or identified with the circuit clerk of that circuit or of the subject judge's home circuit. The proceeding will continue in the circuit of the first-filed or first-identified complaint. The judicial council of the circuit where the complaint was first filed or first identified may transfer the complaint to the subject judge's home circuit or to the circuit where the alleged misconduct occurred, as the case may be.

Commentary on Rule 7

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

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

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

8. Action by Clerk

(a) Receipt of Complaint. Upon receiving a complaint against a judge filed under Rule 5 or 6, the circuit clerk must open a file, assign a docket number according to a uniform numbering scheme promulgated by the Judicial Conference Committee on Judicial Conduct and Disability, and acknowledge the complaint's receipt.

(b) Distribution of Copies. The clerk must promptly send copies of a complaint filed under Rule 6 to the chief judge or the judge authorized to act as chief judge under Rule 25(f), and copies of complaints filed under Rule 5 or 6 to each subject judge. The clerk must retain the original complaint. Any further distribution should be as provided by local rule.

(c) Complaints Against Noncovered Persons. If the clerk receives a complaint about a person not holding an office described in Rule 4, the clerk must not accept the complaint for filing under these Rules.

(d) Receipt of Complaint about a Judge and Another Noncovered Person. If a complaint is received about a judge described in Rule 4 and a person not holding an office described in Rule 4, the clerk must accept the complaint for filing under these Rules only with regard to the judge and must inform the complainant of the limitation.

Commentary on Rule 8

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

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

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

9. Time for Filing or Identifying a Complaint

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

Commentary on Rule 9

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

10. Abuse of the Complaint Procedure

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

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

Commentary on Rule 10

This Rule is adapted from the Illustrative Rules.

Rule 10(a) provides a mechanism for a judicial council to restrict the filing of further complaints by a single complainant who has abused the complaint procedure. In some instances, however, the complaint procedure may be abused in a manner for which the remedy provided in Rule 10(a) may not be appropriate. For example, some circuits have been inundated with submissions of dozens or hundreds of

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

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

ARTICLE III. REVIEW OF A COMPLAINT BY THE CHIEF JUDGE

11. Review by the Chief Judge

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

(1) dismissed;

(2) concluded on the ground that voluntary corrective action has been taken;

(3) concluded because intervening events have made action on the complaint no longer necessary; or

(4) referred to a special committee.

(b) Inquiry by Chief Judge. In determining what action to take under Rule 11(a), the chief judge may conduct a limited inquiry. The chief judge, or a designee, may

communicate orally or in writing with the complainant, the subject judge, and any others who may have knowledge of the matter, and may review transcripts or other relevant documents. In conducting the inquiry, the chief judge must not determine any reasonably disputed issue.

(c) Dismissal.

(1) Allowable grounds. A complaint must be dismissed in whole or in part to the extent that the chief judge concludes that the complaint:

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

(B) is directly related to the merits of a decision or procedural ruling;

(C) is frivolous;

(D) is based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred or that a disability exists;

(E) is based on allegations which are incapable of being established through investigation;

(F) has been filed in the wrong circuit under Rule 7; or

(G) is otherwise not appropriate for consideration under the Act.

(2) Disallowed grounds. A complaint must not be dismissed solely because it repeats allegations of a previously dismissed complaint if it also contains material information not previously considered and does not constitute harassment of the subject judge.

(d) Corrective Action. The chief judge may conclude the complaint proceeding in whole or in part if:

(1) an informal resolution under Rule 5 satisfactory to the chief judge was reached before the complaint was filed under Rule 6, or

(2) the chief judge determines that the subject judge has taken appropriate voluntary corrective action that acknowledges and remedies the problems raised by the complaint.

(e) Intervening Events. The chief judge may conclude the complaint proceeding in whole or in part upon determining that intervening events render some or all of the allegations moot or make remedial action impossible.

(f) Appointment of Special Committee. If some or all of the complaint is not dismissed or concluded, the chief judge must promptly appoint a special committee to investigate the complaint or any relevant portion of it and to make recommendations to the judicial council. Before appointing a special committee, the chief judge must invite the subject judge to respond to the complaint either orally or in writing if the judge was not given an opportunity during the limited inquiry. In the chief judge's discretion, separate complaints may be joined and assigned to a single special committee. Similarly, a single complaint about more than one judge may be severed and more than one special committee appointed.

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

(1) When special committee is appointed. If a special committee is appointed, the chief judge must notify the complainant and the subject judge that the matter has been referred to a special committee and identify the members of the committee. A copy of the order appointing the special committee must be sent to the Judicial Conference Committee on Judicial Conduct and Disability.

(2) When chief judge disposes of complaint without appointing special committee. If the chief judge disposes of the complaint under Rule 11(c), (d), or (e), the chief judge must prepare a supporting memorandum that sets forth the reasons for the disposition. Except as authorized by 28 U.S.C. § 360, the memorandum must not include the name of the complainant or of the subject judge. The order and the supporting memorandum, which may be one document, must be provided to the complainant, the subject judge, and the Judicial Conference Committee on Judicial Conduct and Disability.

(3) Right of petition for review. If the chief judge disposes of a complaint under Rule 11(c), (d), or (e), the complainant and subject judge must be notified of the right to petition the judicial council for review of the disposition, as provided in Rule 18. If a petition for review is filed, the chief judge must promptly transmit all materials obtained in connection with the inquiry under Rule 11(b) to the circuit clerk for transmittal to the judicial council.

(h) Public Availability of Chief Judge's Decision. The chief judge's decision must be made public to the

extent, at the time, and in the manner provided in Rule 24.

Commentary on Rule 11

Subsection (a) lists the actions available to a chief judge in reviewing a complaint. This subsection provides that where a complaint has been filed under Rule 6, the ordinary doctrines of waiver do not apply. A chief judge must identify as a complaint any misconduct or disability issues raised by the factual allegations of the complaint even if the complainant makes no such claim with regard to those issues. For example, an allegation limited to misconduct in fact-finding that mentions periods during a trial when the judge was asleep must be treated as a complaint regarding disability. Some formal order giving notice of the expanded scope of the proceeding must be given to the subject judge.

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

In conducting a limited inquiry under subsection (b), the chief judge must avoid determinations of reasonably disputed issues, including reasonably disputed issues as to whether the facts alleged constitute misconduct or disability, which are ordinarily left to a special committee and the judicial council. An allegation of fact is ordinarily not "refuted" simply because the subject judge denies it. The limited inquiry must reveal something more in the way of refutation before it is appropriate to dismiss a complaint that is otherwise cognizable. If it is the complainant's word against the subject judge's -- in other words, there is simply no other significant evidence of what happened or of

the complainant's unreliability -- then there must be a special-committee investigation. Such a credibility issue is a matter "reasonably in dispute" within the meaning of the Act.

However, dismissal following a limited inquiry may occur when the complaint refers to transcripts or to witnesses and the chief judge determines that the transcripts and witnesses all support the subject judge. Breyer Committee Report, 239 F.R.D. at 243. For example, consider a complaint alleging that the subject judge said X, and the complaint mentions, or it is independently clear, that five people may have heard what the judge said. Id. The chief judge is told by the subject judge and one witness that the judge did not say X, and the chief judge dismisses the complaint without questioning the other four possible witnesses. Id. In this example, the matter remains reasonably in dispute. If all five witnesses say the judge did not say X, dismissal is appropriate, but if potential witnesses who are reasonably accessible have not been questioned, then the matter remains reasonably in dispute. Id.

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

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

Subsection (c) describes the grounds on which a complaint may be dismissed. These are adapted from the Act, 28 U.S.C. § 352(b), and the Breyer Committee Report, 239 F.R.D. at 239-45. Subsection (c)(1)(A) permits dismissal of an allegation that, even if true, does not constitute misconduct or disability under the statutory standard. The

proper standards are set out in Rule 3 and discussed in the Commentary on that Rule. Subsection (c)(1)(B) permits dismissal of complaints related to the merits of a decision by a subject judge; this standard is also governed by Rule 3 and its accompanying Commentary.

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

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

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

Rule 11(c)(1)(E) is intended, among other things, to cover situations when no evidence is offered or identified, or when the only identified source is unavailable. Breyer Committee Report, 239 F.R.D. at 243. For example, a complaint alleges that an unnamed attorney told the complainant that the judge did X. Id. The subject judge denies it. The chief judge requests that the complainant (who does not purport to have observed the judge do X) identify the unnamed witness, or that the unnamed witness

come forward so that the chief judge can learn the unnamed witness's account. Id. The complainant responds that he has spoken with the unnamed witness, that the unnamed witness is an attorney who practices in federal court, and that the unnamed witness is unwilling to be identified or to come forward. Id. at 243-44. The allegation is then properly dismissed as containing allegations that are incapable of being established through investigation. Id.

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

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

Subsection (c)(2) indicates that the investigative nature of the process prevents the application of claim preclusion principles where new and material evidence becomes available. However, it also recognizes that at some point a renewed investigation may constitute harassment of the subject judge and should be foregone, depending of course on the seriousness of the issues and the weight of the new evidence.

Rule 11(d) implements the Act's provision for dismissal if voluntary appropriate corrective action has been taken. It is largely adapted from the Breyer Committee Report, 239 F.R.D. 244-45. The Act authorizes the chief judge to conclude the proceedings if "appropriate corrective action has been taken." 28 U.S.C. § 352(b)(2). Under the Rule, action taken after the complaint is filed is "appropriate" when it acknowledges and remedies the problem raised by the complaint. Breyer Committee Report, 239 F.R.D. at 244. Because the Act deals with the conduct of judges, the emphasis is on correction of the judicial conduct that was the subject of the complaint. Id. Terminating a complaint based on corrective action is premised on the implicit understanding that voluntary self-correction or redress of

misconduct or a disability is preferable to sanctions. Id. The chief judge may facilitate this process by giving the subject judge an objective view of the appearance of the judicial conduct in question and by suggesting appropriate corrective measures. Id. Moreover, when corrective action is taken under Rule 5 satisfactory to the chief judge before a complaint is filed, that informal resolution will be sufficient to conclude a subsequent complaint based on the identical conduct.

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

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

Voluntary corrective action should be proportionate to any plausible allegations of misconduct in the complaint. The form of corrective action should also be proportionate to any sanctions that a judicial council might impose under Rule 20(b), such as a private or public reprimand or a change in case assignments. Breyer Committee Report, 239

F.R.D at 244-45. In other words, minor corrective action will not suffice to dispose of a serious matter. Id.

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

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

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

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

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

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

ARTICLE IV. INVESTIGATION AND REPORT BY SPECIAL COMMITTEE

12. Composition of Special Committee

(a) **Membership. Except as provided in (e), a special committee appointed under Rule 11(f) must consist of the chief judge and equal numbers of circuit and district judges. If the complaint is about a district judge, bankruptcy judge, or magistrate judge, then, when possible, the district-judge members of the committee must be from districts other than the district of the subject judge. For the courts named in 28 U.S.C. § 363, the committee must be selected from the judges serving on the subject judge's court.**

(b) **Presiding Officer. When appointing the committee, the chief judge may serve as the presiding officer or else must designate a committee member as the presiding officer.**

(c) **Bankruptcy Judge or Magistrate Judge as Adviser. If the subject judge is a bankruptcy judge or magistrate judge, he or she may, within 14 days after being notified of the committee's appointment, ask the chief judge to designate as a committee adviser another bankruptcy judge or magistrate judge, as the case may be. The chief judge must grant such a request but may otherwise use discretion in naming the adviser. Unless the adviser is a Court of Federal Claims special master appointed under 42 U.S.C. § 300aa-12(c), the adviser must be from a district other than the district of the subject bankruptcy judge or subject magistrate judge. The adviser cannot vote but has the other privileges of a committee member.**

(d) **Provision of Documents. The chief judge must certify to each other member of the committee and to any adviser copies of the complaint and statement of facts in whole or relevant part, and any other relevant documents on file.**

(e) **Continuing Qualification of Committee Members. A member of a special committee who was qualified to serve when**

appointed may continue to serve on the committee even though the member relinquishes the position of chief judge, active circuit judge, or active district judge, as the case may be, but only if the member continues to hold office under Article III, Section 1, of the Constitution of the United States, or under 28 U.S.C. § 171.

(f) Inability of Committee Member to Complete Service. If a member of a special committee can no longer serve because of death, disability, disqualification, resignation, retirement from office, or other reason, the chief judge must decide whether to appoint a replacement member, either a circuit or district judge as needed under (a). No special committee appointed under these Rules may function with only a single member, and the votes of a two-member committee must be unanimous.

(g) Voting. All actions by a committee must be by vote of a majority of all members of the committee.

Commentary on Rule 12

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

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

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

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

Subsection (c) also provides that the adviser will have all the privileges of a committee member except a vote. The adviser, therefore, may participate in all deliberations of

the committee, question witnesses at hearings, and write a separate statement to accompany the special committee's report to the judicial council.

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

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

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

13. Conduct of an Investigation

(a) Extent and Methods of Special-Committee Investigation. Each special committee must determine the appropriate extent and methods of the investigation in light of the allegations of the complaint. If, in the course of the investigation, the committee has cause to believe that the subject judge may have engaged in misconduct or has a disability that is beyond the scope of the complaint,

the committee must refer the new matter to the chief judge for action under Rule 5 or Rule 11.

(b) Criminal Conduct. If the committee's investigation concerns conduct that may be a crime, the committee must consult with the appropriate prosecutorial authorities to the extent permitted by the Act to avoid compromising any criminal investigation. The committee has final authority over the timing and extent of its investigation and the formulation of its recommendations.

(c) Staff. The committee may arrange for staff assistance to conduct the investigation. It may use existing staff of the judicial branch or may hire special staff through the Director of the Administrative Office of the United States Courts.

(d) Delegation of Subpoena Power; Contempt. The chief judge may delegate the authority to exercise the committee's subpoena powers. The judicial council or special committee may institute a contempt proceeding under 28 U.S.C. § 332(d) against anyone who fails to comply with a subpoena.

Commentary on Rule 13

This Rule is adapted from the Illustrative Rules.

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

One of the difficult questions that can arise is the relationship between proceedings under the Act and criminal investigations. Rule 13(b) assigns responsibility for coordination to the special committee in cases in which criminal conduct is suspected, but gives the committee the

authority to determine the appropriate pace of its activity in light of any criminal investigation.

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

14. Conduct of Hearings by Special Committee

(a) Purpose of Hearings. The committee may hold hearings to take testimony and receive other evidence, to hear argument, or both. If the committee is investigating allegations against more than one judge, it may hold joint or separate hearings.

(b) Committee Evidence. Subject to Rule 15, the committee must obtain material, nonredundant evidence in the form it considers appropriate. In the committee's discretion, evidence may be obtained by committee members, staff, or both. Witnesses offering testimonial evidence may include the complainant and the subject judge.

(c) Counsel for Witnesses. The subject judge has the right to counsel. The special committee has discretion to decide whether other witnesses may have counsel present when they testify.

(d) Witness Fees. Witness fees must be paid as provided in 28 U.S.C. § 1821.

(e) Oath. All testimony taken at a hearing must be given under oath or affirmation.

(f) Rules of Evidence. The Federal Rules of Evidence do not apply to special-committee hearings.

(g) Record and Transcript. A record and transcript must be made of all hearings.

Commentary on Rule 14

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

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

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

15. Rights of Subject Judge

(a) Notice.

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

(A) the appointment of a special committee under Rule 11(f);

(B) the expansion of the scope of an investigation under Rule 13(a);

(C) any hearing under Rule 14, including its purposes, the names of any witnesses the committee intends to call, and the text of any

statements that have been taken from those witnesses.

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

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

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

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

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

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

Commentary on Rule 15

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

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

purpose of receiving evidence of record or hearing argument under Rule 14.

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

16. Rights of Complainant in Investigation

(a) Notice. The complainant must receive written notice of the investigation as provided in Rule 11(g)(1). When the special committee's report to the judicial council is filed, the complainant must be notified of the filing. The judicial council may, in its discretion, provide a copy of the report of a special committee to the complainant.

(b) Opportunity to Provide Evidence. If the committee determines that the complainant may have evidence that does not already exist in writing, a representative of the committee must interview the complainant.

(c) Presentation of Argument. The complainant may submit written argument to the special committee. In its discretion, the special committee may permit the complainant to offer oral argument.

(d) Representation by Counsel. A complainant may submit written argument through counsel and, if permitted to offer oral argument, may do so through counsel.

(e) Cooperation. In exercising its discretion under this Rule, a special committee may take into account the degree of the complainant's cooperation in preserving the confidentiality of the proceedings, including the identity of the subject judge.

Commentary on Rule 16

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

In accordance with the view of the process as fundamentally administrative and inquisitorial, these Rules

do not give the complainant the rights of a party to litigation, and leave the complainant's role largely to the discretion of the special committee. However, Rule 16(b) provides that, where a special committee has been appointed and it determines that the complainant may have additional evidence, the complainant must be interviewed by a representative of the committee. Such an interview may be in person or by telephone, and the representative of the committee may be either a member or staff.

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

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

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

17. Special-Committee Report

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

Commentary on Rule 17

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

ARTICLE V. JUDICIAL-COUNCIL REVIEW

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

(a) Petitions for Review. After the chief judge issues an order under Rule 11(c), (d), or (e), a complainant or subject judge may petition the judicial council of the circuit to review the order. By rules promulgated under 28 U.S.C. § 358, the judicial council may refer a petition for review filed under this Rule to a panel of no fewer than five members of the council, at least two of whom must be district judges.

(b) When to File; Form; Where to File. A petition for review must be filed in the office of the circuit clerk within 35 days of the date on the clerk's letter informing the parties of the chief judge's order. The petition should be in letter form, addressed to the circuit clerk, and in an envelope marked "Misconduct Petition" or "Disability Petition." The name of the subject judge must not be shown on the envelope. The letter should be typewritten or otherwise legible. It should begin with "I hereby petition the judicial council for review of . . . " and state the reasons why the petition should be granted. It must be signed.

(c) Receipt and Distribution of Petition. A circuit clerk who receives a petition for review filed within the time allowed and in proper form must:

(1) acknowledge its receipt and send a copy to the complainant or subject judge, as the case may be;

(2) promptly distribute to each member of the judicial council, or its relevant panel, except for any member disqualified under Rule 25, or make available in the manner provided by local rule, the following materials:

(A) copies of the complaint;

(B) all materials obtained by the chief judge in connection with the inquiry;

(C) the chief judge's order disposing of the complaint;

(D) any memorandum in support of the chief judge's order;
(E) the petition for review; and
(F) an appropriate ballot;

(3) send the petition for review to the Judicial Conference Committee on Judicial Conduct and Disability. Unless the Judicial Conference Committee requests them, the clerk will not send copies of the materials obtained by the chief judge.

(d) **Untimely Petition.** The clerk must refuse to accept a petition that is received after the deadline in (b).

(e) **Timely Petition Not in Proper Form.** When the clerk receives a petition filed within the time allowed but in a form that is improper to a degree that would substantially impair its consideration by the judicial council — such as a document that is ambiguous about whether it is intended to be a petition for review — the clerk must acknowledge its receipt, call the filer's attention to the deficiencies, and give the filer the opportunity to correct the deficiencies within 21 days of the date of the clerk's letter about the deficiencies or within the original deadline for filing the petition, whichever is later. If the deficiencies are corrected within the time allowed, the clerk will proceed according to paragraphs (a) and (c) of this Rule. If the deficiencies are not corrected, the clerk must reject the petition.

Commentary on Rule 18

Rule 18 is adapted largely from the Illustrative Rules.

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

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

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

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

19. Judicial-Council Disposition of Petitions for Review

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

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

(1) affirm the chief judge's disposition by denying the petition;

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

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

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

(c) **Notice of Council Decision. Copies of the judicial council's order, together with any accompanying memorandum in support of the order or separate concurring or dissenting statements, must be given to the complainant, the subject judge, and the Judicial Conference Committee on Judicial Conduct and Disability.**

(d) **Memorandum of Council Decision. If the council's order affirms the chief judge's disposition, a supporting memorandum must be prepared only if the judicial council concludes that there is a need to supplement the chief judge's explanation. A memorandum supporting a council order must not include the name of the complainant or the subject judge.**

(e) **Review of Judicial-Council Decision. If the judicial council's decision is adverse to the petitioner, and if no member of the council dissented on the ground that a special committee should be appointed under Rule 11(f), the complainant must be notified that he or she has no right to seek review of the decision. If there was a dissent, the petitioner must be informed that he or she can file a petition for review under Rule 21(b) solely on the issue of whether a special committee should be appointed.**

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

Commentary on Rule 19

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

The council should ordinarily review the decision of the chief judge on the merits, treating the petition for review for all practical purposes as an appeal. The judicial council may respond to a petition by affirming the chief judge's order, remanding the matter, or, in exceptional cases, taking other appropriate action.

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

(a) **Rights of Subject Judge. Within 21 days after the filing of the report of a special committee, the subject judge may send a written response to the**

members of the judicial council. The judge must also be given an opportunity to present argument through counsel, written or oral, as determined by the council. The judge must not otherwise communicate with council members about the matter.

(b) Judicial-Council Action.

(1) Discretionary actions. Subject to the judge's rights set forth in subsection (a), the judicial council may:

(A) dismiss the complaint because:

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

(ii) the complaint is directly related to the merits of a decision or procedural ruling;

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

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

(B) conclude the proceeding because appropriate corrective action has been taken or intervening events have made the proceeding unnecessary.

(C) refer the complaint to the Judicial Conference of the United States with the council's recommendations for action.

(D) take remedial action to ensure the effective and expeditious administration of the business of the courts, including:

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

(ii) ordering that no new cases be assigned to the subject judge for a limited, fixed period;

(iii) in the case of a magistrate judge, ordering the chief judge of the district court to take action specified by the council, including the initiation of removal proceedings under 28 U.S.C. § 631(i) or 42 U.S.C. § 300aa-12(c)(2);

(iv) in the case of a bankruptcy judge, removing the judge from office under 28 U.S.C. § 152(e);

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

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

(E) take any combination of actions described in (b)(1)(A)-(D) of this Rule that is within its power.

(2) Mandatory actions. A judicial council must refer a complaint to the Judicial Conference if the council determines that a circuit judge or district judge may have engaged in conduct that:

(A) might constitute ground for impeachment; or

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

(c) Inadequate Basis for Decision. If the judicial council finds that a special committee's report, recommendations, and record provide an inadequate basis for decision, it may return the matter to the committee for further investigation and a new report, or it may conduct further investigation. If the judicial council decides to conduct further investigation, the subject judge must be given adequate prior notice in writing of that decision and of the general scope and purpose of the additional investigation. The judicial council's conduct of the additional investigation must generally accord with the procedures and powers set forth in Rules 13 through 16 for the conduct of an investigation by a special committee.

(d) Council Vote. Council action must be taken by a majority of those members of the council who are not disqualified. A decision to remove a bankruptcy judge from office requires a majority vote of all the members of the council.

(e) Recommendation for Fee Reimbursement. If the complaint has been finally dismissed or concluded under (b)(1)(A) or (B) of this Rule, and if the subject judge so requests, the judicial council may recommend that the Director of the Administrative Office of the United States Courts use funds appropriated to the Judiciary to reimburse the judge for reasonable expenses incurred during the investigation, when those expenses would not have been incurred but for the requirements of the Act and these Rules. Reasonable expenses include attorneys' fees and expenses related to a successful defense or prosecution of a proceeding under Rule 21(a) or (b).

(f) Council Action. Council action must be by written order. Unless the council finds that extraordinary

reasons would make it contrary to the interests of justice, the order must be accompanied by a memorandum setting forth the factual determinations on which it is based and the reasons for the council action. The order and the supporting memorandum must be provided to the complainant, the subject judge, and the Judicial Conference Committee on Judicial Conduct and Disability. The complainant and the subject judge must be notified of any right to review of the judicial council's decision as provided in Rule 21(b).

Commentary on Rule 20

This Rule is largely adapted from the Illustrative Rules.

Rule 20(a) provides that within twenty-one days after the filing of the report of a special committee, the subject judge may address a written response to all of the members of the judicial council. The subject judge must also be given an opportunity to present oral argument to the council, personally or through counsel. The subject judge may not otherwise communicate with council members about the matter.

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

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

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

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

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

21. Committee on Judicial Conduct and Disability

(a) Review by Committee. The Committee on Judicial Conduct and Disability, consisting of seven members, considers and disposes of all petitions for review under (b) of this Rule, in conformity with the Committee's jurisdictional statement. Its disposition of petitions for review is ordinarily final. The Judicial Conference of the United States may, in its sole discretion, review any such Committee decision, but a complainant or subject judge does not have a right to this review.

(b) Reviewable Matters.

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

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

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

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

(c) Committee Vote. Any member of the Committee from the same circuit as the subject judge is disqualified from considering or voting on a petition for review. Committee decisions under (b) of this Rule must be by majority vote of the qualified Committee members. If only six members are qualified to vote on a petition for review, the decision must be made by a majority of a panel of five members drawn from a randomly selected list that rotates after each decision by a panel drawn from the list. The members who will determine the petition must be selected based on committee membership as of the date on which the petition is received. Those members selected to hear the petition should serve in that capacity until final disposition of the petition, whether or not their term of committee membership has ended. If only four members are qualified to vote, the Chief Justice must appoint, if available, an ex-member of the Committee or, if not, another United States judge to consider the petition.

(d) Additional Investigation. Except in extraordinary circumstances, the Committee will not conduct an additional investigation. The Committee may return the matter to the judicial council with directions to undertake an additional investigation. If the Committee conducts an additional investigation, it will exercise the powers of the Judicial Conference under 28 U.S.C. § 331.

(e) Oral Argument; Personal Appearance. There is ordinarily no oral argument or personal appearance before the Committee. In its discretion, the Committee may permit written submissions from the complainant or subject judge.

(f) Committee Decisions. Committee decisions under this Rule must be transmitted promptly to the Judicial Conference of the United States. Other distribution will be by the Administrative Office at the direction of the Committee chair.

(g) Finality. All orders of the Judicial Conference or of the Committee (when the Conference does not exercise its power of review) are final.

Commentary on Rule 21

This Rule is largely self-explanatory.

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

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

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

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

22. Procedures for Review

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

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

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

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

(c) Time. A petition must be submitted within 63 days of the date of the order for which review is sought.

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

(e) Action on Receipt of Petition for Review. The Administrative Office must acknowledge receipt of a petition for review submitted under this Rule, notify the chair of the Judicial Conference Committee on Judicial Conduct and Disability, and distribute the petition to the members of the Committee for their deliberation.

Commentary on Rule 22

Rule 22 is self-explanatory.

ARTICLE VII. MISCELLANEOUS RULES

23. Confidentiality

(a) General Rule. The consideration of a complaint by the chief judge, a special committee, the judicial council, or the Judicial Conference Committee on Judicial Conduct and Disability is confidential. Information about this consideration must not be disclosed by any judge or employee of the judicial branch or by any person who records or transcribes testimony except as allowed by these Rules. In extraordinary circumstances, a chief judge may disclose the existence of a proceeding under these Rules when necessary to maintain public confidence in the federal judiciary's ability to redress misconduct or disability.

(b) Files. All files related to complaints must be separately maintained with appropriate security precautions to ensure confidentiality.

(c) Disclosure in Decisions. Except as otherwise provided in Rule 24, written decisions of the chief judge, the judicial council, or the Judicial Conference Committee on Judicial Conduct and Disability, and dissenting opinions or separate statements of members of the council or Committee may contain information and exhibits that the authors consider appropriate for inclusion, and the information and exhibits may be made public.

(d) Availability to Judicial Conference. On request of the Judicial Conference or its Committee on Judicial Conduct and Disability, the circuit clerk must furnish any requested records related to a complaint. For auditing purposes, the circuit clerk must provide access to the Committee to records of proceedings under the Act at the site where the records are kept.

(e) Availability to District Court. If the judicial council directs the initiation of proceedings for removal of a magistrate judge under Rule 20(b)(1)(D)(iii), the circuit clerk must provide to the chief judge of the district court copies of the report of the special committee and any other documents and records that were before the judicial council at the time of its decision. On request of the chief judge of the district court, the judicial council may authorize release to

that chief judge of any other records relating to the investigation.

(f) Impeachment Proceedings. If the Judicial Conference determines that consideration of impeachment may be warranted, it must transmit the record of all relevant proceedings to the Speaker of the House of Representatives.

(g) Subject Judge's Consent. If both the subject judge and the chief judge consent in writing, any materials from the files may be disclosed to any person. In any such disclosure, the chief judge may require that the identity of the complainant, or of witnesses in an investigation conducted by a chief judge, a special committee, or the judicial council, not be revealed.

(h) Disclosure in Special Circumstances. The Judicial Conference, its Committee on Judicial Conduct and Disability, or a judicial council may authorize disclosure of information about the consideration of a complaint, including the papers, documents, and transcripts relating to the investigation, to the extent that disclosure is justified by special circumstances and is not prohibited by the Act. Disclosure may be made to judicial researchers engaged in the study or evaluation of experience under the Act and related modes of judicial discipline, but only where the study or evaluation has been specifically approved by the Judicial Conference or by the Judicial Conference Committee on Judicial Conduct and Disability. Appropriate steps must be taken to protect the identities of the subject judge, the complainant, and witnesses from public disclosure. Other appropriate safeguards to protect against the dissemination of confidential information may be imposed.

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

(j) Assistance and Consultation. Nothing in this Rule precludes the chief judge or judicial council acting on a complaint filed under the Act from seeking the help of qualified staff or from consulting other judges who may be helpful in the disposition of the complaint.

Commentary on Rule 23

Rule 23 was adapted from the Illustrative Rules.

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

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

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

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

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

Rule 23 recognizes that there must be some exceptions to the Act's confidentiality requirement. For example, the Act requires that certain orders and the reasons for them must be made public. 28 U.S.C. § 360(b). Rule 23(c) makes it explicit that memoranda supporting chief judge and council

orders, as well as dissenting opinions and separate statements, may contain references to information that would otherwise be confidential and that such information may be made public. However, subsection (c) is subject to Rule 24(a) which provides the general rule regarding the public availability of decisions. For example, the name of a subject judge cannot be made public in a decision if disclosure of the name is prohibited by that Rule.

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

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

Rule 23(h) permits disclosure of additional information in circumstances not enumerated. For example, disclosure may be appropriate to permit a prosecution for perjury based

on testimony given before a special committee. Another example might involve evidence of criminal conduct by a judge discovered by a special committee.

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

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

24. Public Availability of Decisions

(a) General Rule; Specific Cases. When final action has been taken on a complaint and it is no longer subject to review, all orders entered by the chief judge and judicial council, including any supporting memoranda and any dissenting opinions or separate statements by members of the judicial council, must be made public, with the following exceptions:

(1) if the complaint is finally dismissed under Rule 11(c) without the appointment of a special

committee, or if it is concluded under Rule 11(d) because of voluntary corrective action, the publicly available materials must not disclose the name of the subject judge without his or her consent.

(2) if the complaint is concluded because of intervening events, or dismissed at any time after a special committee is appointed, the judicial council must determine whether the name of the subject judge should be disclosed.

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

(4) if the complaint is finally disposed of under Rule 20(b)(1)(D) by any action other than private censure or reprimand, the text of the dispositive order must be included in the materials made public, and the name of the subject judge must be disclosed.

(5) the name of the complainant must not be disclosed in materials made public under this Rule unless the chief judge orders disclosure.

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

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

(d) Complaints Referred to the Judicial Conference of the United States. If a complaint is referred to the

Judicial Conference under Rule 20(b)(1)(C) or 20(b)(2), materials relating to the complaint will be made public only if ordered by the Judicial Conference.

Commentary on Rule 24

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

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

Rule 24 provides for public availability of orders of the chief judge, the judicial council, and the Judicial Conference Committee on Judicial Conduct and Disability and the texts of any memoranda supporting their orders, together with any dissenting opinions or separate statements by members of the judicial council. However, these orders and memoranda are to be made public only when final action on the complaint has been taken and any right of review has

been exhausted. The provision that decisions will be made public only after final action has been taken is designed in part to avoid public disclosure of the existence of pending proceedings. Whether the name of the subject judge is disclosed will then depend on the nature of the final action. If the final action is an order predicated on a finding of misconduct or disability (other than a privately communicated censure or reprimand) the name of the judge must be made public. If the final action is dismissal of the complaint, the name of the subject judge must not be disclosed. Rule 24(a)(1) provides that where a proceeding is concluded under Rule 11(d) by the chief judge on the basis of voluntary corrective action, the name of the subject judge must not be disclosed. Shielding the name of the subject judge in this circumstance should encourage informal disposition.

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

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

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

25. Disqualification

(a) General Rule. Any judge is disqualified from participating in any proceeding under these Rules if

the judge, in his or her discretion, concludes that circumstances warrant disqualification. If the complaint is filed by a judge, that judge is disqualified from participating in any consideration of the complaint except to the extent that these Rules provide for a complainant's participation. A chief judge who has identified a complaint under Rule 5 is not automatically disqualified from considering the complaint.

(b) Subject Judge. A subject judge is disqualified from considering the complaint except to the extent that these Rules provide for participation by a subject judge.

(c) Chief Judge Not Disqualified from Considering a Petition for Review of a Chief Judge's Order. If a petition for review of a chief judge's order entered under Rule 11(c), (d), or (e) is filed with the judicial council in accordance with Rule 18, the chief judge is not disqualified from participating in the council's consideration of the petition.

(d) Member of Special Committee Not Disqualified. A member of the judicial council who serves on a special committee, including the chief judge, is not disqualified from participating in council consideration of the committee's report.

(e) Subject Judge's Disqualification After Appointment of a Special Committee. Upon appointment of a special committee, the subject judge is automatically disqualified from participating in any proceeding arising under the Act or these Rules as a member of any special committee, the judicial council of the circuit, the Judicial Conference of the United States, and the Judicial Conference Committee on Judicial Conduct and Disability. The disqualification continues until all proceedings on the complaint against the subject judge are finally terminated with no further right of review.

(f) Substitute for Disqualified Chief Judge. If the chief judge is disqualified from participating in consideration of the complaint, the duties and responsibilities of the chief judge under these Rules must be assigned to the most-senior active circuit judge not disqualified. If all circuit judges in regular active service are disqualified, the judicial council may determine whether to request a transfer under Rule 26, or, in the interest of sound judicial administration, to permit the chief judge to dispose of the complaint on the merits. Members of the judicial council who are named in the complaint may participate

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

(g) Judicial-Council Action When Multiple Judges Are Disqualified. Notwithstanding any other provision in these Rules to the contrary,

(1) a member of the judicial council who is a subject judge may participate in its disposition if:

(A) participation by one or more subject judges is necessary to obtain a quorum of the judicial council;

(B) the judicial council finds that the lack of a quorum is due to the naming of one or more judges in the complaint for the purpose of disqualifying that judge or judges, or to the naming of one or more judges based on their participation in a decision excluded from the definition of misconduct under Rule 3(h)(3); and

(C) the judicial council votes that it is necessary, appropriate, and in the interest of sound judicial administration that one or more subject judges be eligible to act.

(2) otherwise disqualified members may participate in votes taken under (g)(1)(B) and (g)(1)(C).

(h) Disqualification of Members of the Judicial Conference Committee. No member of the Judicial Conference Committee on Judicial Conduct and Disability is disqualified from participating in any proceeding under the Act or these Rules because of consultations with a chief judge, a member of a special committee, or a member of a judicial council about the interpretation or application of the Act or these Rules, unless the member believes that the consultation would prevent fair-minded participation.

Commentary on Rule 25

Rule 25 is adapted from the Illustrative Rules.

Subsection (a) provides the general rule for disqualification. Of course, a judge is not disqualified simply because the subject judge is on the same court. However, this subsection recognizes that there may be cases in which an appearance of bias or prejudice is created by circumstances other than an association with the subject judge as a colleague. For example, a judge may have a familial relationship with a complainant or subject judge.

When such circumstances exist, a judge may, in his or her discretion, conclude that disqualification is warranted.

Subsection (e) makes it clear that the disqualification of the subject judge relates only to the subject judge's participation in any proceeding arising under the Act or these Rules as a member of a special committee, judicial council, Judicial Conference, or the Judicial Conference Committee. The Illustrative Rule, based on Section 359(a) of the Act, is ambiguous and could be read to disqualify a subject judge from service of any kind on each of the bodies mentioned. This is undoubtedly not the intent of the Act; such a disqualification would be anomalous in light of the Act's allowing a subject judge to continue to decide cases and to continue to exercise the powers of chief circuit or district judge. It would also create a substantial deterrence to the appointment of special committees, particularly where a special committee is needed solely because the chief judge may not decide matters of credibility in his or her review under Rule 11.

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

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

the most senior active circuit judge who is a member of the judicial council and who is not disqualified will preside.

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

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

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

Applying a rule of necessity in these situations is consistent with the appearance of justice. See, e.g., In re Complaint of Doe, 2 F.3d 308 (8th Cir. Jud. Council 1993) (invoking the rule of necessity); In re Complaint of

Judicial Misconduct, No. 91-80464 (9th Cir. Jud. Council 1992) (same). There is no unfairness in permitting the chief judge to dispose of a patently insubstantial complaint that names all active circuit judges in the circuit.

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

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

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

26. Transfer to Another Judicial Council

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

Commentary on Rule 26

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

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

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

27. Withdrawal of Complaints and Petitions for Review

(a) Complaint Pending Before Chief Judge. With the chief judge's consent, a complainant may withdraw a complaint that is before the chief judge for a decision under Rule 11. The withdrawal of a complaint will not prevent a chief judge from identifying or having to identify a complaint under Rule 5 based on the withdrawn complaint.

(b) Complaint Pending before Special Committee or Judicial Council. After a complaint has been referred to a special committee for investigation and before the committee files its report, the complainant may withdraw the complaint only with the consent of both the subject judge and either the special committee or the judicial council.

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

Commentary on Rule 27

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

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

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

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

28. Availability of Rules and Forms

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

29. Effective Date

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

Library

- Publications and Reports
- Periodicals
- Judicial Ethics and Conduct
- Statistical Reports
- Forms
- Court Fees

Return to Library

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.

Newsletter of the Federal Courts

THE THIRD BRANCH

Home/Contents
Masthead

Vol. 39, Number 8 — August 2007

Public Comment Invited on Judicial Guidelines

The federal Judiciary is seeking public comment on proposed rules on how the federal judicial system should deal with judicial misbehavior and disability.

Nearly 30 draft rules governing judicial conduct and disability proceedings in the federal courts have been posted on the Judiciary's Internet website for 90 days of public comment. Navigate to the proposed rules from the Judiciary's home page at www.uscourts.gov; a link to the draft rules is under "What's New." Comments on the rules may be sent to JudicialConductRules@ao.uscourts. gov. A public hearing on the draft rules will be held in New York City on September 27, 2007.

The Judicial Conduct and Disability Act of 1980 authorizes the filing of a complaint alleging that a federal judge has engaged in conduct "prejudicial to the effective and expeditious administration of the business of the courts." It also permits complaints that allege conduct reflecting a judge's inability to perform his or her duties because of "mental or physical disability."

In 2004, in the wake of Congressional criticism of how complaints against judges had been handled, the late Chief Justice William H. Rehnquist appointed the Judicial Conduct and Disability Act Study Committee to examine the Act's implementation and make recommendations.

In September 2006, the Committee, chaired by Justice Stephen Breyer, made its report to Chief Justice John Roberts, Jr. The Judicial Conference Executive Committee then asked the Conference Committee on Judicial Conduct and Disability "to undertake a prompt, comprehensive review of the Breyer Committee Report with a view toward presenting to the Judicial Conference at its March 2007 session any recommendations that may be ripe for Conference action, information on administrative and other activities related to the report and a status update . . ."

"To meet the reform goals presented by the Breyer Committee," said Judicial Conduct and Disability Committee chair Judge Ralph K. Winter, "and in order to ensure the consistent application of the Act throughout the Judiciary, our Committee concluded that a set of rules or guidelines governing the proceedings under the Act needed to be drafted and published for comment. For example, the Breyer Report noted that in many critical areas the Act provided little guidance as to the disposition of complaints filed or when chief circuit judges are themselves required to initiate complaints."

The rules proposed by the Judicial Conduct and Disability Committee and now posted for public comment would establish standards to guide decisions on the merits of complaints; standards for when chief circuit judges should initiate complaints; responsibility for credibility decisions, confidentiality and public access provisions; and procedural rules for proceedings under the Act. On the website, each proposed rule is accompanied by an explanation and/or background information.

After the public comment period, the Committee will send another draft of the rules

to the Judicial Conference with a recommendation that the Conference consider it at its March 2008 meeting. Informational and educational programs for judges and staff regarding the rules will be established after their promulgation.

Home/Contents

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courts to continue efforts to achieve diversity in all aspects of the magistrate judge selection process. The Committee also discussed the issue of magistrate judge involvement in court governance. The Committee agreed to write to the chief judges of those circuits without a magistrate judge on the circuit council to encourage them to consider including magistrate judges on their respective circuit councils.

COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

INFORMATION ON COMPLAINT PROCEDURES

In recognition of the increasing importance of on-line availability of information for the transaction of legal business, and at the suggestion of two members of Congress, the Committee to Review Circuit Council Conduct and Disability Orders recommended that the Judicial Conference:

a. Urge every federal court to include a prominent link on its website to its circuit's forms for filing complaints of judicial misconduct or disability and its circuit's rules governing the complaint procedure; and

b. Encourage chief judges and judicial councils to submit non-routine public orders disposing of complaints of judicial misconduct or disability for publication by on-line and print services.

The Conference adopted the Committee's recommendations.

COMMITTEE ACTIVITIES

The Committee to Review Circuit Council Conduct and Disability Orders continued to monitor the status of H.R. 3892 (107th Congress), legislation to amend (in several minor respects) the Judicial Conduct and Disability Act, 28 U.S.C. § 372(c), that was introduced on March 7, 2002.

LAW.COM

Circuits Wary of Plan for Policing Federal Bench

Dan Levine
The Recorder
11-02-2007

When it comes to proposed new rules for disciplining wayward federal judges, circuit chiefs from around the country haven't exactly been falling over themselves to publicly air their thoughts.

Indeed, the national committee in charge of fashioning those rules has decided to withhold the chiefs' critiques -- including those from a 9th Circuit committee convened by Chief Judge Mary Schroeder to weigh in.

And while Schroeder said Tuesday that she will abide by that edict and not disclose her committee's specific comments, she did highlight a concern that she said the 9th Circuit shares with others across the country.

"We have always been concerned in the 9th Circuit about maintaining the ability of our circuit to handle the issues relating to the West, and to try to avoid undue centralization in Washington," Schroeder said. "That is kind of a theme -- a tension between the role of circuit councils and the administrative office."

The raft of proposed rules comes from a committee headed by 2nd Circuit Judge Ralph Winter. The rules, issued in June as a draft, follow a report last year from a group led by U.S. Supreme Court Justice Stephen Breyer, which found that the circuit councils' handling of 5 of 17 "high visibility" misconduct cases had been "problematic."

The proposals would remove some of the discretion each circuit now has over whether and when to initiate formal proceedings against a judge accused of misconduct.

One of the biggest disciplinary cases in the 9th Circuit involved Los Angeles federal judge Manuel Real. Interestingly, the proposed new rules bear a distinct mark of the Real proceedings, says Arthur Hellman, a professor at the University of Pittsburgh School of Law and 9th Circuit watcher.

Attorney Stephen Yagman accused Real of improperly interfering in a bankruptcy case to protect a probationer he supervised. In 2004 Schroeder dismissed the complaint without appointing a special committee to investigate. A divided 9th Circuit council confirmed her decision.

In the spring of 2006, the national conduct committee decided by a 3-2 vote that it didn't have the authority to review the 9th Circuit's Real finding because Schroeder never formed a special committee. Winter wrote the dissent. With Congress weighing impeachment proceedings, Schroeder appointed a committee to investigate; the committee's recommendation that Real be censured is pending before the national Judicial Conference.

Under the proposed rules, a national conduct panel would have new authority to review cases like these, in which chief circuit judges decline to appoint a special committee to investigate a complaint. Thus it appears Winter may have the last laugh.

"You can directly trace the exercise of [national] authority in the proposed rules to the dissenting opinion in the Real case," Hellman said.

Schroeder declined to comment on how the new rules would have affected the Real proceeding.

The new rules will also rob circuit chiefs of some discretion for appointing special committees to investigate complaints. Under the proposal, the chief judge must not "make findings of fact about any matter that is reasonably in dispute." Some judges fear that this language could lead to an overly formal process for complaints that have little or no merit. And since these special committees require outside counsel, the costs could add up.

But Hellman supports the concept behind this new rule. In testimony to Winter's committee, the professor noted that a "recurring theme" in problematic high-visibility cases examined by Breyer was the failure of circuit chiefs to convene special committees when there were clear factual disputes.

Yet another possible source of contention is a requirement for the circuits to forward every complaint -- and every document gathered in the investigation of a complaint -- to the conduct committee in Washington.

On top of any policy concerns, Schroeder said the proposed rules just aren't well drafted. She hopes Winter's committee will issue a new draft for feedback before making its recommendation to the national judicial conference.

The 9th Circuit chief said the original time frame would have called for a finished draft to be ready for a conference meeting in March. But given the comments from across the country, Schroeder said she now doubts whether that date can be met.

http://www.latimes.com/news /politics/la-na-vegas8jun08,1 ,7420641.story
From the Los Angeles Times
JUICE VS. JUSTICE | A TIMES INVESTIGATION
In Las Vegas, They're Playing With a Stacked Judicial Deck
Some judges routinely rule in cases involving friends, former clients and business associates -- and in favor of lawyers who fill their campaign coffers.
By Michael J. Goodman and William C. Rempel
Times Staff Writers

June 8, 2006

LAS VEGAS — When Judge Gene T. Porter last ran for reelection, a group of Las Vegas lawyers sponsored a fundraiser for him at Big Bear in California. Even by Las Vegas standards, it was brazen. Some of the sponsors had cases before him. One case was set for a crucial hearing in four days.

"A Lavish Buffet Dinner will be catered By Big Bear's Premier Restaurant," invitations to Porter's fundraiser said. "There will be Food, Fun, Libations … a 7:30 p.m. Sunset Cruise on the Big Bear Queen … a Zoo Tour for the Little Ones." Porter, 49, a Nevada state judge, attended. The evening blossomed into a festival of champagne, lobster and money. Organizers said guests contributed nearly $30,000, dropping much of it into a crystal punch bowl.

Some lawyers considered it protection against ill fortune. Robert D. Vannah, a sponsor of the fundraiser whose firm had the hearing scheduled in Porter's courtroom in four days, would later explain his donation this way: "Giving money to a judge's campaign means you're less likely to get screwed…. A $1,000 contribution isn't going to buy special treatment. It's just a hedge against bad things happening."

Vannah and others in his law firm, along with one of their consultants, made donations worth a total of $13,500, fundraising reports show. It was the fattest combined contribution of the night.

On the other side of the case, counsel for Michael D. Farney, then a resident of Ojai, Calif., whose company was being sued, hadn't chipped in a dime. Worried that bad things might happen to him, the lawyer, Douglas Gardner of Las Vegas, asked Porter to withdraw from the case. "The timing of the campaign gala," Gardner's motion said, "is too close."

Porter refused, protesting he had "no bias or prejudice."

At the hearing four days after the fundraiser, Gardner requested a delay.

Porter refused that too.

The case went to trial, and Porter ordered Farney's company to pay $1.5 million in damages.

The California businessman said his attorneys were appalled. " 'Hometown justice,' " Farney said they called it. "I don't plan to go back for more."

Porter's refusal to withdraw is hardly unusual in Las Vegas courts.

This is a juice town, some Las Vegas attorneys openly concede. Financial contributions "get you juice with a judge — an 'in,' " Ian Christopherson, a lawyer in Las Vegas for 18 years, said in an interview. "If you have juice, you get different treatment. This is not a quid pro quo town like, say, Chicago. This town is a juice town."

Las Vegas is one of the fastest-growing metropolitan areas in the United States. Since 1960, census figures show, its population has exploded by 1,246%. But many of its courts have not grown with it, much less grown up. At the heart of the Las Vegas court system are 21 state judges who hear civil and criminal cases, and who can be assigned anywhere in Nevada, but who are called district judges because they work out of courthouses in the judicial districts where they are elected. These state judges often dispense a style of wide-open, frontier justice that veers out of control across ethical, if not legal, boundaries. The consequences reach beyond Nevada, affecting people in other states, especially California.

Some of the effect falls upon visitors from Los Angeles who come here to gamble, flirt with sin and have a good time. More than a quarter — about 29% — of the 38.5 million visits to Las Vegas in 2005 were made by Southern Californians, including many who came here more than once. By that estimate, published by the Las Vegas Convention and Visitors Authority, Southern Californians make more than 11 million visits to Las Vegas every year.

But the effect falls, as well, upon Californians in business. Like Michael Farney of Ojai, who owned Elite Marine, a boat company that served southern Nevada and Lake Mead, an uncounted number of people from Southern California hold financial interests in Las Vegas and its surrounding metropolitan area. Of all businesses that relocate to Nevada, according to the state Commission on Economic Development, at least 36% come from California.

Whether they want to play or do business, all who come to Las Vegas, from Southern California or elsewhere across the nation, expect a fair shake, especially from its courts. Las Vegas is a town, however, where some judges, operating in a new $185-million Clark County courthouse two blocks from casinos, wedding chapels and strip clubs, routinely rule in cases involving friends, former clients and business associates, even in cases touching people to whom they owe money.

In 1990, Porter borrowed $15,000 from attorney George P. Kelesis. While he owed Kelesis the money, Porter ruled in at least six cases involving the law firm of Cook & Kelesis. A recent search found no statement in court records that he told opposing attorneys about the loan. Kelesis says he had left the firm but allowed it to continue using his name to boost its stature. Porter promised to repay the money in 1993, according to county records. But when he retired from the bench in 2003, his disclosure statements show, he still owed Kelesis at least $5,000.

Porter, who has joined a Los Angeles-Las Vegas law firm, declined to be interviewed for this story and would not respond to written questions.

Las Vegas is a town where James C. Mahan, 62, who served initially on

the state bench and is now a federal judge, awarded more than $4.8 million in judgments and fees during more than a dozen cases in which a recent search of court records found no statement that he disclosed his ties to those who benefited. Mahan, who sometimes wears a holstered semiautomatic pistol on his right hip while sitting at his desk in the U.S. courthouse, approved court fees for a former business associate who twice served as his judicial campaign treasurer and was instrumental in his federal appointment.

Mahan approved additional fees for his former law partner, who was providing free legal services for the judge's wife and the judge's executive judicial assistant and with whom he still had financial ties, including property ownership and a profit-sharing arrangement.

In an interview, Mahan said the relationships made no difference in his decisions. "I don't care who the attorneys are," he said. He denied seeing any conflict of interest and grew angry at being questioned.

Las Vegas is a town where District Judge Nancy M. Saitta, 55, running unopposed in 2002, raised a political war chest totaling $120,000. She received nearly $70,000 from 140 attorneys and law firms. All 55 lawyers or law firms giving $500 or more had cases assigned to her courtroom or pending before her, according to court and campaign records. Her campaign collected donations at fundraisers hosted by lawyers, also with cases before her.

In one instance, Saitta awarded more than $1 million in fees for a certified public accountant and his attorneys, two of whom held a fundraiser for her while she was ruling on their case.

In an interview, Saitta said, "People who appear in my courtroom are all on equal footing." She said she came up with likely contributors to invite to her fundraisers by finding out who gave readily to other judicial campaigns. Did she take names from her court docket? "Oh," she said, "I would never do that."

Las Vegas is a town where District Judge Sally Loehrer, 59, also running unopposed in 2002, collected about $80,000 in campaign funds. Of 54 attorneys and law firms contributing $500 or more, fundraising reports and court records show that 51 had cases pending before her or assigned to her courtroom. On the eve of one fundraiser, according to the reports, four law firms gave her 12 bottles of wine, a 13-inch TV, two DVD players, a gas grill, dinner for four at Zefferino's restaurant, two theater tickets, two golf lessons and a pool float with two beach towels. All four firms, court records show, had cases pending before her.

In response to written questions, Loehrer said: "I do not keep a list of persons who have contributed in my head, in my desk nor on my computer…. My decisions are based solely upon my understanding of both the facts and the law at the time of the decision and nothing more." She said the wine, beach towels and other items were given away as door prizes.

Loehrer publicly donated $3,300 of her campaign contributions to other candidates, records show. They included candidates for district attorney and attorney general, both of whom try cases before her.

Nevada judicial canons say judges shall not "publicly endorse" another candidate.

She responded that her "best analysis" of the canons and a subsequent advisory ruling by Nevada's Standing Committee on Judicial Ethics and Election Practices was that judges may buy tickets to campaign functions regardless of cost. She did not say whether her donations, ranging from $150 to $900, were for tickets.

But the ethics committee noted that any donation of more than $100 had to be reported publicly. Hence, it said, if a ticket cost more than $100, then buying it constituted "a public endorsement" and was "in violation of the Nevada Code of Judicial Conduct."

Las Vegas is a town where District Judge Joseph S. Pavlikowski, 78, officiated on May 4, 1969, at the wedding of Frank "Lefty" Rosenthal, notorious as a front man for the Chicago mob — and then accepted a discounted wedding reception for his own daughter at a casino where Rosenthal was a top boss. Pavlikowski subsequently ruled for Rosenthal in three cases when authorities attempted to bar him from running a casino.

Today, Pavlikowski is a senior judge, commissioned by the Nevada Supreme Court to serve at its pleasure without accountability to the voters.

He declined to be interviewed and would not respond to written questions.

Las Vegas is a town where District Judge Donald M. Mosley, 59, gave unspent campaign funds to a girlfriend. He called it a loan. She said it was a gift. Canon 7 of the state Code of Judicial Conduct said a judge or a candidate for judicial office "should not use … campaign contributions for purposes unrelated to the campaign." Mosley acknowledged six years ago in a deposition that he provided her with $10,000 of his political money. Mosley said it was restored to his campaign fund, but his girlfriend said she did not repay it.

Mosley's campaign fundraising reports leave the matter unresolved. They show that the money was neither withdrawn nor paid back.

In a written statement, Mosley said he had been subjected to absurd and unsupported allegations by political opponents and by the girlfriend, with whom he eventually fought for custody of their child. "Neither these individuals nor their attacks," he said, "deserve the dignity of a response."

Judicial campaign rules vary from state to state. The Nevada Supreme Court, the top court in the state, whose justices collect money from lawyers and casinos for their own campaigns, allows district judges to accept campaign donations from people who might appear before them. State judicial canons encourage the judges to solicit and accept the donations through campaign committees, but the canons also allow the judges to do it personally.

U.S. and Nevada judicial canons say judges should withdraw from cases where their impartiality might reasonably be questioned. Nevada canons also say judges must avoid even the appearance of impropriety and should reveal on the record anything that they think anyone in court

could reasonably consider relevant to disqualification — even if the judges do not think they should withdraw.

Nevada, however, does not require judges to reveal when their donors appear before them.

When lawyers in California and Nevada, along with a number of Nevada district judges, both sitting and retired, were asked about how this affected justice in Las Vegas, many spoke openly about its pernicious effects — particularly about how lawyers and their clients sometimes must pay to play on a level field.

They also told how the effects of judicial corruption seep from Nevada across the state line into California.

Federal and state rules are often ignored, some lawyers said. They cited a good-old-boy culture of cronyism and chumminess that accepted conflicts of interest as "business as usual" and as part of Nevada's maverick history of government-sanctioned prostitution, gambling, drive-through marriages and quickie divorces.

"The common excuse is that this is the way it's always been done — fast and loose — the wild, wild West," said Las Vegas attorney Charles W. Bennion. "But the people making those excuses are the only ones that benefit, and they want it to stay that way."

A common perception among a dozen out-of-state lawyers interviewed about their experiences in Nevada courtrooms is that justice in Las Vegas is just another form of legalized gambling.

"I don't think what goes on in Nevada bears any resemblance to a justice system," said John C. Kirkland, a Santa Monica attorney. He said he had clients who were victimized in Las Vegas courts. "It's an old-boy network. It's not a legal system."

Justice in Nevada, conceded Cal Potter III, a veteran Las Vegas lawyer, is such that "outside law firms just don't trust Nevada courtrooms."

Many blame the campaign funding practices of district judges who have to run for office. "There should be a provision in the law prohibiting judges from directly soliciting a campaign contribution," said state Judge Brent Adams of Reno. "The one standard for a judicial candidate in Nevada today is, 'How much money can you raise?' "

During the most recent Nevada election in which all district judgeships in Las Vegas were on the ballot, 17 incumbents raised more than $1.7 million in campaign funds, collecting much of it from lawyers and casinos with cases pending before them, campaign financial reports and court records show. At least 90% of all contributions for the election, held Nov. 5, 2002, came from lawyers and casinos.

Frequently, a donation was dated within days of when a judge took action in the contributor's case, the records show. Occasionally the contribution was dated the same day.

"It can seem like a shakedown," conceded Jeffrey Sobel, a judge who lost his seat — and that was the point. Sobel collected donations of

$1,000 to $5,000 each from 39 attorneys or law firms while their cases were pending in his courtroom, records show. The Nevada Commission on Judicial Discipline investigated him after learning that he had discussed campaign contributions during a conference on a case pending before him. Commission records show Sobel told one attorney that "he was f---ed because he hadn't contributed while others had."

Sobel later said he was joking, but the commission ruled last July that he had violated the state Code of Judicial Conduct, censured him publicly and "permanently barred [him] from serving as an elected or appointed judicial officer in Nevada." The commissioners recommended that "judges should avoid, even during normal campaign activities, soliciting campaign help from attorneys" with cases pending before them, and even from attorneys with "the reasonable likelihood of future litigation" in their courts.

Nonetheless, the commission allowed Sobel to continue to mediate and arbitrate cases, which comprised the majority of his law practice, and it allowed him to continue to be appointed as a special master, who investigates claims in lawsuits and makes recommendations to judges.

Because of campaign contributions from lawyers and casinos appearing before them, said Don Chairez, a former Las Vegas state judge, "Nevada judges find themselves losing or bargaining away their integrity or independence."

Some lawyers, said Steve Morris, a prominent Nevada attorney with 35 years of experience, "are in almost terror of not giving" to judges seeking campaign contributions. His law firm spread about $7,500 in contributions among 11 candidates in the 2002 election, fundraising reports show.

"If it's a close call," Morris said, "asking judges to treat lawyers who contribute money the same as lawyers who don't is asking for the superhuman. When judges come around and say, 'I need money,' it's a nasty bit of business."

At the very least, some lawyers said, pay-to-play can get them favorable court dates on crowded dockets.

Each state judge in Las Vegas handles more than 2,700 cases a year. A contribution of $500 to $1,000 might not "get you a favorable ruling, [but] it can grease the skids … get your case called first," said former prosecutor Ulrich Smith, in private practice since 1995.

Bucking this system can be the "kiss of death," some lawyers said. "If you speak out, certain judges take it personally," said Grenville Pridham, a state deputy attorney general for 11 years who is now in private practice in Las Vegas. "You'll pay dearly when you visit their courtroom."

In 2002, Pridham ran for district judge. During his campaign, he denounced fundraising by judges. He accepted no donations.

He lost by more than 160,000 votes.

It got worse, Pridham said. Since the election, he said, regardless of when his cases are scheduled, some judges "call the lawyers around me,

even if it's out of order, until I'm the last private attorney left in the courtroom."

Some lawyers are particularly critical of the way judges use leftover campaign money.

Thirteen of the 17 incumbent judges in 2002 ran unopposed, but they collected $967,000 anyway, in both cash and checks, according to fundraising reports. After the election, 11 of the unopposed judges reported they were sitting on a total of about $634,000 in unspent contributions.

"It's scandalous how much unused campaign money is allowed to pile up," said Sobel, the former judge who was defeated. "There's no limit on how much you can keep…. There is no watchdog and no real definition of what exactly is or isn't proper. You can return [unspent money], or save it for a future campaign, or you can give it to a charity, or spend it for some political purpose.

"That leaves a good deal of room for interpretations of all kinds. You could argue that [having] dinner on the Strip gives you a chance to talk to waiters and maitre d's — so, technically, you're campaigning."

Disclosing the size of an unspent bankroll is mandatory, said Dean Heller, Nevada's secretary of state and chief elections officer. But the requirements for specifying what happens to it, he said, are vague. "It's pathetic … a system designed by politicians to work for them."

Heller said the Legislature gave him only seven people to monitor elections and the campaign reporting of up to 1,000 candidates statewide. Worse, he said, legislators "won't give us authority to audit or even look for reporting irregularities unless we receive a complaint in writing. We get a lot of complaints over the phone, but not many want to put it in writing."

He said the Legislature had rejected his attempts to toughen requirements to disclose unspent contributions. "They want to raise as much money as possible," Heller said, "and tell the public as little as possible."

The public information officer for state courts in Las Vegas, Michael Sommermeyer, advised judges to say nothing in response to questions from The Times. "My recommendation is for all of the judges to refuse to comment," he said in an April 28 memo to Saitta.

Saitta was among three state judges who chose to ignore Sommermeyer's memo. "My job as a public servant has to be open to scrutiny by the public," she said. "I have to be answerable and subject to that scrutiny. I can't hide. I don't have anything to hide."

Case Study

Gene Porter

The lawyers who filled the crystal punch bowl with money at Judge Gene

Porter's fundraiser at Big Bear certainly had reason to believe that he would not hesitate to hear their cases.

A Times review of lawsuits that came before Porter during his eight years on the bench shows that 61 presented possible conflicts of interest. In 50 of them, there is no statement in court records that he withdrew or disclosed the possibility of a conflict.

The 61 cases were found in a review of more than 2,000 legal actions involving members of his former law firm as well as his former legal clients, political allies, business associates and creditors.

One example involved Desert Springs Hospital in Las Vegas. Porter's law firm had listed the hospital as one of its "representative clients" in the Martindale-Hubble legal directory the year Porter was appointed to the bench. Porter had been the hospital's attorney of record in at least three lawsuits, court records show.

When six cases naming Desert Springs as the plaintiff or defendant came before Porter as a judge, there is no statement in court records that he revealed his former relationship to the hospital.

In a seventh case, in January 1997, he withdrew, saying, "Because this court represented Desert Springs at the time of this incident … this court hereby disqualifies itself."

But Porter did not withdraw from the other cases.

Similarly, in at least 15 cases, Porter did not disclose his longtime friendship with attorney Matthew Callister when he presided over Callister's cases. He and Callister had been friends since high school, and Callister became his close political ally when they served together in the state Assembly. Callister also served as a resident agent for a real estate company formed by Porter's wife.

In a lawsuit involving two business executives from California, Porter appointed Callister as a $200-an-hour receiver, or caretaker of assets. One of the executives, Irenemarie Kennedy of Laguna Niguel, had sued Ashik Patel of Orange, her partner in Seaspan Inc., a hotel management firm incorporated in Nevada.

Porter instructed Callister to run the company during the dispute, replacing another receiver appointed two weeks earlier by another judge. "I wasn't happy," Patel said in an interview. Soon, Patel said, he learned "that the judge and Callister were buddies." Then, Patel said, he made another discovery: "Callister had an association with the other side."

According to court documents submitted by Patel's lawyer and records in the Nevada secretary of state's office, while Callister was serving as receiver in the Seaspan suit, he or his law firm were resident agents for two other corporations and a partnership formed by Kennedy — and he had been doing legal work for Kennedy and her family lawyer.

Patel's lawyer, Samuel B. Benham, asked Porter to allow Callister to withdraw. Court records show that Porter denied the request without comment.

Callister declined to be interviewed and did not respond to written questions.

Kennedy did not return phone calls. Instead a man identifying himself as "Mike Walker, an advisor to the Kennedys," responded, saying: "I don't know if the relationship between Callister and the judge was disclosed at the time, but afterward we did learn they had a relationship. But I met with Callister at least five times, and he was objective and is doing a good job."

In 2002, Porter was reelected to a six-year term. In a campaign fundraising report filed Jan. 10, 2003, he said he still had $32,816 "cash on hand." Porter resigned that September, saying financial considerations forced him from the bench.

As of this week, Secretary of State Heller said, Porter had not met a requirement to file an accounting of his unspent campaign money.

Licensed to practice in Nevada and California, Porter has joined a Las Vegas-Los Angeles law firm and serves as a private judge for Alternative Resolution Centers, a mediation and arbitration firm that provides settlement and fact-finding services in Las Vegas and Los Angeles.

Case Study

Nancy Saitta

The fight was over a company with a subsidiary that made a liposuction machine, which guzzles fat from loins, necks, thighs and waists.

The company was Medical Device Alliance Inc., incorporated in Nevada but whose subsidiary was based in Carpinteria, Calif. Minority shareholders said Donald McGhan, its founder and chief executive officer, should be removed. McGhan fought back. The dispute landed in the courtroom of Judge Nancy M. Saitta.

In June 1999, she appointed George C. Swarts, a certified public accountant, as a receiver — someone to run the company while it was embroiled in the dispute.

Within six months, McGhan and a second, separate group of stockholders filed complaints that Swarts' decisions were biased, lacked expertise and often were unauthorized by Saitta.

Privately, attorneys expressed dismay. "George [Swarts] had inordinate power" with the judge, Alfred E. Augustini, a Los Angeles attorney and legal advisor to McGhan, said in an interview. Swarts "would threaten us, tell us, 'The judge will do anything I ask, whatever I present to her.' George was running the case. We had to yield to George … comfort George … agree with George. He was God … the great pooh-bah … the big Jabba the Hutt."

What Swarts wanted most of all, Augustini said, was "to keep the meter running." The case was in limbo, he said, and "limbo was paying very well."

Swarts' fees were mounting.

"We tried to get Saitta to fire Swarts," Augustini said, "but that only made things worse."

McGhan tried to disqualify Saitta from the case.

"Judge Saitta has publicly pronounced McGhan guilty three times without hearing the evidence or the testimony of witnesses," said his Nevada attorneys, Steve Morris and Todd L. Bice, in a motion filed in August 2000. "By passing judgment … without a trial, Judge Saitta can no longer be considered a fair and neutral arbiter…. Under the law, she is required to step aside."

Swarts' attorneys countered that the real target of the attack was Swarts.

The request to remove Saitta went before Lee Gates, the chief judge in Las Vegas at the time.

But Gates had a possible conflict. An attorney from the Frank Ellis law firm, which often represented Swarts, was defending Gates' wife, Yvonne Atkinson Gates, a county commissioner, against a recall, including a lawsuit that court records show was on appeal before the state Supreme Court.

A recent search found no statement in court records that Judge Gates disclosed the relationship or similar relationships in two other cases involving his wife and the Ellis law firm.

Within two weeks, he denied the motion to disqualify Saitta, declaring that she "is not biased or prejudiced concerning any party."

By now, Saitta had come under attack for refusing to let anyone examine paperwork supporting the first bill submitted by Swarts and his lawyers: $524,680 in fees from June 29, 1999, to May 30, 2000.

"Unconscionable … exorbitant … outrageously excessive," said lawyers for McGhan and one of the stockholder groups. Attorney Matthew Callister, who represented a second group of stockholders, said in a motion that if Saitta did not deny Swarts' fee or require him to account for its size, then "a great injustice will occur in this case."

Nonetheless, Saitta approved Swarts' request for $524,680, as well as a second request, this one for fees totaling $662,411 for him and his attorneys covering June 2000 through September 2001, court records show.

Attorney Daniel J. McAuliffe, representing McGhan and other defendants, complained in a motion that Swarts had filed the second request 13 months late, "in violation of this court's order."

In yet another motion, Swarts asked that fees be doubled for his attorneys through 2001 and requested 18% interest on unpaid fees since his appointment in 1999.

McGhan's attorneys protested that Swarts' requests "provide for the looting of [the company] to line the pockets of various and numerous

counsel — all with no accountability." The request for 18% interest, they said, was "astonishing…. Even Visa and MasterCard charge less."

Nonetheless, Saitta approved both of those requests as well.

In 2002, according to a report McGhan entered into court records, she approved $588,000 for Swarts and $630,000 for his lawyers.

When she was asked about the fees during her interview, Saitta said: "I handle 2,400 cases a year. You're asking me for details on one case. I don't have time to go back and look up every case."

Neither Swarts nor Judge Gates responded to written questions.

In 2002, an election year, Saitta announced that she would seek another term on the bench. Nevada judges seeking reelection historically try to scare off potential opponents by raising large war chests quickly. By March, however, Saitta had raised less than $5,000, campaign records show.

She got help from J. Randall Jones, one of Swarts' attorneys in the ongoing Medical Device Alliance case.

With major decisions in the case still pending, Jones, of Harrison, Kemp & Jones, held a fundraiser for her. The fundraiser was set for May 2 at Jones' home in Las Vegas. Invitations said, "Minimum Suggested Contribution: $500." A cohost was Mark James, an attorney for Medical Device Alliance shareholders. James had played a key role in persuading Saitta to appoint Swarts.

In the 60 days leading up to the fundraiser, Jones, as Swarts' lawyer and a Saitta defender against the accusations of bias, appeared before her at least four times and received favorable rulings, which included her approval of a hotly contested $4-million "good faith settlement" sought by Jones' and James' clients against Wedbush Morgan Securities, based in Los Angeles.

During the fundraiser, Saitta personally greeted about two dozen contributors. Court and campaign records as well as interviews show that at least 18 of the contributors were lawyers with one or more cases pending before her at the time.

The event collected about $20,000 on her behalf.

At election time, she ran unopposed.

Jones and James were asked in separate telephone interviews why they held the fundraiser.

"I think it is incumbent upon attorneys to support good candidates for the bench and retain qualified judges," James said. He added, "That's all I have to say."

Jones said, "I have nothing to say to you." He hung up.

In her interview, Saitta said Jones "asked if he could do the party." Attorneys attended from both sides of the Medical Device Alliance case, she said. "As a candidate, you just show up. You meet with the

people. You shake their hands. There's a bowl for the checks."

She said her campaigns do not accept cash. If anyone tries to hand her a check personally, she said, an aide standing beside her takes it instead. "I don't want anything to do with the money."

Saitta and Swarts served as judge and receiver in the case until Medical Device Alliance was sold in January 2004 for $60 million and all claims were settled, court records show.

When Swarts and his lawyers originally persuaded Saitta to name him the receiver, they dismissed predictions that the "costs of Mr. Swarts' appointment would be in excess of $1 million." Such claims, they said, were "hyper-alarmist arguments" and were "grossly over-exaggerated."

In fact, the cost of Swarts' receivership topped $1 million within its first three years, court records show.

Case Study

Donald Mosley

Donald Mosley, the judge who turned over $10,000 of his unspent campaign money to his girlfriend, testified in 1999, nine years after he did it, that it was "the only cash I had available at the time."

He said he did not seek any legal opinions about the legality of what he did.

"I don't know that it's a direct violation to borrow against [campaign funds] on occasion and return the money plus interest," Mosley said during a deposition in an unrelated defamation suit and counterclaim. "I'm not too concerned about that as an infraction of ethics."

Mosley said he gave the money to Terry Figliuzzi (who later changed her name to Mosley). "The situation was that it was early in December and her parents were coming out from Minnesota to visit us … [and] she wanted to buy Christmas gifts and show her parents a good time."

Mosley said he loaned his girlfriend the money because she expected to win a lawsuit over an unpaid real estate commission of more than $600,000. "It was thought at the time that it was just a matter of several weeks or a month or so and she would have this enormous judgment and so the money would be available."

Eventually, the judge said, the $10,000 was restored to his campaign fund when he received $20,000 from a claim against the judgment.

In an interview, Terry Mosley disputed the judge's version, saying that she had regarded the $10,000 as a gift — "Christmas money. He brought it home in cash and tossed it on the table. It wasn't a loan. I never signed anything."

She said the $20,000 was unrelated to the gift. "I never paid Don back for that — not to this day."

Judge Mosley's campaign funding reports do not resolve the conflicting versions. His 1990 reports say he raised $56,811 and spent $27,573 — leaving $29,238 unspent, but the reports show no $10,000 withdrawal or loan.

The reports he filed in 1996, before his next campaign — one year after Terry Mosley won her $606,877 judgment — reflect no loan repayment.

In 1990, the year Mosley said he withdrew the money from his campaign fund, Canon 7 of the Nevada Code of Judicial Conduct held that a judge or candidate for judicial office "should not use … campaign contributions for purposes unrelated to the campaign."

Today, the question is covered by Canon 5, which says judicial candidates "shall not use or permit the use of campaign contributions for the private benefit of the candidate or others."

Since 1991, Nevada state law has banned personal use of campaign donations by any state or local candidate. In its most recent formulation, Nevada Revised Statute 294A.160 states: "It is unlawful for a candidate to spend money received as a campaign contribution for his personal use."

Apart from what Mosley did with his campaign money, his girlfriend's real estate lawsuit entangled him in a conflict from which he did not withdraw.

To provide her with a $100,000 security bond for her suit, Mosley put up his house as collateral — giving him a direct stake in the outcome of her case. He arranged for his girlfriend to hire attorney Jason G. Landess, who was appearing before him in another case. While Landess represented Mosley's girlfriend, court records show the judge made several rulings favoring Landess' other client.

The opposing attorney in that case, Richard McKnight, said in an interview that he was never informed about Mosley's stake in Landess' case on Terry Mosley's behalf. "I kept getting my brains beat out in Mosley's court," he said. "It felt sometimes like Mosley and Landess were teaming up against me."

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From the Los Angeles Times
JUICE VS. JUSTICE

A Judge Who Isn't Playing by Fast and Loose Rules
By Michael J. Goodman
Times Staff Writer

June 8, 2006

LAS VEGAS — Judge John S. McGroarty did it differently.

In the last Nevada election in which all district judgeships in Las Vegas were on the ballot, 13 incumbents ran unopposed. Unlike others, McGroarty returned his unspent campaign contributions.

"I sent the money back. It wasn't mine to keep," McGroarty said in an interview. "I didn't have an opponent, so I didn't need it. I don't want slush funds … money burning a hole in my pocket."

Particularly, McGroarty said, when the money comes from those who are likely to appear in court before him. "It can seem like a quid pro quo," he said.

Not every state judge in Las Vegas plays fast and loose with conflicts of interest. McGroarty, 64, has been a state judge since 1982.

He retired as a regular judge this year and was commissioned as a senior judge to fill in and ease the caseload. He says he does his best to avoid conflicts.

It is not always easy. Being a judge in Las Vegas, McGroarty said, "puts personal integrity to the test."

"This is a fast track, a fast town — very fast," he said. "This isn't Des Moines, Iowa." He rubbed his thumb and forefinger together to indicate money. "This is a juice town," he said. "Go out there and start messing with that juice, and it will come back and get you.

"There are crosscurrents. Go out there with impunity, and you will get burned."

McGroarty said he would never knowingly seek a campaign contribution from anyone with a case pending in his courtroom.

When that sort of thing happened, he often found out. "Somehow," he said, "the big contributor is always brought to your attention." Then, McGroarty said, "I'll take extra time, do more research" to make absolutely certain that all of his decisions in the case are well-supported by the facts.

The 2002 judicial election illustrated how far McGroarty was willing to go to avoid conflicts of interest. The 13 unopposed incumbents, including McGroarty, raised a total of nearly $1 million in contributions well before any challengers could file papers to run against them.

At least 90% of their cash came from lawyers, law firms and casinos that frequented their courtrooms, according to a comparison of court and campaign records. Some of the judges collected contributions, the records show, even while they were deciding a contributor's case.

The incumbents, including McGroarty, spent part of their campaign

money for early displays of determination to scare off potential competitors. "I put up signs around town right away," McGroarty said, "like everybody else."

When the filing period closed, all 13 remained unopposed.

Their victories were assured.

But they all had leftover campaign funds. In their campaign filings after the election, other unopposed judges reported that they were still holding a total of $634,000.

McGroarty was the only one who gave his leftover money back.

"Don't get me wrong. If I had an opponent, I'd use the money," McGroarty said. "I know other judges keep the money, and that's their business."

McGroarty had received 96 contributions, ranging from $20 to $5,000, for a total of $31,666, campaign records show. That was a comparatively small amount of money. Seven unopposed judges had amassed war chests ranging from $69,531 to $166,401, the records show.

McGroarty listed campaign costs totaling $14,759, largely for fundraisers, advertising, campaign staff and office expenses. He reported that he had $16,907 left when the filing deadline passed and he was unopposed.

The following month, he returned his leftover campaign contributions, prorating the returns to each of his 96 contributors. "I think it worked out," McGroarty said, "that everybody got back about 56 cents on the dollar."

A $20 contributor, for example, was refunded $14. McGroarty's lone $5,000 contributor, Coast Hotels and Casinos, was refunded $2,800, records show.

McGroarty said he returned his leftover contributions in 1996, as well, when he also ran unopposed.

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http://www.latimes.com/news /politics/la-na-vegas9jun09,1 ,7879395.story
From the Los Angeles Times
JUICE VS. JUSTICE | A TIMES INVESTIGATION
For a Vegas Judge and His Friends, One Good Turn Led to Another
James Mahan got his jobs on the state and federal benches through the connections of old pal George Swarts. Things turned out well for Swarts too.
By Michael J. Goodman and William C. Rempel
Times Staff Writers

June 9, 2006

LAS VEGAS — Without help from a friend, James Mahan might never have

become a Las Vegas state judge. Certainly he wouldn't have gotten one of the top judicial jobs in town: a lifetime appointment to the federal bench.

Then again, without Mahan, his friend George Swarts would never have gotten to run an Internet porn business, a hotel-casino hair salon or a Southern California software company. Indeed, the careers of Judge James C. Mahan, 62, and his friend George C. Swarts, also 62, whom he appointed again and again as a receiver to manage troubled businesses, might be the ultimate example of how juice replaces justice in Las Vegas courtrooms.

In this town, people speak reverently of having juice, or an "in," and Mahan — bearded, likable but sometimes caustic — has made it a striking feature in his courtroom. First as a state judge and now as a federal judge, he has approved more than $4.8 million in judgments and fees during more than a dozen cases in which a recent search of court records found no statement that he disclosed his relationships with those who benefited from his decisions.

On the state bench for three years, and since his appointment as a U.S. District Court judge four years ago by President Bush, Mahan has approved many of these fees for Swarts, a certified public accountant who had served as his judicial campaign treasurer and whose political connections got him appointed. Mahan approved additional fees for Frank A. Ellis III, 51, a former law partner with whom the judge still owned property and participated in a profit-sharing plan. Ellis also provided free legal services for Mahan's family and for his executive judicial assistant.

Mahan, like a number of Las Vegas judges, has taken on cases despite state and federal prohibitions against such apparent conflicts. Some Las Vegas judges have ruled in cases involving their friends, even those to whom they owe money.

The practice harms visitors and business people alike, especially Californians, who come here in large numbers to work and play. They fall victim to an untamed style of justice, blatantly tangled in clashing local interests.

Las Vegas is a town of instant millionaires, 60-second weddings, six-week divorces and a sly wink at conflicts of interest, to say nothing of the abuses that go with them. Some California lawyers view Las Vegas justice as just another crapshoot. When they are pressed about it, some Nevada lawyers openly condemn the system. The excuse, says Las Vegas attorney Charles W. Bennion, "is that this is the way it's always been done — fast and loose."

Even in Las Vegas, however, Judge James Cameron Mahan stands out.

When owners fight over a business, judges often appoint someone independent as either a special master, to investigate the dispute, or as a receiver, to run the business until the differences are settled.

On 13 occasions in state and federal court, Mahan has installed Swarts, a large man in a business suit who tells people how to spell his name — "think of 'wart' with an 's' on each end" — or his son, Curtis, 41, taller and more often casually dressed, at up to $250 an

hour, to be a special master or receiver in cases that come before him.

Mahan has then given his approval when George Swarts hired Ellis, low-key and quiet-spoken, or his firm, at up to $250 an hour, to represent Swarts in nine of these cases. In all, Mahan ordered plaintiffs and defendants to pay Swarts and Ellis more than $700,000, the records show.

U.S. and Nevada judicial canons say judges should withdraw from cases where their impartiality might reasonably be questioned. Nevada canons also say: "A judge should disclose on the record information that the judge believes the parties [in a case] or their lawyers might reasonably consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification."

A recent search of court records in the 13 cases involving Swarts or Ellis, as well as interviews with litigants and their attorneys, found no disclosure of Mahan's relationship with either of the two men. Complaints of excessive fees and inaction occasionally united opposing sides to implore him to remove Swarts. In case after case, he refused.

Mahan's judicial power and soaring reputation silenced many of those who suspected or knew of his undisclosed ties, according to lawyers. He was southern Nevada's top-rated state judge in 2000 and 2002 in a biennial survey of attorneys by the state's largest newspaper, the Las Vegas Review-Journal.

In an interview with The Times, Mahan acknowledged that he routinely did not disclose personal relationships. He dismissed them as insignificant and bristled at being questioned.

Face flushed and jabbing a forefinger in anger, Mahan said he appointed receivers in lawsuits based upon their ability and experience. He said he had named Swarts as a receiver for those two reasons and not because of any favoritism.

Mahan also said he had never influenced Swarts to choose Ellis to represent him as receiver's counsel.

"I don't see any conflict of interest," Mahan said.

At one point during the interview in his chambers at the Las Vegas federal courthouse, Mahan moved in his chair, and a holstered semiautomatic pistol became visible on his right hip. In written questions submitted for this story, Mahan was asked about the pistol. He did not respond.

In a separate interview, Swarts said his appointments from Mahan were proper. "I don't think that is a problem," he said. "In fact, if you were going to put someone in a position of responsibility, why wouldn't you put in someone you know, someone you trust … somebody you knew had integrity?"

When he was asked if Mahan was favoring him with lucrative court assignments, Swarts replied: "Me and Judge Mahan? That's amazing. That's crazy! That's the craziest thing I've ever heard…. Judge Mahan's only appointed me two or three times."

When he was told that Mahan had in fact appointed him in a dozen or more cases, Swarts replied: "No way! No way! I know what you guys are going to do. You're just trying to make us look bad. I don't see any reason to talk to you…. Judge Mahan? He's a fine person. I can't believe you're looking at him."

Ellis was given written questions about his relationship with Mahan and cases in Mahan's court. He did not respond.

One Las Vegas attorney willing to speak out about Mahan, P. Sterling Kerr, who represented two clients in a case before him, said the judge appointed Swarts simply "to give his friends some business."

Kerr called it "a travesty of justice."

Chapter 1

The Lee Case

Mahan has been dismissive of conflicts from the start.

He came to Las Vegas as a lawyer in 1973 and went to work for John Peter Lee, a veteran Nevada attorney. Seven years later, Lee hired Frank A. Ellis III. Two years after that, Mahan and Ellis set out on their own.

Within six months, Mahan sued Lee, claiming that Lee had stiffed him on a profit-sharing bonus. Lee sued back, claiming that Mahan took office furniture, including a desk, and left behind an interest-free IOU, payable only when he got his bonus.

With Ellis representing him, Mahan pursued the matter to the Nevada Supreme Court. It ruled in Lee's favor and ordered Mahan to pay for the furniture — desk and all. "I was surprised at [Mahan's] deep-seated resentment," says attorney Richard McKnight, who had spent five years with him at Lee's firm.

Seventeen years later, when Mahan became a state judge in Las Vegas, Lee asked that he disqualify himself "from all of our firm's [cases] due to past problems between you and the firm … so we may protect our clients."

Court records show Mahan wrote back: "I have instructed court administration to recuse me from all of your cases."

Mahan did disqualify himself shortly afterward during a case in which Lee was an attorney, court records show. But in another case seven months later, Mahan refused to withdraw when Lee and his son James, also an attorney, asked him to when they appeared in his courtroom as co-counsel, according to court records and interviews.

The Lees were representing a woman in a palimony suit over a $35-million estate.

A jury ruled against the Lees' client. The Lees asked Mahan to order a new trial, saying, among other things, that he had wrongly instructed

the jurors. Court records show that Mahan denied the request.

"It was improper," John Peter Lee said in an interview. "I still feel that way."

When he was asked why he did not withdraw, Mahan said in an interview: "I decided I was going to hear that case. Judges are supposed to hear cases."

Asked about the desk and other furniture he took from Lee's law firm, Mahan shrugged, smiled and patted an unremarkable but ample wooden desk in front of him.

"This is the desk," he said.

Chapter 2

Swarts and Rogich

Many of Mahan's undisclosed relationships were with Swarts, a politically connected businessman who grew up in Las Vegas.

His financial relationship with Mahan began as early as 1988, when the law firm of Mahan & Ellis formed the first of at least 12 companies or joint ventures for Swarts, several in partnership with Frank Ellis' father, according to Nevada secretary of state records. Often either Mahan or the younger Ellis — or both — served as resident agents or directors.

One such project drew Swarts and the elder Ellis into a lawsuit against investors in a development deal. Court records show that Ellis and Swarts were represented by Mahan and another attorney.

During the 1990s, Mahan expanded his ties with Swarts.

A booming Nevada economy gave him the opportunity. The boom attracted entrepreneurial opportunists with more brass than bankroll. Business disputes and bankruptcies began choking the Nevada courts. In some cases, judges appointed receivers to protect investors, preserve assets and manage troubled businesses while the conflicts dragged on.

Like special masters, receivers are independent, neutral officers of the court, answerable only to the judges who appoint them and typically give them absolute control over the businesses in dispute. Receiverships are easily abused. Historically, state and federal courts appoint receivers only as a last resort.

In contrast to California's rules, Nevada's requirements for receivers are loose. In both states, receivers are governed by court orders. In Nevada, lawyers write the orders and judges sign them, sometimes changing them as they see fit. But in Los Angeles County, for instance, judges begin with standardized orders and use or rewrite them. Steve Morris, a prominent Las Vegas trial lawyer with 35 years of legal experience in Nevada, said, "Rules for receivers here are short, ambiguous and elastic."

By the mid-1990s, Swarts had become a receiver in both state and

federal courts. He brought in his son, Curtis, also a CPA. In 1996, the law firm of Mahan & Ellis incorporated them as Swarts & Swarts.

With increasing frequency, Swarts asked judges to let him hire his own counsel at the expense of the parties in dispute. Most often, he chose Mahan & Ellis.

In 1998, Mahan decided to become a state judge.

His decision put him in Swarts' debt for two favors. In Nevada, state judges are elected. Mahan ran for a judgeship in Las Vegas, and as the first favor, Swarts, seasoned in local politics, agreed to be his campaign treasurer.

Mahan lost the election.

"I decided not to stop," he said in an interview. Two state judges from Las Vegas had won seats on the Nevada Supreme Court, creating a pair of vacancies. Newly elected Gov. Kenny Guinn, a Republican, would fill them after his inauguration in January 1999. "I began 'running for appointment,' " Mahan said.

In this quest, Mahan needed only one vote — that of Nevada power broker Sig Rogich, a Republican fundraiser and media specialist who had been a consultant to Presidents Reagan and George H.W. Bush. It was Rogich who was responsible for the elder Bush's TV ad showing Democratic opponent Michael S. Dukakis perched on a tank with a helmet dwarfing his head.

More important to Mahan, Rogich had masterminded Guinn's gubernatorial election. Guinn had never run for public office.

Rogich was part of old Las Vegas. By contrast, Mahan was a newcomer, but he knew an insider: Swarts. He and Rogich had been friends since grade school.

Indeed, while Swarts had been Mahan's campaign treasurer, Rogich had entrusted him with keeping the books for Guinn's $6-million campaign as well. Records show that Swarts donated his time.

Now, in the second of the two favors, Swarts spoke to Rogich on Mahan's behalf.

"I put [Mahan's] name in with Sig," Swarts said in an interview. "And why did I do that? Because I believe Jim Mahan is one of the finest people I have ever known…. I'd put his name in again."

Mahan was summoned to Rogich's office. "He wanted to meet me," Mahan said in an interview. After the meeting, said a participant who requested anonymity, Rogich promised to "go to the governor."

It worked.

On Feb. 22, 1999, during his second month in office, Guinn appointed Mahan to the bench in the state's 8th Judicial District in Las Vegas.

In an interview, Rogich refused to discuss the matter publicly.

Seventeen days after the appointment, Mahan was assigned to decide the

appeal of a lawsuit that Rogich won in Justice Court against Phillip Crenshaw, a Las Vegas store owner, over a damaged stereo.

Despite the canons demanding that judges disqualify themselves when their impartiality might reasonably be questioned, Mahan sat in judgment on the appeal.

He reduced Rogich's $3,449 award by $90, but decided in his favor.

R. Clay Hendrix, the attorney for Crenshaw, said he was unaware of Mahan's connection to Rogich until after the case ended, when he received an invitation from Rogich to a Mahan fundraiser. Hendrix was asked how he felt when he found out about Mahan's ties to Rogich. He shrugged and looked away.

This was, after all, Las Vegas.

Mahan was given written questions about this and other cases in this story. He did not respond.

Chapter 3

Elkind-Wilson Case

When Mahan became a state judge, he left Mahan & Ellis. But the law firm did not exactly leave him. He remained a part owner and landlord of the law firm property and continued to draw interest from the Mahan & Ellis profit-sharing plan, according to land records and financial disclosures required of state and federal judges.

The disclosures show that he received income from the law office building until June 2001 and from the profit-sharing plan until mid-December 2002, when his share of the proceeds was rolled over into an IRA.

Meanwhile, the financial fortunes of his former law firm were tied in part to the fortunes of one of its most active clients — George Swarts. On the eve of Mahan's appointment to the bench, court records show, the law firm represented Swarts in three receiverships involving combined legal fees of about $150,000.

During the first weeks of his judgeship, Mahan acknowledged a conflict if he were to preside over a case involving Ellis, court records show. On March 26, 1999, he disqualified himself from a case "to avoid the appearance of impropriety and implied bias" because Ellis was his former law partner.

But 2 1/2 weeks later, in his second month as a judge, Mahan recommended and then appointed Swarts as a $200-an-hour caretaker in a business dispute — and then approved Ellis as Swarts' attorney, according to court records.

The case involved Stuart Matthews Wilson, a hairstylist who finally struck gold: The Desert Inn hotel-casino on the Las Vegas Strip had selected him to take over its exclusive four-star spa.

The Desert Inn wanted him to expand. He didn't have the money, so he took on a partner, Abbott Elkind, a contractor and client who chipped in about $400,000 for 51% ownership.

Right away, they fought. Soon they sued each other.

In an interview, Wilson recalled their first hearing: "We get to the courtroom and this guy, George Swarts, is already there, waiting. Out of the blue, Judge Mahan has this guy come in as a receiver to take over our beauty salon."

There was a glitch. Wilson's attorney, James Lee, said appointment of a receiver would violate the salon's lease with the hotel-casino. So Mahan decided to call Swarts a special master.

Lee would later write into the court record that, "in fact, Swarts was appointed to be a receiver … [and] to act as a receiver in every sense of the word."

At the start, according to court minutes, Mahan promised Wilson and Elkind that they would "be included in [Swarts'] business decisions." Within a month, however, Robert Goldstein, Elkind's lawyer, said in a court filing that they were no closer to a buyout — and that Swarts, in effect, had frozen Elkind out of the business.

In response, Mahan wrote that Swarts "shall run the salon business as he sees fit."

That August, court records show, Ellis billed $4,694 for three months, and Swarts presented a three-month bill for $95,928. "My lawyer and I looked at each other in disbelief," Wilson recalled. "Swarts was charging $30,000 a month for basically having somebody pick up the salon's receipts each night."

Both sides filed motions pleading with Mahan to remove Swarts and sell the business before there was nothing left. They said a bookkeeper or payroll service could do for $1,000 a month what Swarts was doing for 30 times that amount.

But Mahan refused to remove him.

In March, a year after Mahan appointed Swarts, Wilson filed for bankruptcy in federal court. "Swarts and Judge Mahan … destroyed everything I built up in this town for 20 years," Wilson said. "Nobody — lawyers, anybody — wanted to go up against Judge Mahan or Swarts.

"Anything Swarts wanted from the judge, Swarts got."

The Desert Inn closed in August 2000. Elkind, 66, died in January 2002. Wilson now works at a beauty salon in another hotel on the Strip.

When asked about the propriety of appointing his friend Swarts, Mahan responded, "I appoint receivers based on their backgrounds and the job at hand." Citing another case, he added, "I know George [Swarts] has done securities work before, so I picked him for a securities case."

Mahan said Swarts was just one of several receivers he had used. He

named two others. "I just want someone who is competent. I knew [Swarts] was competent. That's why I appointed him."

When asked about the propriety of approving Ellis, his former law partner, to represent Swarts, Mahan responded angrily: "It's up to the receiver to pick his own attorney. I never select them. Receivers select their own attorney. I've never imposed an attorney on any receiver. I don't care who the attorneys are."

Regarding his financial interests with Ellis, Mahan said he made no profit from the income listed on his financial disclosure report as rent from the Ellis office building, because it equaled his share of the mortgage payment. He noted that he sold his interest in the building to Ellis in June 2001.

By then, however, Mahan had been on the bench for two years and had involved Swarts and Ellis in at least seven cases and approved their fees.

As for the Mahan & Ellis profit-sharing plan, Mahan continued to receive interest from it for 18 months after selling his property ownership, his financial reports show — and during that period, court records reveal, Mahan appointed Swarts as a receiver and approved fees for Ellis' law firm as Swarts' counsel in at least five additional cases.

Swarts, in an interview, said there had never been anything improper about his court appointments from Mahan or any other judge. "I don't hobnob with judges…. I don't solicit cases. But when a judge calls, I respond."

Swarts was given written questions about the details of this and other cases in this story. He did not respond.

Chapter 4

The Topless Case

Three people from Detroit wanted to open a topless bar in Las Vegas.

Ronald Sweatt, his wife, Lydia, and investor Robert Katzman formed a 50-50 partnership, called Motor City III. In 1997, they bought an empty lounge near the Strip and began turning it into a cabaret with bare-breasted dancers. Their investment totaled nearly $1 million.

Felony tax evasion convictions ended the Sweatts' chances for licensing in Nevada. So they put the lounge up for sale.

Katzman sold his interest to Ed Gardocki, also of Michigan. The Sweatts accused Katzman and Gardocki of dealing in secret and sued them in Michigan.

They, in turn, sued the Sweatts in Las Vegas.

The case was assigned to Mahan.

He appointed George Swarts as receiver. Mahan said, however, that Swarts' son, Curtis, would handle the matter because he would bill at a lower rate, according to court minutes. "No one loses if a receiver is appointed," Mahan said. Both sides "will be looking at a pile of money, not a piece of property."

Swarts hired the law firm of Alverson, Taylor, Mortensen, Nelson & Sanders to represent him. Two and a half years passed, and the topless lounge still was not sold. Moreover, according to court records, the tab for Swarts and his attorneys had climbed to more than $100,000.

Both sides tried to get rid of Swarts. Mahan refused.

• On one side: Attorney P. Sterling Kerr, who represented the Sweatts, said in court documents that the fee for Swarts and his attorneys "shocks the conscience" because their only job was selling an empty building.

"Those guys raped my client," Kerr said in an interview. "Mahan was looking for an excuse to give his friends some business."

• On the other side: Katzman and Gardocki said Swarts and his attorneys had been paid out of partnership funds without court approval and had failed to pay county taxes on the lounge "to the point where the property itself is in jeopardy."

A month later, Swarts reported that he had paid the taxes.

Attorney Peter Christiansen, who represented Katzman and Gardocki, reminded Mahan that he had promised that Swarts' son, Curtis, would handle the receivership and charge less. Instead, Christiansen said, "George Swarts did the overwhelming majority of the work."

Swarts and his lawyers have "treated this case as a cash cow," Christiansen said. If attorneys on both sides combined and quadrupled their fees, he said, they wouldn't approach what Swarts and his attorneys were charging.

Some charges, Christiansen said, were for duplicate services, services not rendered and services negligently rendered.

Records show that George Swarts billed $200 an hour.

A review of resumes and contemporaneous cases shows that four other Nevada receivers charged $150 to $175 an hour. A year earlier, court records show, Swarts had charged $150 an hour.

Swarts and his attorneys told the court that attacks against them were laced with distortions, sometimes fabricated, sometimes absurd and often as "appalling as they are incorrect." They accused both sides of opposing their every move and of creating unnecessary, baseless and frivolous litigation.

As for whether Swarts was running the receivership and not his less-expensive son, Swarts said that Mahan had set the same fee for both of them.

By 2005, the topless lounge was still unsold. On July 25, Swarts said

his fees had reached $285,000. Michael Hall, an attorney representing Katzman, was asked what his client and others in the case thought about Swarts' fees. He replied, "They thought it was ridiculous."

State Judge Michelle Leavitt, who replaced Mahan when he went on the federal bench, discharged Swarts as the receiver. On July 27, Leavitt signed an order "approving sale" of the property and said Swarts' fee "comes off the top."

The property finally sold for $1.9 million, Hall said. After fees for Swarts and the attorneys, the pile of money promised by Mahan had vanished.

In an interview, Swarts was asked to explain how partners so divided could be so united in their criticism of him.

"Well, Sterling Kerr hates me," he said, referring to the Sweatts' lawyer. "I have a thankless job. You've got to be crazy to do this. It's not possible to do this job and not have someone get mad at you. I've had lawyers come across the table at me…. When I come in, both parties hate each other, and in the end, both parties hate me."

Chapter 5

Adult On-Line Case

Andrea Norman retired from the escort business when she was 26.

In April 2000, she said, she and her then-fiance invested $500,000 in Las Vegas Adult On-Line Productions Inc., a website marketing prepaid cards to anonymously view or buy Internet pornography.

"It was a great idea," she said in an interview at her gated town house near the Strip. It was late morning. She wore a nightgown, an anklet and rings on her left hand and the second toe of her right foot.

Norman and her fiance put their $500,000 investment into a corporate account.

One day, she said, she got a call from the bank. "I just about s---. There was $16,832 left."

Norman sued her two stockholder-managers.

Meanwhile, Mahan ran to keep his seat on the bench. Swarts served for the second time as his campaign treasurer. Mahan won without opposition, and in June 2000, midway through the race, Norman's lawsuit went to his court. While Swarts was still his treasurer, Mahan appointed him as the receiver for Adult On-Line.

Norman recalled the first hearing. "George [Swarts] was already there in court. Bam-pow! He was in as receiver. No discovery. No questions. [Mahan] just put in a receiver. It was pre-decided … pre-set. My mouth hit the floor."

Mahan assured Norman that he saw "potential value here and that [the]

asset should be preserved," court minutes show. "Mr. Swarts … will keep the business running."

Swarts chose the Ellis law firm, where Mahan had been a partner, to represent him, and Mahan approved the appointment. Mahan was still receiving what he described as rent, or "investment income," from the law firm office building, as well as interest from the Mahan & Ellis profit-sharing plan, according to the financial reports he would file from the federal bench.

Three months after the suit was filed, the two stockholder-managers complained to Mahan, saying they feared that Las Vegas Adult On-Line Productions Inc. was "being bled dry." They said Swarts had frozen or emptied their accounts, would not pay creditors, had broken financing promises and would communicate only through attorneys charging up to $250 an hour.

Unless Mahan intervened, they wrote, they would "be headed into bankruptcy."

But Mahan allowed the receivership to continue.

A month later, court records show, Ellis told Mahan at a hearing, "There is little money" left.

Mahan ended the receivership in December, records show, and approved fees of $15,525 for Swarts and $19,293 for the Ellis law firm for the three months of July 3 to Oct. 9.

"In the end, whatever funds were in the account went to pay the receiver," Norman said. "If I ever see [Mahan] on the street, I'm going to spit in his f------ face."

Chapter 6

The NetSol Case

On June 11, 2001, dissident stockholders, escorted by armed guards, took over the offices of NetSol International Inc., a software company in Calabasas.

Although NetSol was based in California, it had been incorporated in Nevada, and its deposed managers sought assistance there. They sued in Las Vegas state court, and the case was assigned to Mahan.

"The judge, right out of the blue, said: 'Maybe we should get a receiver…. I know a guy who is perfect for this,' " John C. Kirkland, a Santa Monica attorney for the dissidents, said in an interview.

Mahan ordered a recess, Kirkland said, and Swarts appeared in the courtroom. "Right away," Kirkland said, local attorneys told him that Mahan and Swarts "were best friends, had barbecues … were very close…. We were told in no uncertain terms: This is the 'judge's receiver,' and we were going to have to live with him."

Again, Swarts chose the Ellis law firm, where Mahan had been a partner, to represent him in the receivership, court records show.

By now, Mahan had sold his interest in the law firm real estate. But according to his financial disclosure statements, he was still receiving interest from the Mahan & Ellis profit-sharing plan.

Todd L. Bice, a Las Vegas attorney for NetSol management, said in a telephone interview that he had been unaware of any relationship between Mahan and Swarts. "I don't remember that the issue ever came up in court."

A month later, records show, Kirkland, the dissidents' counsel, accused Swarts of devaluing the firm. "What once was a multimillion-dollar company is now a penny stock," Kirkland said, adding that NetSol was doomed.

In August 2001, Mahan ended the receivership. He ordered NetSol to pay Swarts and the Ellis law firm $65,000 for two months' work.

Although many computer-based companies suffered during the technology bust, NetSol's plunge was dramatic. In March 2000, its stock traded at $75 a share. By October 2002, the stock had fallen to a nickel a share.

This week, it closed at $1.86 a share.

Kirkland scoffed at the Las Vegas justice system. "It's the most corrupt system I've ever seen," he said. "They hometown everyone."

Chapter 7

A Federal Judge

By February 2001, the second anniversary of his appointment to the state bench, Mahan's name had surfaced for possible nomination to the federal bench by George W. Bush, the newly elected president.

Sig Rogich had been the finance chairman of Bush's Nevada campaign. When he learned that Bush would nominate two judges in the state, he made three telephone calls on Mahan's behalf, according to a political insider who requested anonymity.

One call was to Sen. John Ensign, the Nevada Republican who would recommend potential appointees to Bush.

"I nominated Judge Mahan," Ensign said, "because of his outstanding record and reputation. Throughout his career, he has demonstrated a careful and deliberative nature, and a commitment to fairness and the proper application of the law."

The second call was to the screening panel for the Senate Judiciary Committee.

The third was to the White House.

Mahan won Ensign's approval, as well as the endorsement of Nevada's veteran Sen. Harry Reid, a Democrat.

"Sen. Reid joined Sen. Ensign in supporting the nomination," said Reid's spokesman, Jim Manley, "because he felt Judge Mahan had the qualifications necessary to serve as a U.S. District Court judge."

Bush nominated Mahan on Sept. 10, 2001, to be one of the five U.S. District Court judges then in Las Vegas. The Senate confirmed him without controversy, and he joined the federal bench on Jan. 30, 2002, a lifetime post.

Mahan's confidants, allies and business pals were not far behind. As his executive judicial assistant, he hired Jeri Winter, a former member of his campaign staff who had been his executive judicial assistant when he was a state judge.

Within little more than a month, he approved the hiring of the law firm of his former partner, Ellis, in a federal case while Ellis was representing Winter at no charge in a bankruptcy. Only five months before, Ellis had represented Mahan's wife in a family probate, also for free.

The federal case was over E-Rex Inc., developer of the Dragonfly, a portable printer-fax with Internet capability. Dissident shareholders had sued executives, accusing them of mismanagement, according to court records.

Mahan appointed Swarts, this time as a special master, to investigate the accusations, the records show. According to court minutes, Mahan ordered the dissidents to pay Swarts an advance of $5,000 and an overall fee of $250 an hour.

Mahan approved hiring Ellis' law firm to represent Swarts at $210 an hour.

"We had no idea that the federal judge, Judge Mahan, had a relationship to Swarts or his attorney," Ruben F. Sanchez, a Woodland Hills lawyer representing E-Rex, said in an interview. "That was never disclosed."

Sanchez said E-Rex hired Harold Gewerter, a Nevada attorney. Gewerter was asked in a telephone interview if he knew at the time about Mahan's relationships with Swarts and Ellis. He replied: "I heard indirectly that — I have no knowledge of any relationship. Judge Mahan did a fine job."

Mahan awarded Swarts $17,267 and the Ellis law firm $1,582 for work during March, April, May and June, the court records show.

In July 2002, Mahan dismissed the lawsuit.

The dissidents appealed. In January 2004, a three-judge panel of the U.S. 9th Circuit Court of Appeals reversed Mahan's dismissal in part, saying he had erred by denying the shareholders an opportunity to amend their complaint. The appeals court sent the case back to Mahan.

In April 2005, Mahan granted a change of venue to Florida. The case was appealed again. It remains an open case.

Chapter 8

Interstate Mortgage

One month after he appointed Swarts in the E-Rex case, Mahan was assigned a federal lawsuit accusing Interstate Mortgage Group Inc. of Las Vegas and its former owner and president, David Ferradino, of fraud, breach of contract and breach of fiduciary duty, court records show.

Two and a half years earlier, Swarts had been appointed conservator, or custodian, of Interstate Mortgage, the records show, and then had been appointed receiver of the firm, which had been seized by the Nevada Financial Institutions Division, a state agency that regulated mortgage brokers.

The suit was filed by Robert and Ruby Rogers of Phoenix, who demanded the return of $110,000 lost through what they called "fraudulent acts" by Ferradino and his company — plus $5 million to punish them. The suit meant the firm Swarts was managing had become a defendant in Mahan's court, and Swarts was a defense witness.

Mahan had vouched for Swarts a month earlier by appointing him special master in the E-Rex case.

Now he was sitting in judgment upon a firm Swarts was managing in a case accusing the company of fraud.

Representing Swarts and Interstate Mortgage in Mahan's courtroom was the Ellis law firm, where Mahan had been a partner and where Ellis had represented Mahan's wife in a probate and was still providing free legal counsel for Mahan's executive assistant in her bankruptcy case.

"We were never told Mahan [had] any connections with Swarts or his attorney," said plaintiff Robert Rogers in a telephone interview.

Mahan dismissed Interstate Mortgage as a defendant, records show. That left Ferradino as the sole defendant. He was ordered to make restitution.

Rogers said he settled with Ferradino in 2003 for $82,000.

Chapter 9

The Bulloch Case

Less than a month after dismissing Interstate Mortgage and its conservator Swarts from the case, records show, Mahan decided a lawsuit in favor of Howard Bulloch, a longtime Las Vegan, and awarded him more than $4 million.

Mahan and Bulloch were former business associates.

In July 1997, Mahan, then a partner in Mahan & Ellis, and Bulloch, a Las Vegas real estate agent, were on a receivership team to sell 89.07 acres in Laughlin, Nev.

At the time, the judge in the case appointed Swarts as receiver. Swarts had hired Mahan as his lawyer and recruited Bulloch to sell the property. Mahan's billings, filed in 1998 court records, show how closely Mahan and Bulloch had worked together.

Jan. 20: "Review letter … to Howard Bulloch." Jan. 22: "Review letter … to Bulloch." Jan. 30: "Review proposed flyer from Bulloch. Telephone call with Bulloch: proposed revisions." Feb. 5: "Review proposed purchase and sale agreement from Howard Bulloch; revise and return to Howard." Feb. 10: "Telephone calls with Howard Bulloch." Feb. 12: "Conference telephone call with Howard Bulloch … incorporate my suggestions and revisions, which I faxed to Howard yesterday. Conference with client; Howard Bulloch." Feb. 13: "Review marketing efforts documentation from Howard Bulloch." Feb. 19: "Telephone call … Howard Bulloch's office." Feb. 24: "Review information from Howard Bulloch."

That March, the property was auctioned for $1.25 million, Mahan reported to the judge.

Five years later, Bulloch appeared in Mahan's federal courtroom.

He was suing Michael Shustek, a mortgage broker. According to court records, Bulloch contended that Shustek had wrongfully collected a $3.8-million fee on loans to buy land on the edge of Las Vegas.

In March 2003, at the end of a weeklong trial during which Mahan served as judge and jury, he ruled in Bulloch's favor, saying Shustek's fee was excessive and unlawful.

Mahan refunded the fee to Bulloch, plus interest — for a total of $4.12 million.

A recent search found no statement in court records that the judge had revealed their prior relationship. Bulloch said in a telephone interview that it was disclosed.

Shustek's attorney, Steve Morris, was asked in an interview if he knew that Mahan had a prior relationship with Bulloch.

"I'm astounded," Morris replied angrily.

Six weeks later, the Nevada Financial Institutions Division, which regulated mortgage brokers, said that Shustek's fee had been lawful and appropriate.

Shustek appealed Mahan's decision. A three-judge panel of the U.S. 9th Circuit Court of Appeals decided in November that Mahan did not have jurisdiction to hear the case.

The 9th Circuit ruling is being appealed to the Supreme Court.

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From the Los Angeles Times
JUICE VS. JUSTICE | A TIMES INVESTIGATION
How Some Nevada Judges Stay Under the Radar
Senior judges are exempt from some rules of accountability. The careers of three jurists reflect the ethical questions that can result.
By Michael J. Goodman and William C. Rempel
Times Staff Writers

June 10, 2006

LAS VEGAS — One Nevada judge was nearly indicted on blackmail charges. Another ruled repeatedly for a casino corporation in which he held more than 10,000 shares. Still another overruled state authorities and decided in favor of a gambling boss who was notorious as a mob frontman, and whose casino did the judge a $2,800 favor.

Yet the Nevada Supreme Court has conferred upon these judges a special distinction that exempts them from some of the common rules of judicial practice and reduces their accountability. They are among 17 state judges whom the high court has commissioned as senior judges.

Unlike regular judges, senior judges are not answerable to the voters, but serve at the pleasure of the high court, and that can mean for life. Unlike regular judges, they can reject assignments until they are given a case they want to try. Unlike regular judges, they cannot be removed from a case by peremptory challenge. And until last year, they did not have to disclose their financial interests.

With this exceptional flexibility, they could try lawsuits in which they had a personal stake without revealing it. And because they cannot be removed by peremptory challenge, which normally permits a one-time replacement of a judge at the beginning of any case simply for the asking, it is possible for litigants to be stuck with senior judges, their conflicts of interest and their decisions.

The judge who was nearly indicted is James A. Brennan. He resigned as a state judge to avoid being charged by a federal grand jury with blackmail. After the state Supreme Court returned Brennan to the bench and then named him a senior judge, he presided over at least 16 cases involving participants in his real estate deals. A recent search found no statement in court records that Brennan publicly disclosed those relationships.

The judge who ruled for a casino corporation in which he held stock is Stephen L. Huffaker. He owned 12,000 shares of the corporation while the case was before him. In addition, he presided over cases involving another casino corporation whose foundation gave his son a partial scholarship to Yale University. A recent search found no statement in court records that Huffaker publicly disclosed the scholarship at the time.

The judge who ruled in favor of the gambling boss is Joseph S. Pavlikowski. In 1969, he officiated at the wedding of Frank "Lefty" Rosenthal, known as a frontman for the Chicago mob. Pavlikowski then accepted a discounted wedding reception for his daughter at a casino where Rosenthal was a top executive. He subsequently ruled for Rosenthal in three cases when authorities tried to take action against him.

Senior judges, including Brennan, Huffaker and Pavlikowski, are on call statewide to fill in temporarily at any level of the state courts in which they have previous experience. Sometimes they are brought in when local judges disqualify themselves from sensitive and thorny cases.

The Supreme Court, the highest-ranking court in the state, created senior judges in 1977 to ease a workload that has since grown to an average of 2,700 cases for each regular judge in Las Vegas per year.

The high court acted independently of the Legislature. It wrote its own rules for the senior judges, said Ronald R. Titus, the state court administrator. "Nothing in the statutes," Titus said, "talks about senior judges."

The Legislature, however, controls their budget. At one time it was limited to $340,000 annually, and at one point senior judges numbered as few as half a dozen. But since then, more senior judges have been added. The Legislature budgeted $1.5 million last year. Their number may continue to grow along with southern Nevada.

In response to written questions, Robert E. Rose, chief justice of the Supreme Court, said senior judges were accountable because their decisions might be appealed to the Supreme Court. It is, however, the same court that appointed them.

"We must rely on the senior judge to recuse himself or herself in conflict-of-interest situations," Rose said, "or at least bring [the conflict] to the attention of the parties [involved in the case]. And any party can file a motion to disqualify a judge for cause."

Unlike a peremptory challenge, however, removal for cause is not automatic and must be decided by another judge.

Rose also said court administrators monitored the performance of senior judges.

"Many senior judges have had long and distinguished careers," Rose said. "History has shown that judges have the ability to rule fairly and impartially on cases, based on the facts and the law…. To date, no application to become a senior judge or justice has been denied….

"Senior judges are a tremendous asset to the judiciary and the citizens," Rose said. "They are often among the most experienced judges around. They serve only when needed, thus providing a great resource at a bargain price. Without senior judges, it would be necessary to add full-time judges at a cost of millions of dollars.

"Senior judges simply provide the best bang for the buck."

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ref:108

James A. Brennan

Chapter 1

Threat of Indictment

Judge Brennan almost wound up in the dock himself.

In 1988, a friend, Ada Livingston, died. She had been living with Brennan's mother. The judge and his mother found $56,000 worth of savings bonds in her suitcase. The bonds were issued to Livingston and her granddaughter, Marianne Catelli, who lived in Long Branch, N.J., according to court records.

"Brennan said he would send me the bonds, but then I had to cash them and give him half the money," Catelli, now 61, said in a telephone interview. She said Brennan did not tell her the total value of the bonds. "He said he would mail me a few bonds to cash, and then, when I paid him, he would send me more."

Catelli went to the FBI. William A. Maddox, then the U.S. attorney in Las Vegas, said in an interview that he took the matter to a grand jury and determined that Brennan and his mother could be indicted "for blackmail under federal law." Maddox, now a state judge in Carson City, Nev., said his goal was not to indict but "to force Brennan to resign and to keep him from being a judge again."

"I didn't like what he did," Maddox said. "That's not the kind of thing a judge should do."

Brennan agreed to resign and not run for reelection for at least 18 months, Maddox said. "We figured the 18 months would put Brennan beyond the next judicial election [in 1990], and then, by the next judicial election [in 1996], he would have been out of the public eye for eight years." Together with the investigation, Maddox said, this passage of time would "make it pretty hard [for him] to get elected."

In March 1989, Brennan announced that he was stepping down. It was not long, however, before he was back on the bench.

When his 18-month hiatus ended, 16 Las Vegas state judges signed a resolution of support — whereupon the Supreme Court appointed him to a 58-day temporary judgeship, beginning Jan. 2, 1991, to ease the caseload in his old judicial district. The appointment was continued for a year, and in 1992 the Supreme Court commissioned Brennan as a senior judge.

He is in his 14th year without having had to face election.

Maddox said: "Our goal was to make sure Brennan wouldn't run — never serve on the bench again. What can I say?"

The news did not reach Catelli until March 2004, when a Times reporter called. "Isn't that cute!" she said. "I was told he wouldn't get back in office. If it were you or me, we'd be in jail. They said they were going to keep him out of the next election. Well, isn't that cute! It's all about who you know, isn't it?"

Brennan was given written questions about this and other cases in this story. He did not respond.

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Chapter 2

A Testimonial

The letter praised a man accused of smuggling drugs.

Judge Brennan wrote it to a federal magistrate in Tampa, Fla., vouching for Benjamin Barrington, then 48, of Las Vegas, who was under indictment on charges of running a cocaine smuggling ring in Nevada, Texas and Florida. Barrington was appearing before the magistrate for bail.

A transcript of the bail hearing shows that Brennan's letter was one of three from judges who vouched for Barrington. The others, according to the transcript, were from Charles Springer, then the chief justice of the Nevada Supreme Court, and from Dan Ahlstrom, then a Las Vegas justice of the peace.

The case received wide publicity. Court records and a report in the Las Vegas Review-Journal newspaper show that Brennan's letter, dated Nov. 21, 1985, was the most effusive.

"For the last couple of years," Brennan wrote, "I have been a guest in Ben's home, where I have had the opportunity and the pleasure to observe a very dedicated husband and father. Ben's son, Benjie, and his wife idolize Ben, and a team of horses could not separate Ben from his family. On numerous occasions, Ben and I have gotten together for 'intelligent' conversations over cocktails, and I unequivocally state that Ben is a man who will make every court appearance which is required of him."

In a recent interview with The Times, the Florida magistrate, Thomas G. Wilson, recalled being troubled. "I thought right away it was a violation of judicial ethics. So when we broke from the hearing, I went right to the judicial ethics codes, and it said in plain English a judge is not to voluntarily lend the weight of his office to support someone's interest like this."

Wilson denied bail for Barrington. He received a lengthy sentence, according to a spokeswoman for the Federal Bureau of Prisons, and he died in custody. Wilson said the Nevada judges who vouched for Barrington "gave the impression the bench was a good-old-boys group. It didn't raise my opinion of the Nevada judiciary."

Springer, now a Reno attorney, told The Times, "I shouldn't have written that letter." Ahlstrom, now the public administrator for Clark County, including Las Vegas, said that in hindsight "a judge would be well advised not to write such a letter."

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Chapter 3

The Venetian

After Brennan was returned to the bench and named a senior judge, the way he handled one major case came under particular attack.

The case involved a breach-of-contract dispute between the $1.5-billion Venetian casino and resort and its builder, Lehrer McGovern Bovis Inc. Brennan appointed his former law clerk, Erika Pike Turner, as special master to conduct hearings.

Venetian lawyers said Turner was inexperienced and that her law firm represented four clients who had interests in the case. Moreover, they said, Brennan had given her such sweeping authority that "essentially nothing remains for [him] to do but enter judgment."

When Brennan did not remove her, the Venetian complained to the Supreme Court about Turner — and said that Brennan, as an appointee under the senior judge program, had not been independently elected. Venetian lawyers also pointed out that he had been forced to resign years earlier to avoid indictment.

The Supreme Court did not rule on the senior judge issue, but said that Brennan had abused his discretion by giving Turner such broad authority.

One justice, Deborah Agosti, said Brennan had been appointed to ease the court caseload, but then had appointed someone to relieve him of his caseload. He "ought to handle this case himself," she said.

A jury awarded Lehrer McGovern Bovis $44.2 million — but also awarded the Venetian $2.3 million for shoddy workmanship.

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Chapter 4

Conflicts of Interest?

Judge Brennan's financial dealings tell a story of power in Las Vegas. He has been in business with some of the most influential people in town.

He and his Brennan Family Limited Partnership and the James A. Brennan Family Revocable Trust have appeared in at least 180 recordings of land and financial transactions in southern Nevada since his return to the bench in 1991.

His partners and co-investors number more than 300 and include some of Nevada's most powerful political and gambling figures.

Since 1997, for example, Brennan has participated in at least 45 real estate transactions in Las Vegas with Gov. Kenny Guinn, now in his second term, and with Guinn's family. Many of the transactions were made through the Kenny C. Guinn IRA; the Guinn Family Trust; the governor's son, Jeffrey; and the son's mortgage company, Aspen Financial Services, county land records show.

Nevada Lt. Gov. Lorraine Hunt also appears with Brennan in several transactions.

Aside from the governor, an array of longtime casino bosses, developers, lawyers, financiers, contractors, real estate agents, bankers and mortgage brokers often have been named in land records as repeat real estate partners and co-investors with Brennan over the years. Some are lawyers.

Many have had cases before him.

Sometimes he has withdrawn, but rarely said why.

Without disclosing his relationships, Brennan has ruled in at least 16 lawsuits since 1991 that involved one or more of his real estate or investment partners or their attorneys, according to a review of land and court records.

U.S. and Nevada judicial canons say judges should withdraw from cases where their impartiality might reasonably be questioned. Nevada canons also say judges must avoid even the appearance of impropriety and should reveal on the record anything that they think anyone in court could reasonably consider relevant to disqualification — even if the judges do not think they should withdraw.

For senior judges, including Brennan, disclosing all financial relationships has been voluntary until 2005. Now disclosure is required yearly. Historically, however, few if any senior judges ever revealed their financial interests. That made it hard for those appearing before them to know whether the judges had a conflict of interest.

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Joseph S. Pavlikowski

Chapter 1

'Lefty' Rosenthal

The first whiff of possible conflict came at a wedding.

It was 1969. The groom was Frank "Lefty" Rosenthal, whose Las Vegas exploits as a casino boss for the Chicago mob would be portrayed by Robert De Niro in the movie "Casino."

Pavlikowski, then a justice of the peace, performed the ceremony.

The wedding was at Caesars Palace hotel and casino on the Strip. In an interview with The Times, Rosenthal said that Pavlikowski's services, along with the band and a catered reception, were "comped," or provided without cost, compliments of Caesars Palace.

By 1974, Pavlikowski had been elected a state judge in Las Vegas, and the Stardust hotel and casino, under Rosenthal's control, did Pavlikowski a favor. His daughter held a wedding reception at the Stardust, and it gave him a "comp" worth $2,800 on the $4,000 tab.

The comp was revealed by The Times 2 1/2 years later in a series of

stories about Las Vegas. Pavlikowski first said, "I paid that bill." Then he said he paid only $1,200 and sent another $1,000 to the Stardust afterward, but that his check was returned. He said the bill "was padded" to help waiters with their tips.

The second and third whiffs of conflict came in the mid-1970s when, in highly publicized actions, the state Gaming Commission and the Licensing Board of Clark County, which includes Las Vegas, tried to deny Rosenthal's bid for licensing as a key employee at the Stardust.

He appealed the Gaming Commission's action to state court. Under rules calling for random selection among the 12 state judges then in Las Vegas, Rosenthal drew Pavlikowski to hear his case.

A recent search found no statement in court records that Pavlikowski publicly disclosed his role in Rosenthal's wedding or that he had accepted a $2,800 comp from a Rosenthal-controlled casino.

Pavlikowski ruled in his favor.

On Feb. 3, 1977, the state Supreme Court overturned the ruling.

While the case was still on appeal, however, Rosenthal filed a separate court action to prevent denial by the county licensing board.

That case was assigned to Pavlikowski as well.

Again, a recent search found no statement in court records that he publicly disclosed his ties to Rosenthal.

And again, Pavlikowski ruled for Rosenthal, granting a temporary restraining order as well as subpoenas to depose board members.

Rosenthal agreed to drop all but one of the board members from the case: Robert Broadbent, who said in an affidavit that Pavlikowski was biased in Rosenthal's favor.

The case was transferred to another judge.

In 1989, Rosenthal found reason to go back to court again. The Gaming Commission had put him on its List of Excluded Persons, known as the Black Book, a mug-shot catalog of notorious cheaters and mob associates that barred them from Nevada casinos.

His lawyers removed the judge assigned to his case and, again, under rules mandating random selection, Rosenthal drew Pavlikowski.

And again, Pavlikowski ruled in Rosenthal's favor, ordering that he be removed from the Black Book.

In his ruling, Pavlikowski said he had disclosed that he was the judge who had decided the gaming license disputes. James J. Rankl, the deputy attorney general who handled the Black Book case, said, however, that he could not recall such a disclosure.

"I think," Rankl said, "that is something I would have remembered."

At the time, Pavlikowski was not yet a senior judge, and he could have

been removed with a peremptory challenge. But Dan Reaser, chief deputy state attorney general for gaming at the time, said there was no need. "I knew we would prevail at the Supreme Court."

Reaser was right. The high court reversed Pavlikowski. The Black Book banned Rosenthal from Nevada casinos. On its "exclusion/ejection list," the state said Rosenthal "was suspected of overseeing a Las Vegas casino on behalf of organized crime."

In an interview with The Times, Rosenthal was asked: "You're the expert handicapper, Frank. What were the odds that you'd draw the same judge each time?"

Rosenthal paused.

"I didn't even know about" the Black Book case, he said.

He was shown copies of Pavlikowski's ruling and the Supreme Court reversal. "I'll be damned," he said. "You're telling me something I didn't know. I should drop [Pavlikowski] a line. Is he still living?"

A transcript of the Black Book proceedings shows that Rosenthal had flown in from Florida for the case, was present in Pavlikowski's courtroom and identified himself to the judge by name.

Pavlikowski was given written questions about this and other cases in this story. He did not respond.

*

Chapter 2

Drunk Drivers

Arrested for drunk driving? Call John Watkins.

That's who Pavlikowski's son turned to when he lost his driver's license after a drunk-driving arrest in July 1986. The son, Joseph P. Pavlikowski, was 23 at the time. At an administrative hearing, he sought a reversal, and John G. Watkins represented him.

Watkins had been Pavlikowski's law clerk — one of several who became his friends. As private attorneys, they remain fiercely loyal to Pavlikowski and to one another, according to Andrew S. Myers, who is one of them. Pavlikowski, in turn, is loyal to them, Myers said. "It's like a club … a network."

Watkins fought 16 months to regain driving privileges for Pavlikowski's son. In March 1988, he won. A state court returned the driver's license.

During that time, according to court records and interviews with two former prosecutors, Pavlikowski signed 29 orders temporarily returning driving privileges for Watkins' other clients, even though their drunk-driving cases were being heard by other judges.

A recent search of court records found no statement from Pavlikowski that he asked for or received approval from the judges — or publicly

disclosed his relationship with Watkins.

Grenville Pridham, who spent 11 years as a state prosecutor, said he discovered that many of Pavlikowski's orders were never sent to the Department of Motor Vehicles. Hence, Pridham said, the DMV was crediting drunk drivers with serving their suspensions when, in fact, they were still driving.

The Supreme Court said Pavlikowski had acted improperly and that Watkins' failure to inform the DMV was "reprehensible." The court fined Watkins $500.

In some cases, Pavlikowski restored driving privileges for people facing their second or third drunk-driving convictions.

In April 1997, Watkins asked Pavlikowski to let Paulette O. Riggs drive while she appealed her second drunk-driving conviction in four years. This conviction had involved an accident. A prosecutor said Riggs' blood-alcohol level was more than 2 1/2 times the legal limit in one conviction and nearly four times in the other.

Pavlikowski allowed her to drive anyway, pending review of her case.

After five months, Riggs' case was transferred to another judge. He revoked her driving privileges.

"Pavlikowski did favors for Watkins that no judge would do for other attorneys," said Pridham, the former state prosecutor.

In frustration, prosecutors exercised peremptory challenges in 1994, 1996 and 1997 to remove Pavlikowski from cases involving Watkins.

At Watkins' request, Pavlikowski refused to remove himself.

That might have been a first, according to state Judge Peter Breen of Reno, who retired in 2005 after 31 years on the bench. "I can't remember any [other] judge trying to strike down a peremptory challenge" in favor of himself.

Watkins was given written questions about these and other cases in this story. He did not respond.

*

Chapter 3

Favoritism?

A Times examination of court records shows that during the decade before 1999, when he became a senior judge, Pavlikowski determined the outcome of at least 72 cases in which Watkins or his firm defended clients accused of drunk driving or other criminal activity.

A recent search of court records found no statement from Pavlikowski that he publicly disclosed their relationship. In 66 of the cases, or nearly 90%, Pavlikowski ruled in favor of Watkins' clients by reducing, dismissing or reversing charges or other actions filed against them, the records show.

Thirty of those cases were appeals by clients whose driving privileges had been revoked by DMV hearing officers after drunk-driving arrests. In 26 of the 30 cases, or more than 86%, Pavlikowski granted the appeals, restoring driving privileges.

By contrast, 19 of 21 such appeals to Las Vegas state judges, or more than 90%, normally are denied, according to a recent 12-month survey by the DMV. "Chances of getting a reversal in [state] court are 1 in 10," said Randall Pike, a longtime Las Vegas criminal defense attorney.

In California, "your chances for such a reversal are 1 in 50," said Anthony Scott, a Redondo Beach attorney, who said he had handled about 1,500 drunk-driving cases in the last 14 years.

How did Watkins fare before other judges?

A Times review of 209 DMV license revocations that Watkins appealed to 10 other judges shows they ruled against his clients in 176 cases — and for them in 33. Hence, his success rate was 16%.

As for the success rate of Watkins' fellow attorneys before Pavlikowski, a Times examination of 317 drunk-driving appeals shows that while Pavlikowski granted nearly 90% of Watkins' appeals, he approved three of 18, or not quite 17%, of the appeals from other lawyers.

Prosecutors who appealed Pavlikowski's rulings favoring Watkins almost always succeeded.

In 12 of 14 instances since 1983 in which the state appealed Pavlikowski's rulings against the DMV in favor of Watkins' clients, the Nevada Supreme Court reversed Pavlikowski unanimously. The other two appeals were dismissed.

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Chapter 4

Appointing Proteges

Pavlikowski's commission as a senior judge in 1999 gave him no pause in appointing his former law clerks as defense attorneys in criminal cases.

For one case, budget-strapped Nye County, northwest of Las Vegas, paid two of his former clerks tens of thousands of dollars — and remodeled a public library into a courtroom for Pavlikowski.

Pavlikowski was assigned to the case in October 2000. On trial were Robert "Red" Dyer, Nye County's former public administrator, and his wife, Jennette. They were charged with stealing from estates of the deceased while the assets were under their jurisdiction. Dyer had named his wife as his deputy.

Pavlikowski appointed two of his former clerks, Andrew Myers and Martin Hastings, to defend them. Records show Pavlikowski had

appointed Hastings in at least 15 other cases.

A recent search of court records found no statement from Pavlikowski that he publicly disclosed his relationships with Myers and Hastings, but their connection was no secret. "We knew they were 'Pav's' former law clerks," Robert S. Beckett, the Nye County prosecutor, recalled. "Still, I was optimistic…. We have a tight budget and didn't want this to drag. We felt 'Pav' would move this case along."

Instead, Beckett said, it became one of the longest and most expensive cases in Nye County history. By the time it ended, court records show, Pavlikowski had ordered the county to pay Myers' fees totaling about $52,000 and Hastings' fees totaling about $61,000.

And then there was the courtroom.

Neither Myers nor Hastings wanted to drive the 120-mile round trip from Las Vegas to the tiny town of Pahrump and back every day on a two-lane road clogged with trucks, Myers said in an interview.

Beckett said: "We knew 'Pav' didn't want to drive out here" either.

As the trial neared, the official courtroom was closed to remove mold suspected of causing bloody noses, hair loss, fatigue, memory loss, rashes and sore throats, according to county records and interviews.

In its place, a corrugated metal building on a rocky lot was converted into a crude, temporary courtroom.

Pavlikowski balked.

"So we decided to build a courtroom for 'Pav,' " Beckett said. The county spent about $10,000 to renovate the library. "We even made a plaque for him."

But, Beckett said, "they still wanted to get the case to Vegas."

Myers and Hastings argued that the Dyers could not get a fair trial in Pahrump.

Beckett, however, produced a survey that said the "majority of the public has not formed an opinion" on guilt or innocence.

Pavlikowski let jury selection begin, but prosecutors complained that he granted Myers and Hastings twice the legal number of peremptory challenges for disqualifying jurors — and the jury pool ran dry.

Two more alternates were needed.

Chief Deputy Dist. Atty. Kirk Vitto asked Pavlikowski "to send out for additional jurors," court transcripts show. "The sheriff is standing by and will serve those people. We can have them here after lunch…. We are so close."

But Pavlikowski said no.

Publicity, he said, made it impossible to summon more jurors who were impartial.

He declared a mistrial.

Moreover, Pavlikowski said, he already had booked a courtroom in Las Vegas.

"We were devastated," Beckett said.

In Las Vegas, five weeks of trial produced 139 witnesses and 800 exhibits for the prosecution. "We were getting the hell beat out of us," defense attorney Myers recalled. Then the next-to-last prosecution witness, Terry Rusheen, took the stand.

A former friend of the Dyers, Rusheen said he had been "self-employed with macaws and cockatoos as a bird trainer and entertainer." The record shows he blurted: Jennette Dyer "told me to kill her…."

Lawyers for both sides jumped up and shouted, and Pavlikowski ordered jurors to disregard the statement.

Myers and Hastings demanded a mistrial. Prosecutor Vitto asked Pavlikowski to poll the jurors on whether they had heard what Rusheen said.

But Pavlikowski granted the mistrial without asking the jurors anything.

He set a new trial date.

When the defense requested a delay, Vitto objected. And before Pavlikowski could rule, Jennette Dyer disappeared.

Now Myers had no client. Court records show Pavlikowski appointed him co-counsel, along with Hastings, for Robert Dyer, the remaining defendant. Pavlikowski ordered that Myers be paid the "customary rate of $75 per hour."

Robert Dyer pleaded guilty, then asked to withdraw the plea. Hastings said Dyer had not been thinking clearly because of oxygen deprivation caused by jailhouse rules limiting use of his pocket inhaler for asthma.

Dist. Atty. Beckett said Dyer submitted no evidence to support the claim.

But Pavlikowski granted Hastings' request.

He also reversed himself on the difficulty of picking an impartial jury in Pahrump and returned the case to Nye County, where a new state judge had been trying Dyer on separate charges of attempting to bribe and intimidate a witness.

With that, Hastings withdrew as Dyer's lawyer. Pavlikowski approved.

Myers, for his part, said he never drove back to Pahrump to appear on Dyer's behalf. He said he did not know that Pavlikowski had appointed him co-counsel.

In the end, Robert Dyer pleaded no contest to theft and possessing stolen property, records show. He was sentenced in June 2004 to two to five years in prison.

The sentence was in addition to a 1- to 2 3/4 -year sentence for

witness tampering.

His wife remains a fugitive.

Hastings did not respond to written questions about the case.

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Stephen L. Huffaker

Chapter 1

Casino connections

Downtown casinos and the city of Las Vegas sued Carol Pappas and her sons.

A 63-year-old widow, she and her two boys owned a corner strip mall. A casino consortium, with the city on its side, wanted the land to build a parking garage as part of downtown redevelopment. The suit claimed eminent domain.

It went to Huffaker's court in November 1993. He let the consortium bulldoze the property.

Pappas filed a counterclaim saying the city and the casinos conspired to take her property improperly and to violate her civil rights.

Huffaker presided over the high-visibility case for 21 months. His 1994-95 financial disclosure statements showed only that he was receiving a "small interest on stock dividends." But in August 1995, he revealed in court that he held 12,000 shares of Elsinore Corp., owner of the downtown Four Queens hotel and casino, which had a major stake in the redevelopment.

Grant Gerber, an attorney for Pappas, told Huffaker in a letter: "For you to preside over this case violates [judicial] canons." Two days later, Huffaker withdrew.

But he had been issuing rulings for 21 months.

The attorneys for Pappas asked for dismissal of all Huffaker rulings.

Request denied.

They asked to question Huffaker under oath: Did he have other conflicts of interest in the case?

Request denied.

Their concern about other possible conflicts appeared to be valid. A nonprofit foundation sponsored by Mirage Resorts Inc., which owned the Golden Nugget, another casino involved in downtown redevelopment, had given Huffaker's son, Stephen, an $11,000 scholarship to Yale in 1994, according to court records.

Casino mogul Stephen A. Wynn owned Mirage at the time.

The year the scholarship was awarded, The Times found, Huffaker was

presiding over the Pappas case and four other lawsuits involving the Golden Nugget.

A recent search of court records found no statement from Huffaker that he publicly disclosed the scholarship at the time. Nor did he reveal it in his annual financial disclosure statements.

The Pappas lawsuit ended in August 2004 when the city settled for $4.5 million, according to court records and an interview with Gerber.

Huffaker did reveal his son's scholarship in 1994 in another case involving Wynn's casino interests. Moreover, in his financial disclosure statements for 1994 through 1997, he said his son had worked at Wynn's Treasure Island hotel and casino, his Shadow Creek golf club and at the law firm of Schreck, Jones, Bernhard, Woloson & Godfrey, which represented Wynn's interests.

At various times during those years, Huffaker presided over five lawsuits involving the law firm or Wynn's casinos, according to court records.

In a sixth case, Huffaker presided for nearly a year before Schreck attorney James R. Chamberlain reminded him that his "son is employed as a runner for the summer months at the firm," court minutes show.

The opposing lawyer had no objection, according to the minutes.

In a seventh case, a lawyer objected to a similar conflict. The lawyer represented Joseph Canterino, then a 40-year-old New York dockworker who sued the Mirage. Canterino said he suffered mental illness after being savagely beaten and robbed of $70,000 while he stayed at the hotel in 1992.

Canterino blamed lax security.

A jury awarded Canterino $5.8 million, court records show.

Huffaker called the judgment "absolutely shocking," according to the records.

He reduced it to $1.5 million.

In an affidavit, Canterino's lawyer, Eckley M. Keach, said Huffaker had failed during the case to disclose Stephen Huffaker's scholarship.

Huffaker replied that he had told Keach and a Mirage attorney about the scholarship.

Both said they could recall no such disclosure.

In 2002, the case was settled for an undisclosed amount.

By then, Huffaker had announced he would not seek reelection, and the Supreme Court commissioned him as a senior judge.

He was given written questions about these cases by The Times, but he did not respond.

Huffaker received the senior judge commission despite being one of the

most avoided state judges in Las Vegas.

During 2001, for instance, the year before he was appointed, attorneys dodged his courtroom 163 times by exercising one-time peremptory challenges to remove a judge without explanation, court records show.

Now, as a senior judge, Huffaker is immune from peremptory challenge.

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Times researcher Nona Yates contributed to this report.

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Appeals court dismisses complaint against judge

Panel says that despite The Times' allegations of favoritism in judgments and fees, the jurist's ties didn't affect his impartiality.

By Ashley Powers, Los Angeles Times Staff Writer
December 11, 2007

LAS VEGAS -- The U.S. 9th Circuit Court of Appeals has dismissed a complaint against a federal judge who awarded more than $4.8 million in judgments and fees to people with whom he had long-standing political and business ties.

U.S. District Judge James C. Mahan of Las Vegas, who was featured in a 2006 Los Angeles Times investigation into the Nevada judiciary, was cleared of allegations that he had personal connections with those involved in cases he heard.

Many of those relationships "were not of the nature or extent alleged" and didn't affect the judge's impartiality, the 9th Circuit Judicial Council said.

A special committee that interviewed more than 30 witnesses, got 16 affidavits and reviewed media coverage and court transcripts unanimously recommended that the complaint be dismissed.

Mahan, appointed to the federal bench in 2002, declined to comment. He told the Las Vegas Review-Journal in October that he was "very heartened" by the findings. "All a judge has is his integrity," Mahan said. "This whole thing was an attack on my integrity, and frankly, I felt like it was an attack on the Nevada judiciary."

The court launched its investigation after The Times' series detailed how Mahan's decisions in more than a dozen cases had benefited his former law partner, his former judicial campaign treasurer or the former treasurer's son.

On several occasions, the judge appointed George Swarts, his former treasurer, or Swarts' son to be a special master or receiver of businesses embroiled in legal disputes. The men were paid up to $250 an hour.

Swarts -- who was assigned to either investigate the business disputes or run the companies until they were settled -- often hired Frank A. Ellis III, Mahan's former law partner, as his attorney. Rulings Mahan made from the bench instructed various parties to pay Swarts and Ellis a total of more than $700,000.

Mahan denied any wrongdoing in not disclosing his relationships with the men and said he appointed receivers based on their ability.

Mahan was one of several current and former Nevada judges featured in The Times' report, which has prompted the state to reexamine how its judges are selected.

After the series, U.S. District Judge Terry J. Hatter Jr. of Los Angeles urged an investigation by the 9th Circuit., which oversees nine Western states including Nevada and California. Hatter could not be reached for comment.

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FEDERAL COURTS

Judges impose secrecy on ethics-rules revision

Secrecy on the rewriting of federal misconduct rules is only deepening suspicions among critics who say judges have failed to police themselves adequately.

By MARISA TAYLOR
mtaylor@mcclatchydc.com

WASHINGTON --
Judiciary Committee, calling a mistake the decision to keep rule-change comments secret

As the federal judiciary embarks on a historic revision of its rules against judicial misconduct, the panel of judges that is overseeing the drafting of new regulations refuses to disclose the public comments that could help shape the overhaul.

After requesting public comments about the proposed rules, the Committee on Judicial Conduct and Disability refuses to say how many responses it received, who commented or what was said.

"I have never heard of public comments being made confidentially," said Abner Mikva, a retired chief judge of the U.S. Court of Appeals for the District of Columbia Circuit. ``I'm trying to think of an explanation, but this strikes me as very strange."

What's known is that several chief circuit judges across the country are among those who weighed in, sparking speculation that the judiciary is debating the merits of the proposed rules, which would impose unprecedented oversight over how federal courts handle complaints.

BEHIND CLOSED DOORS

Legal experts said they weren't surprised by the reticence to release the information. By tradition and necessity, the federal judiciary often weighs some of its most important decisions behind closed doors and without public input.

Such secrecy, however, threatens to overshadow what's supposed to be the most sweeping tightening of federal judicial-misconduct policies in a quarter of a century.

Some watchdog groups questioned whether the panel's decision to withhold the comments was intended to prevent the disclosure of details of misconduct or to hide unhappiness among judges about having to comply with new rules.

The proposed rules provide strict oversight from Washington and require judges to leave much more detailed paper trails explaining their decisions about whether to investigate misconduct, experts said.

HABIT OF SECRECY

The judiciary previously has been criticized for imposing secrecy in matters that would more appropriately be discussed openly.

Earlier this year, court officials initially refused to disclose details about the sponsors of expenses-paid trips for judges, as new ethics rules require.

"It shows how difficult it is to wean the judiciary off its habits of confidentiality and keeping things to themselves," said Arthur Hellman, a professor who specializes in federal judicial ethics at the University of Pittsburgh School of Law. 'It's so deeply engrained that their first reaction is always, `No, no, that's not for public circulation.' "

The decision to keep the written responses under wraps comes as the judiciary is under growing pressure from Congress to provide a better public explanation of how it handles misconduct complaints.

Legislators, advocacy groups and legal experts said that withholding the written responses would only add to suspicions about the often-secretive misconduct proceedings.

Rep. James Sensenbrenner of Wisconsin, a Republican member of the House Judiciary Committee, called the decision a mistake.

"By releasing them, the judicial branch would have credibility that it is responding to the failure of its own procedures," he said.

The changes come in response to criticism that federal judges have failed to police themselves adequately. Last year, a panel overseen by Supreme Court Justice Stephen Breyer concluded that judges who handled five of 17 high-profile complaints had failed to investigate them properly, although it didn't find the problem to be systemic.

COMPLAINTS REJECTED

In the last five years, the judiciary closed 3,532 complaints but took action against judges in only four cases. In defending the high dismissal rate, judges point out that a large number of misconduct complaints are filed by people who misunderstand or abuse the process. Often, litigants who have lost their cases file misconduct complaints when they should be appealing the decisions to higher courts. Accusations of conflict of interest also are generally handled separately in recusal requests.

But critics said they thought that the judiciary might be failing to punish some judges either because the threshold for misconduct was too low or because matters weren't being investigated thoroughly.

ref:123

Sensenbrenner and Republican Sen. Charles Grassley of Iowa have proposed legislation to create an inspector general's office that would independently investigate allegations of judicial misconduct. The judiciary opposes the idea, which Grassley said demonstrated that some judges ``see themselves like gods who are above criticism.''

INCOMPLETE DETAILS

Pittsburgh's Hellman praised the new rules but told the committee that they don't go far enough in requiring details about complaints.

In several cases, circuit courts have provided few details or written vague opinions about judges who are punished for misconduct. In September, the 5th U.S. Circuit Court of Appeals reprimanded U.S. District Judge Samuel B. Kent in Galveston, Texas, but didn't specify his punishment or detail what he did wrong. Publicly, at least one female court employee has accused him of sexual harassment.

Report of the National Commission on Judicial Discipline and Removal

Robert W. Kastenmeier (Chair)

1993, 210 pages

(Out of Print: Archival Copy on File)

In 1990, Congress created the National Commission on Judicial Discipline and Removal, who's charge included investigation of problems related to the discipline and removal of life-tenured federal judges, and evaluation of alternatives to current arrangements for judicial discipline and removal, including statutory and constitutional amendments. The Commission was instructed to submit its findings and recommendations to the President, Congress, and the Chief Justice of the United States. The Commission held six public hearings during 1992 and 1993, and submitted its final report on August 2, 1993.

The Federal Judicial Center serves as repository for the Commission's published materials. Although paper copies of the Commission's final report are no longer available, the report is reprinted at 152 Federal Rules Decisions 265 (1994).

Minimize table of contents

To find a specific word below, use the Find or Find (on This Page) command in your browser. (This is usually under the Edit menu.)

Table of Contents

---------- End ----------

More on the Subject(s):
Constitutional Law
Judicial Conduct and Disability
Judicial Ethics

Library

- Return to Statisical Reports

Judicial Business of the United States Courts

- **2006 Annual Report of the Director**
  James C. Duff
- **2005 Annual Report of the Director**
  Leonidas Ralph Mecham
- **2004 Annual Report of the Director**
  Leonidas Ralph Mecham
- **2003 Annual Report of the Director**
  Leonidas Ralph Mecham
- **2002 Annual Report of the Director**
  Leonidas Ralph Mecham
- **2001 Annual Report of the Director**
  Leonidas Ralph Mecham
- **2000 Annual Report of the Director**
  Leonidas Ralph Mecham
- **1999 Annual Report of the Director**
  Leonidas Ralph Mecham
- **1998 Annual Report of the Director**
  Leonidas Ralph Mecham
- **1997 Annual Report of the Director**
  Leonidas Ralph Mecham

ref:129

Table S-24.
Report of Complaints Filed and Action Taken Under Authority of Title 28 U.S.C. Section 372(c) for the Twelve-Month Period Ended September 30, 1997

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Complaints Pending on September 30, 1996*	109	0	1	21	5	11	7	10	1	3	11	31	8	0	0	0
Complaints Filed	679	3	15	16	40	62	69	84	68	28	56	137	54	47	0	0
Complaint Type																
Written by Complaint	678	3	15	16	40	62	69	84	68	27	56	137	54	47	0	0
On Order of Chief Judges	1	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0
Officials Complained About**																
Judges																
Circuit	461	3	4	10	3	24	29	14	11	5	102	249	7	0	0	0
District	497	0	14	17	27	28	48	43	59	25	45	121	38	32	0	0
National Courts	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Bankruptcy Judges	31	0	0	2	2	2	6	3	2	2	2	6	1	3	0	0
Magistrate Judges	138	0	0	1	8	7	15	27	10	0	9	24	25	12	0	0
Nature of Allegations**																
Mental Disability	11	0	0	0	1	1	2	0	2	0	3	2	0	0	0	0
Physical Disability	4	0	0	1	0	1	1	0	1	0	0	0	0	0	0	0
Demeanor	11	0	0	0	2	0	0	0	0	0	1	4	0	4	0	0
Abuse of Judicial Power	179	3	0	6	25	1	40	20	8	13	17	19	22	5	0	0
Prejudice/Bias	193	1	9	8	32	8	27	12	17	4	14	30	20	11	0	0
Conflict of Interest	12	0	0	0	0	0	2	1	2	0	3	3	0	1	0	0
Bribery/Corruption	28	0	0	1	0	2	1	0	4	2	4	13	0	1	0	0
Undue Decisional Delay	44	0	0	1	0	6	1	10	4	2	3	11	5	1	0	0
Incompetence/Neglect	30	0	0	3	4	1	0	0	5	0	0	16	1	0	0	0
Other	161	1	3	2	0	30	1	38	24	10	7	19	22	4	0	0
Complaints Concluded	482	3	9	13	33	31	69	80	49	24	41	60	53	17	0	0
Action By Chief Judges																
Complaint Dismissed																
Not in Conformity With Statute	29	2	4	0	3	1	4	2	1	3	6	2	0	1	0	0
Directly Related to Decision or Procedural Ruling	215	0	0	6	12	21	34	26	21	11	14	31	24	15	0	0
Frivolous	19	1	0	0	0	0	3	0	1	6	1	5	2	0	0	0

Table S-24. (Continued)

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Appropriate Action Already Taken	2	0	0	0	0	0	0	1	0	1	0	0	0	0	0	0
Action No Longer Necessary Because of Intervening Events	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Complaint Withdrawn	5	0	0	0	0	0	4	0	0	0	0	0	0	1	0	0
Subtotal	270	3	4	6	15	22	45	29	23	21	21	38	26	17	0	0
Action by Judicial Councils																
Directed Chief District Judge to Take Action (Magistrate Judges only)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Certified Disability	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Requested Voluntary Retirement	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Temporary Suspension of Case Assignments	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Privately Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Publicly Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Other Appropriate Action	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Dismissed the Complaint	212	0	5	7	18	9	24	51	26	3	20	22	27	0	0	0
Referred Complaint to Judicial Conference	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal	212	0	5	7	18	9	24	51	26	3	20	22	27	0	0	0
Complaints Pending on September 30, 1997	306	0	7	24	12	42	7	14	20	7	26	108	9	30	0	0

[1] CC = U.S. CLAIMS COURT.
[2] CIT = COURT OF INTERNATIONAL TRADE.
* REVISED.
** EACH COMPLAINT MAY INVOLVE MULTIPLE ALLEGATIONS AGAINST NUMEROUS JUDICIAL OFFICERS. NATURE OF ALLEGATIONS IS COUNTED WHEN A COMPLAINT IS CONCLUDED.

Table S-24.
Report of Complaints Filed and Action Taken Under Authority of Title 28 U.S.C. Section 372(c) for the Twelve-Month Period Ended September 30, 1998

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Complaints Pending on September 30, 1997*	214	0	6	3	10	31	0	6	18	4	18	82	1	35	0	0
Complaints Filed	1,051	1	27	10	73	120	73	46	86	37	78	265	37	197	1	0
Complaint Type																
Written by Complainant	1,049	1	27	10	73	120	73	46	86	36	78	264	37	197	1	0
On Order of Chief Judges	2	0	0	0	0	0	0	0	0	1	0	1	0	0	0	0
Officials Complained About**																
Judges																
Circuit	443	1	16	2	14	22	23	13	8	17	134	20	11	162	0	0
District	758	0	47	9	56	83	50	27	82	26	83	250	29	16	0	0
National Courts	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0
Bankruptcy Judges	28	0	2	0	1	2	5	1	3	2	3	6	1	2	0	0
Magistrate Judges	215	0	3	2	8	13	15	12	16	5	7	110	8	16	0	0
Nature of Allegations**																
Mental Disability	92	0	0	3	9	4	7	2	18	0	36	13	0	0	0	0
Physical Disability	7	0	0	2	1	2	0	0	1	0	0	0	0	1	0	0
Demeanor	19	0	0	0	2	3	0	1	3	0	0	8	0	2	0	0
Abuse of Judicial Power	511	1	2	2	30	8	48	16	8	21	27	168	9	171	0	0
Prejudice/Bias	647	0	21	9	36	32	22	22	44	19	46	198	20	178	0	0
Conflict of Interest	141	0	0	1	0	7	3	3	0	0	3	117	2	5	0	0
Bribery/Corruption	166	0	0	0	0	0	3	0	0	1	2	155	2	3	0	0
Undue Decisional Delay	50	0	3	1	4	4	2	0	1	5	7	14	8	1	0	0
Incompetence/Neglect	99	0	0	0	1	4	4	0	3	1	1	81	1	3	0	0
Other	193	0	17	1	11	94	3	13	20	4	11	3	10	6	0	0
Complaints Concluded	1,002	1	33	13	56	95	73	49	70	40	78	257	35	202	0	0
Actions by Chief Judges																
Complaint Dismissed																
Not in Conformity With Statute	43	0	6	0	4	2	5	0	2	3	6	5	3	7	0	0
Directly Related to Decision or Procedural Ruling	532	1	0	5	19	54	42	15	43	16	52	88	18	179	0	0
Frivolous	159	0	1	1	1	1	0	1	5	13	2	133	1	0	0	0

Table S-24. (September 30, 1998—Continued)

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Appropriate Action Already Taken	2	0	0	0	0	0	0	0	0	1	1	0	0	0	0	0
Action No Longer Necessary Because of Intervening Events	1	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0
Complaint Withdrawn	5	0	1	0	0	0	1	0	1	1	1	0	0	0	0	0
Subtotal	742	1	8	6	24	57	48	16	51	34	62	227	22	186	0	0
Action by Judicial Councils																
Directed Chief District Judge to Take Action (Magistrate Judges only)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Certified Disability	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Requested Voluntary Retirement	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Temporary Suspension of Case Assignments	1	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0
Privately Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Publicly Censured	1	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0
Ordered Other Appropriate Action	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Dismissed the Complaint	258	0	25	7	32	38	25	32	19	6	16	29	13	16	0	0
Referred Complaint to Judicial Conference	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal	260	0	25	7	32	38	25	33	19	6	16	30	13	16	0	0
Complaints Pending on September 30, 1998	263	0	0	0	27	56	0	3	34	1	18	90	3	30	1	0

NOTE: EXCLUDES COMPLAINTS NOT ACCEPTED BY THE CIRCUITS BECAUSE THEY DUPLICATED PREVIOUS FILINGS OR WERE OTHERWISE INVALID FILINGS.
[1] CC = U.S. CLAIMS COURT.
[2] CIT = COURT OF INTERNATIONAL TRADE.
* REVISED.
** EACH COMPLAINT MAY INVOLVE MULTIPLE ALLEGATIONS AGAINST NUMEROUS JUDICIAL OFFICERS. NATURE OF ALLEGATIONS IS COUNTED WHEN A COMPLAINT IS CONCLUDED.

Table S-23.
Report of Complaints Filed and Action Taken Under Authority of Title 28 U.S.C. Section 372(c) for the 12-Month Period Ending September 30, 1999

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Complaints Pending on September 30, 1998*	228	0	3	1	23	48	0	3	28	0	19	75	3	25	0	0
Complaints Filed	781	2	16	17	99	34	55	196	72	31	36	115	58	50	0	0
Complaint Type																
Written by Complaint	781	2	16	17	99	34	55	196	72	31	36	115	58	50	0	0
On Order of Chief Judges	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Officials Complained About**																
Judges																
Circuit	174	4	16	0	23	3	7	31	16	7	25	31	11	0	0	0
District	598	0	48	17	63	24	55	98	58	27	24	99	47	38	0	0
National Courts	1	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0
Bankruptcy Judges	30	0	0	1	2	2	0	3	2	1	2	16	0	1	0	0
Magistrate Judges	229	0	1	4	11	5	6	64	14	4	10	69	30	11	0	0
Nature of Allegations**																
Mental Disability	69	0	0	0	26	4	3	11	3	0	2	5	0	15	0	0
Physical Disability	6	0	0	0	2	0	0	0	1	1	0	2	0	0	0	0
Demeanor	34	0	0	0	2	1	4	0	5	3	1	14	1	3	0	0
Abuse of Judicial Power	254	0	1	2	7	45	17	4	9	10	16	91	27	25	0	0
Prejudice/Bias	360	2	15	8	34	20	16	28	41	15	23	85	32	41	0	0
Conflict of Interest	29	0	0	0	5	1	6	4	0	0	2	6	2	3	0	0
Bribery/Corruption	104	0	0	4	10	26	4	4	3	1	2	44	0	6	0	0
Undue Decisional Delay	80	0	5	0	0	6	6	2	5	2	2	30	18	4	0	0
Incompetence/Neglect	108	1	0	0	3	5	3	0	6	0	2	71	2	15	0	0
Other	288	0	2	0	3	62	0	143	25	7	4	26	8	8	0	0
Complaints Concluded	826	2	18	12	57	63	53	184	82	31	45	163	50	66	0	0
Action by Chief Judges																
Complaint Dismissed																
Not in Conformity With Statute	27	0	4	0	0	0	6	0	8	1	4	4	0	0	0	0
Directly Related to Decision or Procedural Ruling	300	2	0	5	19	12	21	31	24	14	11	84	28	49	0	0
Frivolous	66	0	5	2	19	0	6	6	1	3	3	16	4	1	0	0

Table S-23. (September 30, 1999—Continued)

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Appropriate Action Already Taken	1	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0
Action No Longer Necessary Because of Intervening Events	10	0	0	0	3	0	0	0	1	0	0	3	2	1	0	0
Complainant Withdrawn	2	0	0	0	0	0	1	0	0	0	0	0	1	0	0	0
Subtotal	406	2	9	7	41	12	34	37	34	19	18	107	35	51	0	0
Action by Judicial Councils																
Directed Chief District Judge to Take Action (Magistrate Judges Only)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Certified Disability	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Requested Voluntary Retirement	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Temporary Suspension of Case Assignments	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Privately Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Publicly Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Other Appropriate Action	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Dismissed the Complaint	416	0	9	5	16	51	19	147	46	12	27	54	15	15	0	0
Withdrawn	4	0	0	0	0	0	0	0	2	0	0	2	0	0	0	0
Referred Complaint to Judicial Conference	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal	420	0	9	5	16	51	19	147	48	12	27	56	15	15	0	0
Complaints Pending on September 30, 1999	183	0	1	6	65	19	2	15	18	0	10	27	11	9	0	0

NOTE: EXCLUDES COMPLAINTS NOT ACCEPTED BY THE CIRCUITS BECAUSE THEY DUPLICATED PREVIOUS FILINGS OR WERE OTHERWISE INVALID FILINGS.
[1] CC = U.S. CLAIMS COURT.
[2] CIT = COURT OF INTERNATIONAL TRADE.
* REVISED.
** EACH COMPLAINT MAY INVOLVE MULTIPLE ALLEGATIONS AGAINST NUMEROUS JUDICIAL OFFICERS. NATURE OF ALLEGATIONS IS COUNTED WHEN A COMPLAINT IS CONCLUDED.

Table S-22.
Report of Complaints Filed and Action Taken Under Authority of Title 28 U.S.C. Section 372(c) for the 12-Month Period Ending September 30, 2000

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Complaints Pending on September 30, 1999*	181	0	1	5	65	19	2	18	15	0	7	27	11	11	0	0
Complaints Filed	696	2	18	21	59	53	61	113	56	44	51	111	32	73	2	0
Complaint Type																
Written by Complainant	695	2	18	21	59	53	61	113	56	44	51	111	31	73	2	0
On Order of Chief Judges	1	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0
Officials Complained About**																
Judges																
Circuit	191	4	4	4	9	10	14	23	4	11	45	35	15	13	0	0
District	522	0	17	20	41	36	62	60	50	29	52	92	26	37	0	0
National Courts	1	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0
Bankruptcy Judges	26	0	0	1	2	6	1	2	2	2	2	5	2	1	0	0
Magistrate Judges	135	0	0	3	7	2	10	28	13	6	6	32	6	22	0	0
Nature of Allegations**																
Mental Disability	26	0	0	0	2	6	6	5	0	1	3	2	0	1	0	0
Physical Disability	12	0	0	1	1	3	4	0	0	0	0	3	0	0	0	0
Demeanor	13	0	0	0	3	2	0	0	0	0	1	6	0	1	0	0
Abuse of Judicial Power	272	0	0	10	29	25	29	43	9	23	20	38	16	30	0	0
Prejudice/Bias	257	1	13	8	28	17	15	24	28	13	17	39	25	29	0	0
Conflict of Interest	48	1	0	0	11	9	1	5	1	0	3	8	1	8	0	0
Bribery/Corruption	83	0	0	2	21	12	8	4	0	2	6	22	2	4	0	0
Undue Decisional Delay	75	0	2	1	11	6	6	7	5	3	3	16	4	11	0	0
Incompetence/Neglect	61	0	0	0	1	7	8	3	1	3	5	31	0	2	0	0
Other	188	0	7	1	5	66	0	50	4	7	13	20	9	6	0	0
Complaints Concluded	715	2	15	17	80	67	60	123	48	44	51	104	39	65	0	0
Action by Chief Judges																
Complaint Dismissed																
Not in Conformity With Statute	29	0	0	2	0	0	4	0	9	1	0	12	1	0	0	0
Directly Related to Decision or Procedural Ruling	264	2	4	3	29	31	26	23	21	11	23	38	15	38	0	0
Frivolous	50	0	4	1	0	0	2	8	2	12	8	9	2	2	0	0

Table S-22. (September 30, 2000—Continued)

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Appropriate Action Already Taken	6	0	0	1	0	0	0	3	0	0	0	0	2	0	0	0
Action No Longer Necessary Because of Intervening Events	7	0	0	0	1	0	1	2	0	0	0	1	0	2	0	0
Complaint Withdrawn	3	0	0	1	0	0	1	1	0	0	0	0	0	0	0	0
Subtotal	359	2	8	8	30	31	34	37	32	24	31	60	20	42	0	0
Action by Judicial Councils																
Directed Chief District Judge to Take Action (Magistrate Judge Only)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Certified Disability	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Requested Voluntary Retirement	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Temporary Suspension of Case Assignments	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Privately Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Publicly Censured	2	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0
Ordered Other Appropriate Action	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Dismissed the Complaint	354	0	7	9	50	36	26	86	16	20	20	42	19	23	0	0
Withdrawn	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Referred Complaint to Judicial Conference	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal	356	0	7	9	50	36	26	86	16	20	20	44	19	23	0	0
Complaints Pending on September 30, 2000	162	0	4	9	44	5	3	8	23	0	7	34	4	19	2	0

NOTE: EXCLUDES COMPLAINTS NOT ACCEPTED BY THE CIRCUITS BECAUSE THEY DUPLICATED PREVIOUS FILINGS OR WERE OTHERWISE INVALID FILINGS.
[1] CC = U.S. CLAIMS COURT.
[2] CIT = COURT OF INTERNATIONAL TRADE.
* REVISED.
** EACH COMPLAINT MAY INVOLVE MULTIPLE ALLEGATIONS AGAINST NUMEROUS JUDICIAL OFFICERS. NATURE OF ALLEGATIONS IS COUNTED WHEN A COMPLAINT IS CONCLUDED.

Table S-22.
Report of Complaints Filed and Action Taken Under Authority of 28 U.S.C. 372(c) During the 12-Month Period Ending September 30, 2001

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Complaints Pending on September 30, 2001*	150	0	4	9	33	5	3	9	23	1	6	32	4	18	3	0
Complaints Filed	766	0	31	22	102	50	63	100	97	43	52	102	32	70	1	1
Complaint Type																
Written by Complainant	766	0	31	22	102	50	63	100	97	43	52	102	32	70	1	1
On Order of Chief Judge	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Officials Complained About**																
Judges																
Circuit	273	0	15	16	31	13	25	23	12	16	33	53	16	20	0	0
District	563	0	16	26	52	23	45	50	86	37	69	104	25	30	0	0
National Court	3	0	0	0	0	0	0	0	0	0	0	0	1	0	1	1
Bankruptcy Judges	34	0	0	2	2	6	2	2	1	3	0	12	2	2	0	0
Magistrate Judges	143	0	3	1	17	8	12	25	17	3	10	20	9	18	0	0
Nature of Allegations**																
Mental Disability	29	0	0	0	5	4	1	3	3	1	2	5	0	5	0	0
Physical Disability	1	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0
Demeanor	31	0	0	1	14	2	1	0	1	4	2	5	0	1	0	0
Abuse of Judicial Power	200	0	3	3	28	3	35	28	1	13	21	33	15	16	1	0
Prejudice/Bias	266	0	18	11	24	9	17	31	36	13	11	43	14	38	1	0
Conflict of Interest	38	0	0	0	10	4	3	8	1	1	0	5	4	2	0	0
Bribery/Corruption	61	0	0	0	2	5	4	6	1	1	1	33	3	5	0	0
Undue Decisional Delay	60	0	0	0	6	6	3	11	2	6	4	15	0	7	0	0
Incompetence/Neglect	50	0	0	2	5	8	3	3	7	0	1	20	0	1	0	0
Other	186	0	8	1	0	50	4	47	16	3	8	32	7	10	0	0
Complaints Concluded	668	0	18	16	75	53	61	108	68	39	41	100	30	58	1	0
Action by Chief Judges																
Complaint Dismissed																
Not in Conformity With Statute	13	0	1	0	4	0	0	0	1	2	1	4	0	0	0	0
Directly Related to Decision or Procedural Ruling	235	0	2	3	17	26	25	42	20	14	18	27	14	27	0	0
Frivolous	103	0	0	2	13	0	6	13	14	12	7	31	2	3	0	0

Table S-22. (September 30, 2001—Continued)

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Appropriate Action Already Taken	4	0	0	0	0	1	0	0	0	1	1	0	1	0	0	0
Action No Longer Necessary Because of Intervening Events	5	0	0	0	0	0	0	0	0	0	0	0	0	5	0	0
Complaint Withdrawn	3	0	0	1	0	1	0	0	0	0	1	0	0	0	0	0
Subtotal	363	0	3	6	34	28	31	55	35	29	28	62	17	35	0	0
Action by Judicial Councils																
Directed Chief District Judge to Take Action (Magistrate Judge Only)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Certified Disability	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Requested Voluntary Retirement	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Temporary Suspension of Case Assignments	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Privately Censured	1	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0
Publicly Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Other Appropriate Action	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Dismissed the Complaint	303	0	15	10	40	25	30	53	33	10	13	38	12	23	1	0
Withdrawn	1	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0
Referred Complaint to Judicial Conference	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal	305	0	15	10	41	25	30	53	33	10	13	38	13	23	1	0
Complaints Pending on September 30, 2001	248	0	17	15	60	2	5	1	52	5	17	34	6	30	3	1

NOTE: EXCLUDES COMPLAINTS NOT ACCEPTED BY THE CIRCUITS BECAUSE THEY DUPLICATED PREVIOUS FILINGS OR WERE OTHERWISE INVALID FILINGS.
[1] CC = U.S. CLAIMS COURT.
[2] CIT = COURT OF INTERNATIONAL TRADE.
* REVISED.
** EACH COMPLAINT MAY INVOLVE MULTIPLE ALLEGATIONS AGAINST NUMEROUS JUDICIAL OFFICERS. NATURE OF ALLEGATIONS IS COUNTED WHEN A COMPLAINT IS CONCLUDED.

Table S-22.
Report of Complaints Filed and Action Taken Under Authority of 28 U.S.C. 372(c) During the 12-Month Period Ending September 30, 2002

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Complaints Pending on September 30, 2001*	262	0	17	15	60	3	5	19	44	5	17	36	6	31	3	1
Complaints Filed	657	0	20	14	62	51	59	81	77	28	54	105	47	54	5	0
Complaint Type																
Written by Complainant	656	0	20	13	62	51	59	81	77	28	54	105	47	54	5	0
On Order of Chief Judge	1	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0
Officials Complained About**																
Judges																
Circuit	353	0	47	6	10	4	17	26	52	11	52	114	11	3	0	0
District	548	0	13	20	41	35	68	32	72	29	43	127	36	32	0	0
National Courts	5	0	0	0	0	0	0	0	0	0	0	0	0	0	5	0
Bankruptcy Judges	57	0	1	1	1	6	4	2	2	0	3	27	2	8	0	0
Magistrate Judges	152	0	1	2	10	6	8	21	11	2	21	48	11	11	0	0
Nature of Allegations**																
Mental Disability	33	0	0	0	4	1	3	2	6	1	3	11	2	0	0	0
Physical Disability	6	0	0	0	0	1	2	0	0	0	0	3	0	0	0	0
Demeanor	17	0	0	1	3	0	3	0	0	0	0	7	0	3	0	0
Abuse of Judicial Power	327	0	1	7	57	6	29	49	14	13	19	71	17	41	3	0
Prejudice/Bias	314	0	34	16	40	13	20	35	51	11	20	36	19	16	3	0
Conflict of Interest	46	0	1	0	18	9	2	3	2	0	4	3	1	3	0	0
Bribery/Corruption	63	0	0	0	15	0	4	6	8	0	5	20	1	4	0	0
Undue Decisional Delay	75	0	1	0	15	3	3	5	3	7	10	15	7	6	0	0
Incompetence/Neglect	45	0	0	2	2	1	7	1	9	0	6	16	1	0	0	0
Other	129	0	4	2	0	46	3	16	8	2	4	32	9	3	0	0
Complaints Concluded	780	0	35	25	93	48	61	98	98	30	57	124	47	61	3	0
Action By Chief Judges																
Complaint Dismissed																
Not in Conformity with Statute	27	0	1	0	1	0	3	1	7	0	1	9	1	3	0	0
Directly Related to Decision or Procedural Ruling	249	0	6	5	23	17	24	36	31	14	11	36	22	22	2	0
Frivolous	110	0	9	2	9	2	13	7	5	7	10	36	7	3	0	0

Table S-22. (September 30, 2002—Continued)

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Appropriate Action Already Taken	3	0	0	1	0	0	0	0	1	0	1	0	0	0	0	0
Action No Longer Necessary Because of Intervening Events	6	0	0	0	2	0	1	0	0	1	0	0	0	2	0	0
Complaint Withdrawn	8	0	0	2	2	1	0	0	1	0	0	1	0	0	1	0
Subtotal	403	0	16	10	37	20	41	44	45	22	23	82	30	30	3	0
Action by Judicial Councils																
Directed Chief District Judge to Take Action (Magistrate Judges Only)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Certified Disability	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Requested Voluntary Retirement	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Temporary Suspension of Case Assignments	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Privately Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Publicly Censured	2	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0
Ordered Other Appropriate Action	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Dismissed the Complaint	375	0	19	15	56	28	20	54	51	8	34	42	17	31	0	0
Withdrawn	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Referred Complaint to Judicial Conference	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal	377	0	19	15	56	28	20	54	53	8	34	42	17	31	0	0
Complaints Pending on September 30, 2002	139	0	2	4	29	6	3	2	23	3	14	17	6	24	5	1

NOTE: EXCLUDES COMPLAINTS NOT ACCEPTED BY THE CIRCUITS BECAUSE THEY DUPLICATED PREVIOUS FILINGS OR WERE OTHERWISE INVALID FILINGS.
[1] CC = U.S. CLAIMS COURT.
[2] CIT = COURT OF INTERNATIONAL TRADE.
* REVISED.
** EACH COMPLAINT MAY INVOLVE MULTIPLE ALLEGATIONS AGAINST NUMEROUS JUDICIAL OFFICERS. NATURE OF ALLEGATIONS IS COUNTED WHEN A COMPLAINT IS CONCLUDED.

Table S-22.
Report of Complaints Filed and Action Taken Under Authority of 28 U.S.C. 351-364 During the 12-Month Period Ending September 30, 2003

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Complaints Pending on September 30, 2002*	141	0	3	4	29	6	3	7	22	4	15	16	6	20	5	1
Complaints Filed	835	2	11	36	69	41	67	107	73	28	97	146	47	110	0	1
Complaint Type																
Written by Complainant	835	2	11	36	69	41	67	107	73	28	97	146	47	110	0	1
On Order of Chief Judges	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Officials Complained About**																
Judges																
Circuit	204	6	4	19	8	4	16	27	15	2	26	43	12	22	0	0
District	719	0	14	24	49	28	54	54	53	34	157	156	39	57	0	0
National Courts	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Bankruptcy Judges	38	0	0	2	1	3	1	2	5	2	1	16	3	2	0	0
Magistrate Judges	257	0	0	5	11	6	21	24	21	3	91	40	7	28	0	0
Nature of Allegations**																
Mental Disability	26	0	0	1	6	4	5	1	0	1	2	5	0	1	0	0
Physical Disability	7	0	0	0	1	0	0	2	0	0	2	1	0	1	0	0
Demeanor	21	0	0	1	4	3	1	4	0	1	1	3	1	1	1	0
Abuse of Judicial Power	239	1	0	7	20	3	29	22	2	6	30	59	14	45	0	1
Prejudice/Bias	263	2	12	9	20	14	21	26	29	11	36	37	14	29	2	1
Conflict of Interest	33	0	0	1	3	5	3	2	2	1	2	7	3	4	0	0
Bribery/Corruption	87	0	0	1	4	6	10	6	15	0	20	22	0	3	0	0
Undue Decisional Delay	81	0	0	3	9	6	6	4	3	5	25	16	2	1	0	1
Incompetence/Neglect	47	0	0	3	3	2	8	2	3	0	15	6	1	4	0	0
Other	131	0	0	0	4	37	4	45	0	9	2	13	14	0	3	0
Complaints Concluded	682	2	12	18	42	40	69	94	53	31	87	117	42	69	4	2
Action by Chief Judges																
Complaint Dismissed																
Not in Conformity With Statute	39	0	1	0	1	0	3	0	17	2	9	6	0	0	0	0
Directly Related to Decision or Procedural Ruling	230	2	3	2	14	13	30	24	10	15	15	46	9	46	1	0
Frivolous	77	0	0	0	7	1	3	6	0	7	25	21	1	6	0	0

Table S-22. (September 30, 2003—Continued)

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Appropriate Action Already Taken	3	0	0	0	0	1	0	0	0	0	1	1	0	0	0	0
Action No Longer Necessary Because of Intervening Events	8	0	0	1	0	0	0	1	0	0	5	1	0	0	0	0
Complaint Withdrawn	8	0	0	0	0	0	1	0	0	0	4	2	0	1	0	0
Subtotal	365	2	4	3	22	15	37	31	27	24	59	77	10	53	1	0
Action by Judicial Councils																
Directed Chief District Judge to Take Action (Magistrate Judges Only)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Certified Disability	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Requested Voluntary Retirement	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Temporary Suspension of Case Assignments	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Privately Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Publicly Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Other Appropriate Action	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Dismissed the Complaint	316	0	8	15	20	25	32	63	26	7	28	40	32	16	3	1
Withdrawn	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Referred Complaint to Judicial Conference	0	0														
Subtotal	317	0	8	15	20	25	32	63	26	7	28	40	32	16	3	2
Complaints Pending on September 30, 2003	294	0	2	22	56	7	1	20	42	1	25	45	11	61	1	0

NOTE: EXCLUDES COMPLAINTS NOT ACCEPTED BY THE CIRCUITS BECAUSE THEY DUPLICATED PREVIOUS FILINGS OR WERE OTHERWISE INVALID FILINGS.
[1] CC = U.S. COURT OF FEDERAL CLAIMS.
[2] CIT = U.S. COURT OF INTERNATIONAL TRADE.
* REVISED.
** EACH COMPLAINT MAY INVOLVE MULTIPLE ALLEGATIONS AGAINST NUMEROUS JUDGES. NATURE OF ALLEGATIONS IS COUNTED WHEN A COMPLAINT IS CONCLUDED.

Table S-22.
Report of Complaints Filed and Action Taken Under Authority of 28 U.S.C. 351-364 During the 12-Month Period Ending September 30, 2004

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Complaints Pending on September 30, 2003*	249	0	2	19	34	3	10	19	22	1	29	38	11	61	0	0
Complaints Filed	712	2	31	30	23	40	63	95	72	34	77	146	41	58	0	0
Complaint Type																
Written by Complainant	712	2	31	30	23	40	63	95	72	34	77	146	41	58	0	0
On Order of Chief Judges	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Officials Complained About**																
Judges																
Circuit	240	6	20	16	4	6	23	16	24	8	14	84	13	6	0	0
District	539	0	39	21	15	22	52	51	69	27	55	128	23	37	0	0
National Courts	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Bankruptcy Judges	28	0	0	8	1	2	1	2	4	1	0	6	2	1	0	0
Magistrate Judges	149	0	1	5	3	10	18	26	7	3	25	26	11	14	0	0
Nature of Allegations**																
Mental Disability	34	0	0	4	3	5	4	4	2	0	1	10	0	1	0	0
Physical Disability	6	0	0	0	2	1	0	0	0	0	0	3	0	0	0	0
Demeanor	34	0	1	1	6	0	4	3	0	1	7	9	1	1	0	0
Abuse of Judicial Power	251	1	3	11	6	0	42	2	4	2	71	59	22	28	0	0
Prejudice/Bias	334	2	19	27	35	14	22	35	42	7	38	52	20	21	0	0
Conflict of Interest	67	0	5	8	4	6	3	3	2	0	5	22	7	2	0	0
Bribery/Corruption	93	0	0	9	5	10	5	3	1	0	25	33	0	2	0	0
Undue Decisional Delay	70	0	2	7	5	7	4	10	2	5	8	13	4	3	0	0
Incompetence/Neglect	106	0	0	9	3	8	2	3	0	0	18	16	0	47	0	0
Other	224	0	1	1	33	30	10	89	3	24	0	24	9	0	0	0
Complaints Concluded	784	2	28	40	51	34	73	99	56	35	94	135	42	95	0	0
Action By Chief Judges																
Complaint Dismissed																
Not in Conformity With Statute	27	0	4	0	6	0	5	0	4	1	5	0	0	2	0	0
Directly Related to Decision or Procedural Ruling	295	2	9	7	18	13	31	38	16	21	37	65	8	30	0	0
Frivolous	112	0	8	4	3	0	1	11	3	5	18	5	4	50	0	0

Table S-22. (September 30, 2004—Continued)

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Appropriate Action Already Taken	3	0	0	0	1	0	0	0	0	0	1	1	0	0	0	0
Action No Longer Necessary Because of Intervening Events	9	0	0	0	0	0	0	2	0	0	2	0	0	5	0	0
Complaint Withdrawn	3	0	0	0	1	0	0	0	0	0	0	1	1	0	0	0
Subtotal	449	2	21	11	29	13	37	51	23	27	63	72	13	87	0	0
Action by Judicial Councils																
Directed Chief District Judge to Take Action (Magistrate Judges Only)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Certified Disability	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Requested Voluntary Retirement	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Temporary Suspension of Case Assignments	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Privately Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Publicly Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Other Appropriate Action	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Dismissed the Complaint	335	0	7	29	22	21	36	48	33	8	31	63	29	8	0	0
Withdrawn	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Referred Complaint to Judicial Conference	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal	335	0	7	29	22	21	36	48	33	8	31	63	29	8	0	0
Complaints Pending on September 30, 2004	177	0	5	9	6	9	0	15	38	0	12	49	10	24	0	0

NOTE: EXCLUDES COMPLAINTS NOT ACCEPTED BY THE CIRCUITS BECAUSE THEY DUPLICATED PREVIOUS FILINGS OR WERE OTHERWISE INVALID FILINGS.
[1] CC = U.S. COURT OF FEDERAL CLAIMS.
[2] CIT = U.S. COURT OF INTERNATIONAL TRADE.
* REVISED.
** EACH COMPLAINT MAY INVOLVE MULTIPLE ALLEGATIONS AGAINST NUMEROUS JUDGES. NATURE OF ALLEGATIONS IS COUNTED WHEN A COMPLAINT IS CONCLUDED.

Table S-22.
Report of Complaints Filed and Action Taken Under Authority of 28 U.S.C. 351-364 During the 12-Month Period Ending September 30, 2005

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Complaints Pending on September 30, 2004*	212	0	4	9	57	9	8	16	30	1	13	30	8	25	2	0
Complaints Filed	642	1	33	19	36	58	43	99	55	15	38	122	36	85	2	0
Complaint Type																
Written by Complainant	642	1	33	19	36	58	43	99	55	15	38	122	36	85	2	0
On Order of Chief Judges	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Officials Complained About**																
Judges																
Circuit	177	1	18	1	7	4	28	10	7	6	2	80	7	6	0	0
District	456	0	21	15	23	41	32	52	51	11	22	102	27	59	0	0
National Courts	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Bankruptcy Judges	31	0	0	4	0	5	1	2	3	1	2	9	2	2	0	0
Magistrate Judges	135	0	1	4	6	8	9	35	5	2	13	27	7	18	0	0
Nature of Allegations**																
Mental Disability	22	0	1	2	3	2	2	3	0	0	0	6	0	1	2	0
Physical Disability	9	0	0	2	0	0	0	0	0	0	0	4	0	2	1	0
Demeanor	20	0	0	3	0	2	0	2	0	1	2	8	1	1	0	0
Abuse of Judicial Power	206	1	7	13	3	5	26	6	3	4	28	57	0	52	1	0
Prejudice/Bias	275	1	12	19	43	21	9	16	40	5	15	57	15	20	2	0
Conflict of Interest	49	0	2	5	5	11	2	1	3	1	2	13	3	1	0	0
Bribery/Corruption	51	0	0	3	2	1	2	2	1	0	4	32	0	4	0	0
Undue Decisional Delay	65	0	0	6	8	8	2	9	2	0	4	14	7	5	0	0
Incompetence/Neglect	52	0	2	4	4	3	2	3	0	1	8	22	1	1	1	0
Other	260	0	2	1	80	40	11	80	0	7	1	19	18	0	1	0
Complaints Concluded	667	1	22	23	91	47	48	90	47	16	45	120	33	81	3	0
Action by Chief Judges																
Complaint Dismissed																
Not in Conformity With Statute	21	0	1	0	5	0	1	0	2	0	3	5	3	1	0	0
Directly Related to Decision or Procedural Ruling	319	1	8	8	46	18	20	30	12	6	29	57	16	65	3	0
Frivolous	41	0	1	3	1	0	4	6	3	8	5	10	0	0	0	0

Table S-22. (September 30, 2005—Continued)

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Appropriate Action Already Taken	5	0	0	0	0	1	0	1	0	0	0	2	0	1	0	0
Action No Longer Necessary Because of Intervening Events	8	0	1	0	0	1	1	0	0	0	1	0	0	4	0	0
Complaint Withdrawn	6	0	0	0	2	0	0	2	0	0	0	2	0	0	0	0
Subtotal	400	1	11	11	54	20	26	39	17	14	38	76	19	71	3	0
Action by Judicial Councils																
Directed Chief District Judge to Take Action (Magistrate Judges only)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Certified Disability	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Requested Voluntary Retirement	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Temporary Suspension of Case Assignments	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Privately Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Publicly Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Other Appropriate Action	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Dismissed the Complaint	267	0	11	12	37	27	22	51	30	2	7	44	14	10	0	0
Withdrawn	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Referred Complaint to Judicial Conference	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal	267	0	11	12	37	27	22	51	30	2	7	44	14	10	0	0
Complaints Pending on September 30, 2005	187	0	15	5	2	20	3	25	38	0	6	32	11	29	1	0

NOTE: EXCLUDES COMPLAINTS NOT ACCEPTED BY THE CIRCUITS BECAUSE THEY DUPLICATED PREVIOUS FILINGS OR WERE OTHERWISE INVALID FILINGS.
[1] CC = U.S. COURT OF FEDERAL CLAIMS.
[2] CIT = U.S. COURT OF INTERNATIONAL TRADE.
* REVISED.
** EACH COMPLAINT MAY INVOLVE MULTIPLE ALLEGATIONS AGAINST NUMEROUS JUDGES. NATURE OF ALLEGATIONS IS COUNTED WHEN A COMPLAINT IS CONCLUDED.

Table S-22.
Report of Complaints Filed and Action Taken Under Authority of 28 U.S.C. 351-364 During the 12-Month Period Ending September 30, 2006

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Complaints Pending on September 30, 2005*	210	0	3	5	31	20	12	21	42	3	6	29	2	35	1	0
Complaints Filed	643	1	16	31	14	43	47	76	72	35	44	133	49	79	3	0
Complaint Type																
Written by Complainant	555	1	16	0	0	0	47	76	72	35	44	133	49	79	3	0
On Order of Chief Judges	88	0	0	31	14	43	0	0	0	0	0	0	0	0	0	0
Officials Complained About**																
Judges																
Circuit	141	1	14	13	0	3	7	6	14	16	3	34	24	6	0	0
District	505	0	17	50	10	31	36	45	68	31	32	99	40	46	0	0
National Courts	3	0	0	0	0	0	0	0	0	0	0	0	0	0	3	0
Bankruptcy Judges	33	0	0	2	0	1	2	5	2	3	0	12	2	4	0	0
Magistrate Judges	159	0	0	26	4	6	18	20	14	1	8	31	8	23	0	0
Nature of Allegations**																
Mental Disability	30	0	3	4	1	3	1	4	0	1	0	11	2	0	0	0
Physical Disability	3	0	0	0	0	1	0	0	0	0	0	2	0	0	0	0
Demeanor	35	0	0	0	0	4	2	4	1	1	1	17	5	0	0	0
Abuse of Judicial Power	234	1	6	18	0	0	38	22	4	2	21	63	14	44	1	0
Prejudice/Bias	295	1	3	22	28	22	16	35	50	9	18	45	14	31	1	0
Conflict of Interest	43	0	1	6	1	15	2	2	0	0	4	9	2	0	1	0
Bribery/Corruption	40	0	0	8	2	4	2	0	3	0	3	16	0	2	0	0
Undue Decisional Delay	53	0	0	2	2	8	5	5	2	5	2	11	1	10	0	0
Incompetence/Neglect	37	0	1	5	0	3	1	2	0	0	7	15	0	3	0	0
Other	200	0	0	2	38	41	4	59	0	23	4	9	18	0	2	0
Complaints Concluded	619	1	13	26	45	46	59	74	58	38	35	102	37	81	4	0
Action By Chief Judges																
Complaint Dismissed																
Not in Conformity With Statute	25	0	2	1	8	0	2	0	3	2	2	3	2	0	0	0
Directly Related to Decision or Procedural Ruling	283	1	2	5	15	26	24	35	25	13	21	46	17	51	2	0
Frivolous	63	0	4	4	3	0	3	4	5	18	4	7	4	7	0	0

Table S-22. (September 30, 2006—Continued)

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Appropriate Action Already Taken	5	0	0	0	1	0	0	0	0	1	0	1	1	1	0	0
Action No Longer Necessary Because of Intervening Events	6	0	1	0	1	1	0	0	0	0	0	1	0	2	0	0
Complaint Withdrawn	9	0	0	0	0	0	1	2	1	0	1	1	0	3	0	0
Subtotal	391	1	9	10	28	27	30	41	34	34	28	59	24	64	2	0
Action by Judicial Councils																
Directed Chief District Judge to Take Action (Magistrate Judges only)	1	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0
Certified Disability	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Requested Voluntary Retirement	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Temporary Suspension of Case Assignments	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Privately Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Publicly Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Other Appropriate Action	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Dismissed the Complaint	227	0	4	16	17	19	29	33	24	4	7	43	13	16	2	0
Withdrawn	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Referred Complaint to Judicial Conference	0	0	0													
Subtotal	228	0	4	16	17	19	29	33	24	4	7	43	13	17	2	0
Complaints Pending on September 30, 2006	234	0	6	10	0	17	0	23	56	0	15	60	14	33	0	0
Special Investigating Committees Appointed	7	0	0	0	1	1	1	0	0	0	0	2	0	2	0	0

NOTE: EXCLUDES COMPLAINTS NOT ACCEPTED BY THE CIRCUITS BECAUSE THEY DUPLICATED PREVIOUS FILINGS OR WERE OTHERWISE INVALID FILINGS.
[1] CC = U.S. COURT OF FEDERAL CLAIMS.
[2] CIT = U.S. COURT OF INTERNATIONAL TRADE.
* REVISED.
** EACH COMPLAINT MAY INVOLVE MULTIPLE ALLEGATIONS AGAINST NUMEROUS JUDGES. NATURE OF ALLEGATIONS IS COUNTED WHEN A COMPLAINT IS CONCLUDED.

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(as of 19nov9)

Federal Judges' Systematic Dismissal Without Investigation of 99.82% of Complaints[1] Filed Against Them in the 13 Circuits and 2 National Courts[2] During the 1oct96-30sep08 12-Year Period

based on Table S-22 [previously S-23 & S-24] Report of Complaints Filed and Action Taken Under 28 U.S.C. §§351-364[3] of the Administrative Office of the U.S. Courts[4]; and comparing the categories and treatment applied to the complaints filed from **1oct96-30sep07** and **1oct07-10may08** with those from **11may-30sep08** (8,794+672=9,466) after the entry in effect of the amended Rules for Judicial Conduct and Disability Proceedings[5] adopted by the Judicial Conference on March 11, 2008

	Complaints Pending* [6]	on 30sep07	30sep97-07	n/11 average	Complaints Pending [Cf. row 75 Left.]	on 30sep08
1.		333	333	230		*465*
2.	**Entries in 1oct07-10may08 Report**	1oct07-10may08	1oct96-10may08	n/11.6 average	**Entries in 11may-30sep08 Report**	11may-30sep08
3.	**Complaints Filed**	491	8794	758	**Complaints Filed**	672
4.	**Complaint Type:** Written by Complainant	491	8701	750	**Complaint Type:** Written by Complainant	670
5.	On Order of Chief Judges	0	93	8	On Order of Chief Judges	2
6.					***Complainants***[7]**:** *Prison Inmates*	*354*
7.					*Litigants*	*303*
8.					*Attorneys*	*7*
9.					*Public Officials*	*0*
10.					*Other*	*13*
11.	**Officials Complained About****				**Judges Complained About**	
12.	Judges				Circuit Judges	165
13.	Circuit	112	2995	258	District Judges	382
14.	District	344	6841	589	Court of International Trade Judges	0
15.	National Court	0	19	1.6	Courts of Federal Claims Judges	2
16.	Bankruptcy Judges	24	406	35	Bankruptcy Judges	16
17.	Magistrate Judges	105	2014	174	Magistrate Judges	107
18.	**Nature of Allegations****				**Nature of Allegations**[a;8]	
19.	Mental Disability	16	408	35	*Disability*	*30*
20.	Physical Disability	4	66	5.7		
21.	Demeanor	5	262	23	*Hostility Toward Litigant or Attorney*	*69*
22.	Abuse of Judicial Power	242	3176	274		

2.	Entries in 1oct07-10may08 Report	1oct07-10may08	1oct96-10may08	n/11.6 average	Entries in 11may-30sep08 Report	11may-30sep08
23.	Prejudice/Bias	232	3734	322	*Racial, Religious, or Ethnic Bias*	*93*
24.					*Personal Bias Against Litigant or Attorney*	*116*
25.	Conflict of Interest	25	577	50	Conflict of Interest *(Including Refusal to Recuse)*	*46*
26.	Bribery/Corruption	51	894	77	*Acceptance of Bribe*	*21*
27.	Undue Decisional Delay	45	779	67	*Delayed Decision*	*104*
28.	Incompetence/Neglect	46	740	64	*Erroneous Decision*	*338*
29.					*Failure to Give Reasons for Decision*	*18*
30.	Other	225	2486	214	*Other Misconduct*	*262*
31.					*Improper Discussion with Party or Counsel*	*29*
32.					*Failure to Meet Financial Disclosure Requirements*	*0*
33.					*Improper Outside Income*	*0*
34.					*Partisan Political Activity or Statement*	*3*
35.					*Effort to Obtain Favor for Friend or Relative*	*0*
36.					*Solicitation of Funds for Organization*	*1*
37.					*Violation of Other Standards*	*55*
38.					***Actions Regarding the Complaints*** *[cf. row 52 Left]*	
39.	**Complaints Concluded**	552	8529	735	*Concluded by Complainant of Subject Judge*	*4*
40.					*Complaint Withdrawn With Consent of Chief Judge*	*4*
41.					*Withdrawl of Petition for Review*	*0*
42.	**Action By Chief Judges**				**Actions by Chief *Judge***	
43.					*Matters Returned from Judicial Council*	*0*
44.	Complaint Dismissed				*Complaint Dismissed in Whole or in Part*	199
45.	Not in Conformity With Statute	13	311	27	*Not Misconduct or Disability*	*23*
46.	Directly Related to Decision or Procedural Ruling	236	3476	300	*Merits Related*	*167*
47.	Frivolous	23	879	76	Frivolous	39
48.	*Lacked Factual Foundation*[7]	4			*Allegations Lack Sufficient Evidence*	*56*
49.					*Allegations Incapable of Being Established*	*0*
50.	Appropriate Action Already Taken	3	40	3.4		
51.	Action No Longer Needed Due to of Intervening Events	4	70	6	[Cf. rows 56-58 Right.]	
52.	Complaint Withdrawn	5	60	5		
53.	Subtotal	288	4840	417	*Filed in the Wrong Circuit*	*6*

2.	Entries in 1oct07-10may08 Report	1oct07-10may08	1oct96-10may08	n/11.6 average	Entries in 11may-30sep08 Report	11may-30sep08
54.					*Otherwise Not Appropriate*	*4*
55.					*Complaint Concluded in Whole or on Part*	*3*
56.					*Informal Resolution Before Complaint Filed*	*2*
57.					*Voluntary Corrective Action Taken*	*0*
58.					*Intervening Events*	*1*
59.					*Complaint Referred to Special Committee*	*2*
60.					***Actions by Special Committees***	
61.					*Matter Returned From Judicial Council*	*0*
62.					*New Matter Referred to Chief Judge*	*0*
63.	**Action by Judicial Councils**				**Judicial Council *Proceedings***	
64.	Directed Chief District Judge to Take Action (Magistrate Judges only)	0	1	.09	*Matter Returned from Judicial Conference*	*0*
65.	Certified Disability	0	0	0	*Complaint Transferred to/from Another Circuit*	*0*
66.	Requested Voluntary Retirement	0	0	0	*Special Committee Reports Submitted to Judicial Council*	*0*
67.	Ordered Temporary Suspension of Case Assignment	0	1	.09	*Received Petition for Review*	*22*
68.	Privately Censured	0	1	.09	*Action on Petition for Review Petition Denied*	*77*
69.	Publicly Censured	1	6	.05	*Matter Returned to Chief Judge*	*0*
70.	Ordered Other Appropriate Action	0	3	0.26	*Matter Returned to Chief Judge for Appointment of Special Committee*	*0*
71.	Dismissed the Complaint	263	3670	316	*Other*	*0*
72.	Withdrawn	0	7	0.6	*Received Special Committee Report*	*0*[9]
73.	Referred Complaint to Judicial Conference	0	0	0		
74.	Subtotal	264	3689	318		
75.	**Complaints Pending on September 30, 2008**	272[10]			**Complaints Pending on September 30, 2008**[11]	465[12]
76.	Complaints Pending on September 30, 1997-2008		2988	249		
77.	**Special Investigating Committee Appointed**	2	14	1.2	*Complaint Referred to Special Committee*[13]	*2*[14]
78.					***Action on Special Committee Report***	*0*[15]
79.					*Complaint Dismissed*	[16]
80.					*Not Misconduct or Disability*	*0*
81.					*Merits Related*	*0*
82.					*Allegations Lack Sufficient Evidence*	*0*
83.					*Otherwise not Appropriate*	*0*

2.	Entries in 1oct07-10may08 Report	1oct07-10may08	1oct96-10may08	n/11.6 average	Entries in 11may-30sep08 Report	11may-30sep08
84.					*Corrective Action Taken or Intervening Events*	*0*
85.					*Referred Complaint to Judicial Conference*	*0*
86.					*Remedial Action Taken*	*0*
87.					*Censure or Reprimand*	*0*
88.					*Suspension of Assignments*	*0*
89.					***Action Against Magistrate Judge***	*0*
90.					*Removal of Bankruptc Judge*	*0*
91.					*Requesting of Voluntary Retirement*	*0*
92.					*Certifying Disability of Circuit or District Judge*	*0*
93.					*Additional Investigation Warranted*	*0*
94.					*Returned to Special Committee*	*0*
95.					*Retained by Judicial Council*	*0*
96.					***Action by Chief Justice***	
97.					*Transferred to Judicial Council*	*1*
98.					*Received From Judicial Council*	*1*

[Notes of the Administrative Office: * and ** in the 1oct07-10may08 report; [a] in the one for 11may-30sep08; ‡in both.
***Revised. ****Each complaint may involve multiple allegations against numerous judicial officers. Nature of allegations is counted when a complaint is concluded.
[a] Each complaint may involve multiple allegations. Nature of allegations is counted when a complaint is concluded.
‡ Note: Excludes complaints not accepted by the circuits because they duplicated previous filings or were otherwise invalid filings.[17]

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[1] The figure of 99.82% of complaints dismissed without investigation has been calculated based on the official statistics referred to in endnote 4 infra: 16 special investigative committees appointed relative to 9,008 complaints concluded in 1oct96-30sep08: (14 + 2, row77) of ((8,529 complaints concluded in 1oct96-10may08, r39Left, + 272 assumed pending on 10may8, r75L (see endnote 9), + 672 filed in 11may-30sep08, r1R) - 465 pending on 30sep08, r75R). To the 9,008 complaints concluded must be added the unpublished number of all those concluded ab initio in defiance of the Act –endnote5- and thus arbitrarily, that according to the official note -endnote 17 and the corresponding text- were "not accepted by the circuits because they duplicated previous filings or were otherwise invalid filings".

Therefore, however much refinement can be brought to bear on the calculation of the number of complaints dismissed without any investigation, for example, by eliminating the number of complaints withdrawn by complainants -5 in 1oct07-10may08, r52L, and 4 in 11may-sep08, r39R-, the figure of 99.82% of complaints so dismissed by the "circuits" -13 of them and most likely also the two national courts subject to the judicial misconduct act, see endnote 3- could only be higher.

[2] The 13 circuits comprise the 11 numbered circuits, the U.S. Circuit for the District of Columbia, and the Federal Circuit. The two national

courts are the U.S. Court of Federal Claims and the U.S. Court of International Trade.

[3] Judicial Conduct and Disability Act of 1980; http://Judicial-Discipline-Reform.org/docs/28usc351_Conduct_complaints.pdf.

[4] Http://www.uscourts.gov/judbususc/judbus.html; collected at http://Judicial-Discipline-Reform.org/statistics&tables/judicial_misconduct.pdf

[5] 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

[6] Bold emphasis added to headings.

[7] Text in italics appears for the first time in the 1oct07-10may08 or 11may-30sep08 reports.

[8] Some entries under this heading have been moved for ease of comparison with entries on the left.

[9] Although under 28 U.S.C. §353(c), a special committee "shall expeditiously file a comprehensive written report…with the judicial council", none did; r77,72R

[10] So in the original. Most likely it means that there were pending 272 complaints on May 10, 2008, and 465 the following September 30, which is how the 2008 Annual Report of the Director of the Administrative Office of the U.S. Courts refers to these figures; http://www.uscourts.gov/judbus2008/JudicialBusinespdfversion.pdf >36.

[11] Entry from r1R repeated for ease of comparison with the one on the left.

[12] See endnote 10 supra.

[13] Entry moved or repeated for ease of comparison with the one on the left.

[14] See endnote 9 supra.

[15] So in original. Most likely there should be no value next to the heading and the zero should qualify the "Complaint Dismissed" entry.

[16] Id.

[17] Neither the clerk of circuit court, nor the chief judge, nor the "circuits" are authorized to refuse filing a complaint or hold a filing "invalid" a priori. Under 28 U.S.C. §351(a), "any person…may file with the clerk of the court…a written complaint containing a brief statement of the facts constituting such [mis]conduct". Moreover, §351(c) provides that "[u]pon receipt of a complaint filed under subsection (a), the clerk **shall promptly** transmit the complaint to the chief judge of the circuit…The clerk **shall** simultaneously transmit a copy of the complaint to the judge whose conduct is the subject of the complaint." Similarly, under §352(a), "The chief judge **shall expeditiously** review any complaint…In determining what action to take, the chief judge may conduct a limited inquiry…". The "circuits" as such are given no role under the Act. Their judicial councils are entitled under §352(c) et seq. only to adjudicate petitions for review of a final order of the chief judge; they have no role in the filing of complaints. Moreover, Rule 8(c) –endnote 5 supra- only authorizes the clerk not to accept "a complaint about a person not holding a [covered judicial] office". Neither the Act nor the Rules allow him to determine that a complaint is both a "duplicate" and as such unfilable because it contains no new element of fact or law. Is the clerk supposed to read every new complaint and compare it with all others filed that month, that year, or ever to ensure that it is not a duplicate? Does he defeat the promptness requirement and the purpose of Rule 6(e) by opening the "unmarked envelope" and, if he sees the name of a judge that is the subject of another complaint, assume that the complaint is the same in every respect and thus, a duplicate? (Emphasis added.)

Judges' Systematic Dismissal Without Investigation of 99.82% of Complaints Against Them

Table S-22 [previously S-23 & S-24].Report of Complaints Filed and Action Taken Under 28 U.S.C. §351 for the 12-mth. Period Ended 30sep97-07 &10may08. http://www.uscourts.gov/judbususc/judbus.html; collected at http://Judicial-Discipline-Reform.org/statistics&tables/judicial_misconduct.pdf[1]

Complaints filed in the 13 Cir. and 2 Nat. Courts	'96-97	'97-98	'98-99	'99-00	'00-01	'01-02	'02-03	'03-04	'04-05	'05-06	'06-07	'07-5/8	'96-5/8	n/11.6
Complaints Pending on each Sep. 30 of 1996-2008*	109	214	228	181	150	262	141	249	212	210	241	333	2530	218
Complaints Filed	679	1,051	781	696	766	657	835	712	642	643	841	491	8794	758
Complaint Type														
Written by Complainant	678	1,049	781	695	766	656	835	712	642	555	841	491	8701	750
On Order of Chief Judges	1	2	0	1	0	1	0	0	0	88	0	0	93	8
Officials Complained About**														
Judges														
Circuit	461	443	174	191	273	353	204	240	177	141	226	112	2995	258
District	497	758	598	522	563	548	719	539	456	505	792	344	6841	589
National Courts	0	1	1	1	3	5	1	0	0	3	4	0	19	1.6
Bankruptcy Judges	31	28	30	26	34	57	38	28	31	33	46	24	406	35
Magistrate Judges	138	215	229	135	143	152	257	149	135	159	197	105	2014	174
Nature of Allegations**														
Mental Disability	11	92	69	26	29	33	26	34	22	30	20	16	408	35
Physical Disability	4	7	6	12	1	6	7	6	9	3	1	4	66	5.7
Demeanor	11	19	34	13	31	17	21	34	20	35	22	5	262	23
Abuse of Judicial Power	179	511	254	272	200	327	239	251	206	234	261	242	3176	274
Prejudice/Bias	193	647	360	257	266	314	263	334	275	295	298	232	3734	322
Conflict of Interest	12	141	29	48	38	46	33	67	49	43	46	25	577	50
Bribery/Corruption	28	166	104	83	61	63	87	93	51	40	67	51	894	77
Undue Decisional Delay	44	50	80	75	60	75	81	70	65	53	81	45	779	67
Incompetence/Neglect	30	99	108	61	50	45	47	106	52	37	59	46	740	64
Other	161	193	288	188	186	129	131	224	260	200	301	225	2486	214
Complaints Concluded	482	1,002	826	715	668	780	682	784	667	619	752	552	8529	735
Action By Chief Judges														
Complaint Dismissed														
Not in Conformity With Statute	29	43	27	29	13	27	39	27	21	25	18	13	311	27
Directly Related to Decision or Procedural Ruling	215	532	300	264	235	249	230	295	319	283	318	236	3476	300
Frivolous	19	159	66	50	103	110	77	112	41	63	56	23	879	76
Appropriate Action Already Taken	2	2	1	6	4	3	3	3	5	5	3	3	40	3.4
Action No Longer Needed Due to Intervening Events	0	1	10	7	5	6	8	9	8	6	6	4	70	6
Complaint Withdrawn	5	5	2	3	3	8	8	3	6	9	3	5	60	5
Subtotal	270	742	406	359	363	403	365	449	400	391	404	288	4840	417
Action by Judicial Councils														
Directed Chief Dis. J. to Take Action (Magistrates only)	0	0	0	0	0	0	0	0	0	1	0	0	1	.09
Certified Disability	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Requested Voluntary Retirement	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Temporary Suspension of Case Assignments	0	1	0	0	0	0	0	0	0	0	0	0	1	.09
Privately Censured	0	0	0	0	1	0	0	0	0	0	0	0	1	.09
Publicly Censured	0	1	0	2	0	2	0	0	0	0	0	1	6	0.5
Ordered Other Appropriate Action	0	0	0	0	0	0	1	0	0	0	2	0	3	0.26
Dismissed the Complaint	212	258	416	354	303	375	316	335	267	227	344	263	3670	316
Withdrawn	n/a	n/a	4	0	1	0	0	0	0	0	2	0	7	0.6
Referred Complaint to Judicial Conference	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal	212	260	420	356	305	377	317	335	267	228	348	264	3689	318
Special Investigating Committees Appointed	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	7	5	2	14	1.2
Complaints Pending on each September 30 of 1997-08	306	263	183	162	248	139	294	177	187	234	330	272	2795	241

*Revised. **Each complaint may involve multiple allegations against numerous judicial officers. Nature of allegations is counted when a complaint is concluded.

[1]With statistics from 11may-30sep08; cf. http://Judicial-Discipline-Reform.org/JNinfo/25Committee/2DrCordero-petition_25feb9.pdf

2nd Circuit Judicial Council & J. Sotomayor's Denial of 100% of Petitions for Review of Systematically Dismissed Misconduct Complaints Against Their Peers & 0 Judge Disciplined in the Reported 12 Years[1]

Table S-22 [previously S-23 & S-24].Report of Complaints Filed and Action Taken Under 28 U.S.C. §351 for the 12-mth. Period Ended 30sep97-07 &10may8
http://www.uscourts.gov/judbususc/judbus.html; collected at http://Judicial-Discipline-Reform.org/statistics&tables/judicial_misconduct.pdf

Data of Judicial Council 2nd Cir. for AO; 28 U.S.C. §332(g)	'96-97	'97-98	'98-99	'99-00	'00-01	'01-02	'02-03	'03-04	'04-05	'05-06	'06-07	'07-5/8	'96-5/8	Avrg.
Complaints Pending on each September 30 of 1996-2008*	5	10	23	65	33	60	29	34	57	31	28	13	388	32
Complaints Filed	40	73	99	59	102	62	69	23	36	14	22	4	603	50
Complaint Type														
Written by Complainant	40	73	99	59	102	62	69	23	36	0	22	4	589	49
On Order of Chief Judges	0	0	0	0	0	0	0	0	0	14	0	0	14	1.8
Officials Complained About**														
Judges														
Circuit	3	14	23	9	31	10	8	4	7	0	6	1	116	9.7
District	27	56	63	41	52	41	49	15	23	10	12	3	392	33
National Courts	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Bankruptcy Judges	2	1	2	2	2	1	1	1	0	0	0	0	12	1
Magistrate Judges	8	8	11	7	17	10	11	3	6	4	4	0	89	7.5
Nature of Allegations**														
Mental Disability	1	9	26	2	5	4	6	3	3	1	1	1	62	5.2
Physical Disability	0	1	2	1	0	0	1	2	0	0	0	1	8	.7
Demeanor	2	2	2	3	14	3	4	6	0	0	0	0	36	3
Abuse of Judicial Power	25	30	7	29	28	57	20	6	3	0	1	1	207	17
Prejudice/Bias	32	36	34	28	24	40	20	35	43	28	30	5	355	30
Conflict of Interest	0	0	5	11	10	18	3	4	5	1	1	0	58	4.8
Bribery/Corruption	0	0	10	21	2	15	4	5	2	2	1	1	63	5.2
Undue Decisional Delay	0	4	0	11	6	15	9	5	8	2	3	3	66	5.5
Incompetence/Neglect	4	1	3	1	5	2	3	3	4	0	3	2	31	2.6
Other	0	11	3	5	0	0	4	33	80	38	47	14	235	20
Complaints Concluded	33	56	57	80	75	93	42	51	91	45	50	17	690	57
Action By Chief Judges														
Complaint Dismissed														
Not in Conformity With Statute	3	4	0	0	4	1	1	6	5	8	1	2	35	2.9
Directly Related to Decision or Procedural Ruling	12	19	19	29	17	23	14	18	46	15	10	9	231	19
Frivolous	0	1	19	0	13	9	7	3	1	3	2	1	59	4.9
Appropriate Action Already Taken	0	0	0	0	0	0	0	1	0	1	0	0	2	0.2
Action No Longer Needed Due to of Intervening Events	0	0	3	1	0	2	0	0	0	1	0	0	7	0.6
Complaint Withdrawn	0	0	0	0	0	2	0	1	2	0	0	0	5	0.4
Subtotal	15	24	41	30	34	37	22	29	54	28	13	12	339	28
Action by Judicial Councils														
Directed Chief Dis. J. to Take Action (Magistrates only)	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Certified Disability	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Requested Voluntary Retirement	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Temporary Suspension of Case Assignments	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Privately Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Publicly Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Other Appropriate Action	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Dismissed the Complaint	18	32	16	50	40	56	20	22	37	17	37	6	351	29
Withdrawn	n/a	n/a	0	0	1	0	0	0	0	0	0	0	1	.08
Referred Complaint to Judicial Conference	0	0	0	0	0	0	n/a	0	0	n/a	0	0	0	0
Subtotal	18	32	16	50	41	56	20	22	37	17	37	6	352	29
Special Investigating Committees Appointed	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	1	1	0	2	.17
Complaints Pending on each 30sep of 1997-2008	12	27	65	44	60	29	56	6	2	0	0	0	301	25

*Revised. **Each complaint may involve multiple allegations against numerous judicial officers. Nature of allegations is counted when a complaint is concluded.

[1] Cf. http://Judicial-Discipline-Reform.org/SCt_nominee/Senate/26evidence/1DrCordero-Senate.pdf

U.S. Department of Justice
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Bureau of Justice Statistics
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Probation and Parole in the United States, 2006

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The number of adult men and women in the United States who were being supervised on probation or parole at the end of 2006 reached 5,035,225, up from 3,757,282 on December 31, 1995. These data were collected in the Bureau of Justice Statistics' (BJS) 2006 Annual Probation Survey and 2006 Annual Parole Survey.

Probationers are criminal offenders who have been sentenced to a period of correctional supervision in the community in lieu of incarceration. Parole is a period of conditional supervised release following a prison term.

In 2006 the combined probation and parole populations grew by 1.8% or 87,852 persons. The growth in 2006 was slower than the average annual increase of 2.2% since 1995. Over the past 11 years, the total population under community supervision increased by over 1 million offenders, based on comparable reporting agencies. It excludes 236,014 probationers under the supervision of agencies added since 1995. (See *Methodology*.)

More than 8 in 10 offenders under community supervision were on probation at yearend 2006

About 84% of the community supervision population was on probation at yearend 2006. Since 1995 (82%) the proportion of offenders on probation increased as a percentage of the total community supervision population.

During 2006 the probation population grew by 1.7% which represented an increase of 70,266 probationers. This was the largest growth since 2002 when the population increased 2.3% or 92,336 probationers.

Annual probation population and entries to probation, 1995-2006

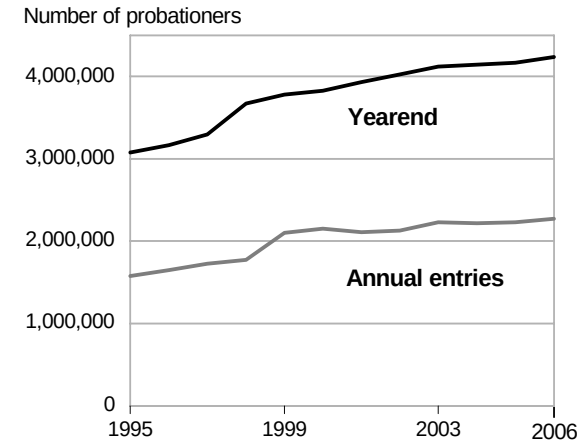

Figure 1

Probation population grew by 923,100 persons since 1995

The probation population increased from 3,077,861 in 1995 to 4,237,023 in 2006 (figure 1). Based on comparable reporting agencies from 1995 to 2006, the probation population grew by 923,100 persons or 30%.

Between 1995 and 2006 the number entering probation supervision exceeded the number exiting and the probation population continued to grow. Entries increased from 1.6 million in 1995 to 2.3 million in 2006. Exits rose from 1.5 million to 2.2 million during this same 11-year period. Both entries and exits increased an average of 3.4% annually between 1995 and 2006.

Nearly a quarter of probationers who entered supervision during 2006 received a probation sentence combined with incarceration

Seventy percent of the estimated 2.3 million probationers who entered supervision during 2006 were sentenced to probation without a term of incarceration. Nearly a quarter of probationers received a combined probation and incarceration sentence.

Indiana reported detailed data for type of entry in 2006, but not in 2000. Based on comparable reporting methods in 2000 and 2006, almost 8 in 10 probationers entered supervision without incarceration while 1 in 6 received a sentence to probation combined with incarceration in both years.

	Percent of adults entering probation		
		2006	
Type of entry	2000	Reported	Comparable
Without incarceration	79%	70%	78%
With incarceration	16	24	16
Other types	5	6	6
Total estimated entries	2,153,300	2,272,300	2,272,300

Nearly 1 in 5 probationers who exited from supervision in 2006 were incarcerated

Since 2000 the total estimated number of probationers exiting supervision annually increased from 2,095,200 to 2,201,800 in 2006 (table 1). During this same time, the percentage of probationers who completed their full-term sentence or were discharged early declined, from 60% in 2000 to 57% in 2006.

Eighteen percent of probationers who exited supervision during 2006 were incarcerated. Nine percent were incarcerated due to a rule violation and 4% were incarcerated because of new offense.

	Percent of adults exiting probation	
Type of exit	2000	2006
Completions	60%	57%
Incarceration	15	18
With new sentence	3	4
With the same sentence	8	9
Other/Unknown	4	5
Absconder	3	4
Discharge to custody, detainer, or warrant	1	1
Other unsatisfactory	11	12
Death	1	1
Other	9	6
Total estimated exits	2,095,200	2,201,800

Over 7.2 million persons on probation or parole or incarcerated in jail or prison at yearend 2006

During 2006 the total Federal, State, and local adult correctional population — incarcerated or in the community — grew by 159,500 persons to over 7.2 million. The growth of 2.3% during the year was about the same as the average annual increase in the correctional population since 1995 (2.5%). About 3.2% of the U.S. adult population, or 1 in every 31 adults, were incarcerated or on probation or parole at yearend 2006.

Since 1995 the jail population was the fastest growing correctional population, with an average annual increase of 3.8%, followed by prison (3.0%), probation (2.4%), and parole (1.5%). Based on data from comparable reporting agencies, between 1995 and 2006 the correctional population increased by over 1.6 million offenders or 31%. Probationers accounted for more than half (57% or 923,100 offenders) of the growth. As a percentage of the correctional population, offenders under community supervision accounted for 69% of the total in 2006, while those incarcerated accounted for 31%. These percentages were almost unchanged from 1995 (70% and 30%, respectively).

Number of persons under correctional supervision, 1995, 2000-06

Year	Total estimated correctional population[a]	Community supervision		Incarceration	
		Probation	Parole	Jail	Prison
1995	5,342,900	3,077,861	679,421	507,044	1,078,542
2000	6,445,100	3,826,209	723,898	621,149	1,316,333
2001	6,581,700	3,931,731	732,333	631,240	1,330,007
2002	6,758,800	4,024,067	750,934	665,475	1,367,547
2003	6,883,200	4,073,987	774,588	691,301	1,390,279
2003 (revised)[b]	6,924,500	4,120,012	769,925	691,301	1,390,279
2004	6,995,100	4,143,792	771,852	713,990	1,421,345
2005	7,051,900	4,166,757	780,616	747,529	1,448,344
2006	7,211,400	4,237,023	798,202[c]	766,010	1,492,973
Percent change, 2005-2006	2.3%	1.7%	2.3%	2.5%	3.1%
Average annual percent change, 1995-2006[d]	2.5%	2.4%	1.5%	3.8%	3.0%

Note: Counts of probationers, parolees, and prisoners are for December 31. All jail counts are for June 30. Jail and prison counts include inmates held in private facilities. Totals in 2005 and 2006 exclude probationers and parolees held in jail or prison. Totals in 2000 through 2004 only exclude probationers held in jail or prison.

[a]Because some offenders may have multiple statuses, totals were rounded to the nearest 100.

[b]Due to changes in reporting, total probation and parole counts include estimated counts for Massachusetts, Pennsylvania, and Washington based on reporting methods comparable to 2004.

[c]Illinois did not provide data for 2006; therefore, all data for Illinois were estimated. See *Methodology*.

[d]Percent change is based on comparable reporting agencies, excluding 236,014 probationers from agencies added since 1995. See *Methodology*.

Table 1. Adults on probation, 2006

Region and jurisdiction	Probation population, 1/1/2006	2006 Entries Reported	2006 Entries Imputed[a]	2006 Exits Reported	2006 Exits Imputed[a]	Probation population 12/31/2006	Percent change, 2006	Number on probation per 100,000 adult residents, 12/31/06
U.S. total	4,166,757	1,846,224	2,272,300	1,780,590	2,201,800	4,237,023	1.7%	1,868
Federal	25,473	12,462	12,462	13,415	13,415	24,491	-3.9%	11
State	4,141,284	1,833,762	2,259,800	1,767,175	2,188,400	4,212,532	1.7	1,857
Northeast	699,933	195,542	260,500	201,456	262,000	698,428	-0.2%	1,657
Connecticut[b]	52,835	29,959	29,959	28,283	28,283	54,511	3.2	2,027
Maine	8,052	3,457	3,457	3,590	3,590	7,919	-1.7	760
Massachusetts	167,960	86,944	86,944	85,382	85,382	169,522	0.9	3,396
New Hampshire	4,615	3,845	3,845	3,870	3,870	4,590	-0.5	450
New Jersey	139,091	24,896	24,896	31,351	31,351	132,636	-4.6	1,995
New York	125,314	33,767	33,767	35,663	35,663	123,418	-1.5	834
Pennsylvania[c]	167,520	2,391	67,400	2,136	62,700	172,184	2.8	1,784
Rhode Island[b]	25,613	5,794	5,794	5,390	5,390	26,017	1.6	3,142
Vermont[b]	8,933	4,489	4,489	5,791	5,791	7,631	-14.6	1,554
Midwest	975,228	483,825	636,600	463,939	619,700	992,920	1.8%	1,981
Illinois[b,c]	143,136	**	60,600	**	62,800	141,000	-1.5	1,461
Indiana[b]	117,960	96,356	96,356	93,895	93,895	120,421	2.1	2,533
Iowa	23,404	14,716	14,716	15,498	15,498	22,622	-3.3	993
Kansas	15,010	19,835	19,835	19,327	19,327	15,518	3.4	748
Michigan[c]	180,290	78,534	137,300	78,521	135,000	182,650	1.3	2,398
Minnesota	118,878	88,735	88,735	80,324	80,324	127,289	7.1	3,243
Missouri[b]	53,614	24,116	24,116	22,767	22,767	54,963	2.5	1,237
Nebraska	18,468	15,338	15,338	15,075	15,075	18,731	1.4	1,410
North Dakota	4,085	2,947	2,947	2,729	2,729	4,303	5.3	875
Ohio[b,c]	240,706	113,645	147,000	107,990	144,600	243,956	1.4	2,799
South Dakota	5,308	3,440	3,440	3,087	3,087	5,661	6.7	959
Wisconsin	54,369	26,163	26,163	24,726	24,726	55,806	2.6	1,311
South	1,685,782	745,553	928,900	728,171	911,200	1,702,430	1.0%	2,060
Alabama[b,d]	48,607	23,658	23,658	16,499	16,499	55,766	14.7	1,592
Arkansas	30,735	10,349	10,349	9,576	9,576	31,508	2.5	1,478
Delaware	18,462	14,951	14,951	16,455	16,455	16,958	-8.1	2,592
District of Columbia	7,006	5,031	5,031	5,154	5,154	6,883	-1.8	1,480
Florida[b,c]	279,613	233,833	251,300	240,502	257,900	272,977	-2.4	1,925
Georgia[b,c,e]	414,409	54,793	213,600	44,681	205,200	422,790	2.0	6,059
Kentucky[b,c]	37,030	16,170	23,200	14,038	19,100	41,162	11.2	1,279
Louisiana	38,366	13,687	13,687	13,996	13,996	38,057	-0.8	1,186
Maryland	75,593	38,583	38,583	38,478	38,478	75,698	0.1	1,773
Mississippi	23,864	8,690	8,690	8,447	8,447	24,107	1.0	1,116
North Carolina[b]	111,626	62,752	62,752	63,959	63,959	110,419	-1.1	1,632
Oklahoma[b]	28,996	13,582	13,582	15,163	15,163	27,415	-5.5	1,016
South Carolina	39,308	14,401	14,401	15,356	15,356	38,353	-2.4	1,160
Tennessee[b]	48,631	26,761	26,761	21,811	21,811	52,558	8.1	1,136
Texas	430,301	179,448	179,448	177,782	177,782	431,967	0.4	2,515
Virginia[b]	45,589	27,951	27,951	25,396	25,396	48,144	5.6	820
West Virginia[b,c]	7,646	913	1,000	878	1,000	7,668	0.3	536
West	780,341	408,842	433,800	373,609	395,400	818,754	4.9%	1,579
Alaska	5,680	1,350	1,350	935	935	6,095	7.3	1,239
Arizona[b,c]	71,115	38,580	39,200	36,580	37,100	73,265	3.0	1,591
California[b]	388,260	203,747	203,747	190,300	190,300	401,707	3.5	1,486
Colorado[b,c]	56,438	30,328	33,700	24,071	27,100	63,032	11.7	1,743
Hawaii	16,825	6,453	6,453	4,680	4,680	18,598	10.5	1,870
Idaho[b,f]	43,712	39,836	39,836	34,939	34,939	48,609	11.2	4,482
Montana[b,c,d]	8,316	3,985	4,100	3,501	3,700	8,770	5.5	1,201
Nevada	12,616	6,683	6,683	6,091	6,091	13,208	4.7	699
New Mexico[b,c,d]	14,982	5,422	7,100	4,989	5,600	16,493	10.1	1,131
Oregon	43,606	18,185	18,185	16,541	16,541	45,250	3.8	1,580
Utah	10,083	5,403	5,403	5,060	5,060	10,426	3.4	586
Washington[b,c]	103,882	45,990	65,100	43,441	60,900	108,076	4.0	2,202
Wyoming	4,826	2,880	2,880	2,481	2,481	5,225	8.3	1,319

Note: Because of nonresponse or incomplete data, the probation population for some jurisdictions on December 31, 2006, does not equal the population on January 1, plus entries, minus exits. Rates were computed using the estimated adult resident population in each state on January 1, 2007. See *Methodology*.

**Not known.

[a]Details may not sum to totals because of rounding.

[b]Some or all detailed data were estimated.

[c]Data for entries and exits were estimated for non-reporting agencies. See *Methodology*.

[d]Due to a change in reporting, data are not comparable to previous years.

[e]Counts include private agency cases and may overstate the number of persons under supervision.

[f]Counts include estimates for misdemeanors based on admissions.

5 States accounted for over half of the growth in the probation population during 2006

Five States had an absolute increase of 4,500 or more in their probation population during 2006. California experienced the largest increase (13,400), followed by Minnesota (8,400), Alabama (7,200), Colorado (6,600), and Pennsylvania (4,700). These same 5 States accounted for 57% of the growth in the population during the year.

State	Absolute increase of 4,500 or more*	Percent of absolute increase, 2006
U.S. total	70,266	100%
Total	40,275	57
California	13,447	19
Minnesota	8,411	12
Alabama	7,159	10
Colorado	6,594	9
Pennsylvania	4,664	7

*Excludes Georgia which included probation case-based counts for private agencies, and Idado which estimated misdemeanors based on admissions.

Majority of probationers were male and white

At yearend 2006, 76% of probationers were male, down from 79% in 1995 (table 2). Since 1995 women have accounted for a larger percentage of the probation population (21% in 1995 compared to 24% in 2006).

The racial composition of the probation population has remained nearly stable since 1995. In both 1995 (53%) and 2006 (55%) the majority of probationers were white. Twenty-nine percent were black in 2006, nearly unchanged from 31% in 1995. Hispanic probationers comprised 13% of the population in 2006; 14% in 1995.

More than 7 in 10 probationers were non-violent offenders

Nearly three-quarters (73%) of probationers under supervision on December 31, 2006 were supervised for a non-violent offense, including more than a quarter for a drug law violation and a sixth for driving while intoxicated. Sixteen percent of probationers were convicted of a violent offense, including 3% for sexual assault, 4% for domestic violence, and 9% for assault other than domestic violence and sexual assault. Eleven percent of probationers were supervised for other unspecified offenses.

Parole population grew by 17,586 during 2006

At yearend 2006 a total of 798,202 adult men and women were on parole or mandatory conditional release following a prison term (table 3). The population grew by 17,586 parolees during the year or 2.3%. This was greater than the average annual increase of 1.5% since 1995.

Table 2. Characteristics of adults on probation, 1995, 2000, and 2006

Characteristic	1995	2000	2006
Total	100%	100%	100%
Gender			
Male	79%	78%	76%
Female	21	22	24
Race/Hispanic origin			
White*	53%	54%	55%
Black*	31	31	29
Hispanic or Latino	14	13	13
American Indian/Alaska Native*	1	1	1
Asian/Native Hawaiian/other Pacific Islander*	--	1	1
Two or more races*	...	...	--
Status of probation			
Direct imposition	48%	56%	58%
Split sentence	15	11	10
Sentence suspended	26	25	23
Imposition suspended	6	7	9
Other	4	1	1
Status of supervision			
Active	79%	76%	71%
Residential/other treatment program	...	...	1
Financial conditions remaining	...	...	2
Inactive	8	9	7
Absconder	9	9	9
Supervised out of State	2	3	3
Warrant status	...	...	6
Other	2	3	2
Type of offense			
Felony	54%	52%	49%
Misdemeanor	44	46	49
Other infractions	2	2	2
Most serious offense			
Sexual assault	...	...	3%
Domestic violence	...	...	4
Other assault	...	...	9
Burglary	...	...	5
Larceny/theft	...	...	13
Motor vehicle theft	...	...	1
Fraud	...	...	5
Drug law violations	...	24	27
Driving while intoxicated	16	18	16
Minor traffic offenses	...	6	6
Other	84	52	11

Note: Each characteristic includes persons of unknown type. Detail may not sum to total because of rounding.
--Less than 0.5%.
...Not available.
*Excludes persons of Hispanic origin.

Table 3. Adults on parole, 2006

Region and jurisdiction	Parole population, 1/1/06	2006 Entries Reported	2006 Entries Imputed[a]	2006 Exits Reported	2006 Exits Imputed[a]	Parole population, 12/31/06	Percent change, 2006	Number on parole per 100,000 adult residents, 12/31/06
U.S. total[b]	780,616	485,882	536,200	469,768	519,200	798,202	2.3%	352
Federal	86,852	41,922	41,922	39,230	39,230	89,438	3.0%	39
State[b]	693,764	443,960	494,300	430,538	480,000	708,764	2.2	313
Northeast	152,033	53,581	68,000	53,793	67,600	152,563	0.3%	362
Connecticut	2,571	2,845	2,845	2,849	2,849	2,567	-0.2	95
Maine	34	1	1	4	4	31	-8.8	3
Massachusetts[c]	3,579	4,619	4,619	5,120	5,120	3,223	-9.9	65
New Hampshire	1,402	628	628	409	409	1,621	15.6	159
New Jersey	13,874	10,373	10,373	9,842	9,842	14,405	3.8	217
New York	53,533	23,422	23,422	23,954	23,954	53,001	-1.0	358
Pennsylvania[d]	75,678	10,853	25,300	10,742	24,600	76,386	0.9	791
Rhode Island	302	379	379	317	317	364	20.5	44
Vermont[c,e]	1,060	461	461	556	556	965	-9.0	197
Midwest[b]	131,283	66,166	102,100	66,736	102,300	131,037	-0.2%	261
Illinois[c,f]	34,576	**	35,900	**	35,600	**	:	:
Indiana	7,295	7,555	7,555	6,900	6,900	7,950	9.0	167
Iowa	3,560	2,381	2,381	2,363	2,363	3,578	0.5	157
Kansas[e]	4,666	5,785	5,785	5,565	5,565	4,886	4.7	235
Michigan	19,978	10,713	10,713	12,205	12,205	18,486	-7.5	243
Minnesota	4,007	5,427	5,427	5,003	5,003	4,431	10.6	113
Missouri[c]	18,374	13,214	13,214	12,525	12,525	19,063	3.7	429
Nebraska	662	1,037	1,037	902	902	797	20.4	60
North Dakota	302	859	859	791	791	370	22.5	75
Ohio	19,512	9,712	9,712	11,621	11,621	17,603	-9.8	202
South Dakota	2,444	2,054	2,054	1,731	1,731	2,767	13.2	469
Wisconsin	15,907	7,429	7,429	7,130	7,130	16,206	1.9	381
South	235,061	108,255	108,255	105,356	105,356	237,821	1.2%	288
Alabama[c]	7,795	3,599	3,599	2,736	2,736	8,658	11.1	247
Arkansas[c]	16,666	8,731	8,731	6,992	6,992	18,405	10.4	863
Delaware	600	367	367	423	423	544	-9.3	83
District of Columbia	4,926	2,256	2,256	1,795	1,795	5,387	9.4	1,158
Florida[c]	4,785	6,474	6,474	6,469	6,469	4,790	0.1	34
Georgia	22,851	11,580	11,580	11,473	11,473	22,958	0.5	329
Kentucky[c]	10,162	7,034	7,034	5,329	5,329	11,867	16.8	369
Louisiana	24,072	13,689	13,689	13,098	13,098	24,663	2.5	769
Maryland	14,271	7,491	7,491	7,411	7,411	14,351	0.6	336
Mississippi	1,970	953	953	1,024	1,024	1,899	-3.6	88
North Carolina[c]	3,101	3,608	3,608	3,473	3,473	3,236	4.4	48
Oklahoma[c]	4,329	843	843	2,100	2,100	3,072	-29.0	114
South Carolina	3,072	773	773	1,110	1,110	2,735	-11.0	83
Tennessee[e]	8,630	4,443	4,443	3,232	3,232	9,702	12.4	210
Texas	101,916	33,308	33,308	35,171	35,171	100,053	-1.8	583
Virginia	4,499	1,979	1,979	2,500	2,500	3,978	-11.6	68
West Virginia	1,416	1,127	1,127	1,020	1,020	1,523	7.6	107
West	175,387	215,958	215,958	204,653	204,653	187,343	6.8%	361
Alaska	973	705	705	634	634	1,044	7.3	212
Arizona[c]	6,213	12,256	12,256	12,006	12,006	6,463	4.0	140
California[e]	111,744	169,625	169,625	163,428	163,428	118,592	6.1	439
Colorado	8,196	7,927	7,927	6,572	6,572	9,551	16.5	264
Hawaii	2,119	798	798	601	601	2,316	9.3	233
Idaho	2,482	1,527	1,527	1,277	1,277	2,732	10.1	252
Montana	703	680	680	539	539	844	20.1	116
Nevada	3,518	2,638	2,638	2,332	2,332	3,824	8.7	202
New Mexico[c,e,g]	2,831	1,650	1,650	1,559	1,559	2,922	3.2	200
Oregon	21,189	9,231	9,231	8,024	8,024	22,396	5.7	782
Utah	3,242	2,617	2,617	2,485	2,485	3,374	4.1	190
Washington	11,568	5,923	5,923	4,880	4,880	12,611	9.0	257
Wyoming	609	381	381	316	316	674	10.7	170

Note: Because of nonresponse or incomplete data, the parole population for some jurisdictions on December 31, 2006, does not equal the population on January 1, plus entries, minus exits. Rates were computed using the estimated adult resident population in each State on January 1, 2007. See *Methodology*.

**Not known.

:Not calculated.

[a]Details may not sum to totals because of rounding.

[b]Includes an estimated 34,900 parolees under supervision in Illinois on December 31, 2006.

[c]Some or all data were estimated.

[d]Data for entries and exits were estimated for nonreporting county agencies. See *Methodology*.

[e]Excludes parolees in one of the following categories: absconder, out of State, inactive, or only have financial conditions remaining.

[f]Parole population on January 1, 2006, was estimated from the number reported for December 31, 2005. See *Methodology*.

[g]Due to a change in recordkeeping procedures, data were not comparable to previous reports.

At yearend 2006, 352 persons per 100,000 adult residents were under parole supervision. This represented 1 in every 284 adults in the United States. Arkansas had the highest rate of parole supervision at yearend 2006 (863 per 100,000), surpassing Pennsylvania (791 per 100,000) which had the highest rate of parole supervision since 1997. Maine had the lowest rate of parole supervision in 2006 (3 per 100,000).

Parole population increased in 36 States

The Federal System, 36 States, and the District of Columbia had more adults on parole at the end of 2006 than at the beginning of the year. Double-digit increases were reported in 14 States, led by North Dakota (up 23%) and Rhode Island (up 21%).

A total of 13 States had a decrease in their parole population during 2006. Double-digit decreases were found in Oklahoma (down 29%), Virginia (down 12%), and South Carolina (down 11%).

Parole entries outpaced exits during 2006

The State parole population reached 708,764 at yearend 2006, an increase of 15,000 parolees (or 2.2%). This was greater than the 10,200 average annual increase (1.5%) that occurred between 2000 and 2006.

During 2006 entries to State parole supervision (3.0%) outpaced exits (2.4%). However, between 2000 and 2006 entries (1.9%) and exits from State parole (1.8%) grew at about the same pace each year on average.

Year	State entries	State exits
2000	441,600	432,200
2001	445,600	439,100
2002	436,300	420,000
2003	459,100	440,500
2004	469,500	467,100
2005	479,800	468,900
2006	494,300	480,000
Percent change, 2006	3.0%	2.4%
Average annual percent change, 2000-06	1.9%	1.8%

Mandatory releases from prison made up half of all entries to parole supervision during 2006

Of the 536,200 parolees who entered parole supervision during 2006, more than half entered through a mandatory release from prison. Since 2000 (54%) mandatory releases to parole have decreased slightly.

Thirty-five percent of parolees who entered supervision in 2006 received a discretionary release from prison by a parole board decision. Discretionary releases to parole have decreased since 2000 (37%).

Between 2000 and 2006 reinstatements to parole increased as a percentage of all entries (6% and 9%, respectively).

Type of entry	Percent of adults entering parole 2000	2006
Discretionary parole	37%	35%
Mandatory parole	54	52
Reinstatement	6	9
Other	2	3
Total estimated entries*	470,400	536,200

*Includes offenders on State parole and Federal post-custody release.

Table 4. Characteristics of adults on parole, 1995, 2000, and 2006

Characteristic	1995	2000	2006
Total	100%	100%	100%
Gender			
Male	90%	88%	88%
Female	10	12	12
Race			
White*	34%	38%	41%
Black*	45	40	39
Hispanic or Latino	21	21	18
American Indian/Alaska Native*	1	1	1
Asian/Native Hawaiian/other Pacific Islander*	--	--	1
Two or more races*	...	...	--
Status of supervision			
Active	78%	83%	84%
Inactive	11	4	4
Absconder	6	7	7
Supervised out of State	4	5	4
Financial conditions remaining	...	...	--
Other	--	1	2
Sentence length			
Less than 1 year	6%	3%	6%
1 year or more	94	97	94
Type of offense			
Violent	...	...	26%
Property	...	...	24
Drug	...	...	37
Public order	...	...	6
Other	...	...	6

Note: Each characteristic included persons of unknown type. Detail may not sum to total because of rounding.
--Less than 0.5%.
...Not available.
*Excludes persons of Hispanic origin.

Percentage of parolees who completed their full-term sentence or exited parole early has remained stable since 2000

Forty-four percent of the estimated 519,200 parolees who exited supervision during 2006 completed their full-term parole sentence or were released from supervision early. Since 2000 this proportion has remained stable (43% in 2000).

In both 2000 and 2006, about 4 in 10 parolees exited supervision because they were returned to incarceration for a new offense or a technical violation. In the same two years, about 1 in 10 parolees exited supervision because they had absconded. Another 2% who exited in 2000 and 2006 had their parole sentence terminated unsatisfactorily.

	Percent of adults exiting parole	
Type of exit	2000	2006
Completions	43%	44%
Returned to incarceration	42	39
With new sentence	11	11
With revocation	30	26
Other/Unknown	1	2
Absconder	9	11
Other unsatisfactory	2	2
Transferred	1	1
Death	1	1
Other	2	3
Total estimated exits	459,400	519,200

Since 1995 the percentage of female and white parolees has increased

At yearend 2006 about 1 out of every 8 adults on parole was a woman (96,200) (table 4). Women represented a greater percentage of the parole population in 2006 (12%), compared to 1995 (10%).

The percentage of parolees who were black dropped to 39% in 2006, continuing a decline from 45% in 1995. Whites constituted 41% of the parole population in 2006, up from 34% in 1995. Almost 1 in 5 parolees were Hispanic (146,200). About 2% of parolees were of other races (12,500).

Nearly 4 in 10 parolees served a sentence for a drug offense

About 94% of all parolees at yearend 2006 had been sentenced to 1 year or more in Federal or State prison. The largest percentage of parolees had been convicted of a drug offense (37%, down from 40% in 2002). Data on type of offense were first collected in 2002.

At yearend 2006 about one in four parolees had been convicted of a violent offense or a property offense. In 2006, 6% of parolees had been convicted of a public order offense and 6% of another type of offense which was not classified.

	Percent of parolees	
Type of offense	2002	2006
Violent	24%	26%
Property	26	24
Drug	40	37
Public order	...	6
Other*	10	6

Note: 2002 was the first year data for type of offense were collected. Detail may not sum to total because of rounding.
...Not available.
*In 2002 public order offenses were reported among other offenses.

1 in 6 persons under parole supervision during 2006 were returned to incarceration

Of the 1,151,203 adult parolees at-risk of re-incarceration during 2006 in the 46 jurisdictions that provided information, 16% (179,259) were re-incarcerated (table 5). Offenders at risk of re-incarceration were defined as adults on parole on January 1, 2006, and those released to parole supervision during the year. In the 46 jurisdictions that provided information, a total of 665,321 parolees were under supervision on January 1, 2006, and 485,882 were released to parole supervision during the year. An unknown number of the 165,642 parolees at-risk in 7 other jurisdictions during 2006 were re-incarcerated.

More than 2 in 5 parolees known to have been returned to incarceration during 2006 were in California (78,721). New York (11,548) and Texas (10,661) each returned more than 10,000 parolees to incarceration. California, New York, and Texas together accounted for more than half of all adult parolees re-incarcerated during 2006 (56%).

6 States returned 20% or more of their at-risk population to incarceration

Utah and California each returned to prison or jail more than a quarter (28%) of their offenders who were under parole supervision at some time during 2006. The offenders were returned either as a result of a technical violation of their conditions of supervision or as a result of a new offense. Colorado and Missouri each returned 24% of their at-risk population during 2006; Kentucky and Minnesota each returned 21%. Of the States that provided information, four reported having returned less than 5% of their at-risk population to incarceration during 2006, including North Carolina and Maine (each 3%), Idaho (less than 0.5%), and Virginia (0%).

Rates of return to incarceration have remained stable since 1998

From 1998 to 2006, the percentage of offenders under parole supervision who were known to have been returned to incarceration remained relatively stable (figure 2). Data on type of exit from parole collected prior to 1998 are not consistent with 2006.

The percentage of the at-risk population returned to incarceration as the result of a revocation also remained stable (11% in each year). In 2006 approximately 5% of the at-risk population had been returned to incarceration for a new offense, unchanged from 1998.

Percentage of at-risk State and Federal parole population returned to incarceration, 1998-2006

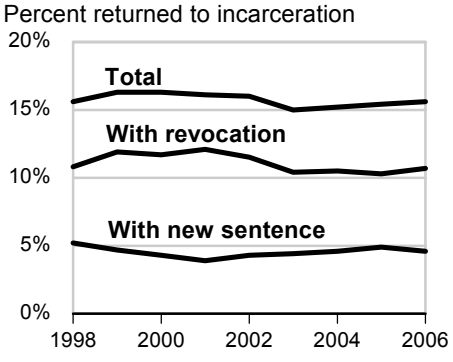

Figure 2

Table 5. Parolees returned to incarceration, 2006

Region and jurisdiction	Total population at-risk of re-incarceration[a,b]	Returned to incarceration[c] Number	Percent
U.S. total	1,151,203	179,259	16%
Federal	128,774	8,521	7%
State	1,022,429	170,738	17
Northeast	149,512	21,737	15%
Maine	35	1	3
Massachusetts	8,198	873	11
New Hampshire	2,030	344	17
New Jersey	24,247	3,321	14
New York	76,955	11,548	15
Pennsylvania	35,845	5,381	15
Rhode Island	681	110	16
Vermont	1,521	159	10
Midwest	162,873	25,994	16%
Indiana	14,850	2,120	14
Iowa	5,941	727	12
Kansas	10,451	1,459	14
Michigan	30,691	5,188	17
Minnesota	9,434	1,952	21
Missouri	31,588	7,447	24
Nebraska	1,699	255	15
North Dakota	1,161	165	14
Ohio	29,224	2,185	7
South Dakota	4,498	793	18
Wisconsin	23,336	3,703	16
South	342,349	32,010	9%
Alabama	11,394	888	8
Arkansas	25,397	2,992	12
District of Columbia	7,182	873	12
Florida	11,259	1,740	15
Georgia	34,431	4,358	13
Kentucky	17,196	3,638	21
Louisiana	37,761	2,238	6
Maryland	21,762	1,566	7
Mississippi	2,923	174	6
North Carolina	6,709	210	3
Oklahoma	5,172	428	8
South Carolina	3,845	271	7
Tennessee	13,073	1,547	12
Texas	135,224	10,661	8
Virginia	6,478	0	0
West Virginia	2,543	426	17
West	367,695	90,997	25%
Arizona	18,469	2,804	15
California	281,369	78,721	28
Colorado	16,123	3,921	24
Hawaii	2,917	191	7
Idaho	4,009	6	--
Montana	1,383	207	15
Nevada	6,156	535	9
Oregon	30,420	2,871	9
Utah	5,859	1,649	28
Wyoming	990	92	9

--Less than 0.5%.

[a]Includes 665,321 adults on parole on January 1 and 485,882 who entered parole between January 1 and December 31, 2006; see table 3.

[b]Excludes an estimated 165,642 at risk of re-incarceration for which the total returned during 2006 was not reported, including Connecticut (5,416), Pennsylvania counties (estimated at 65,133), Illinois (estimated at 70,476), Delaware (967), Alaska (1,678), New Mexico (4,481), and Washington (17,491). See *Methodology*.

[c]Excludes persons who may have been returned to incarceration but were reported as unsatisfactory (8,400), absconder (51,500), other (71,796), or unknown (5,046); see appendix table 1. May also exclude some persons reported as having completed parole for whom outstanding warrants were executed immediately upon exit from parole.

Methodology

Beginning in 1980 the Annual Probation Survey and Annual Parole Survey collected data on the total number of persons supervised in the community on January 1 and December 31 of each year and on counts of the number persons entering and exiting supervision during the year. These surveys cover the Federal System, all 50 States, and the District of Columbia. BJS depends entirely upon the voluntary participation of the State central reporters and the separate State, county, and court agencies for the annual probation and parole data.

In 2006 the U.S. Census Bureau served as the Bureau of Justice Statistics' (BJS) collection agent, except for the Federal system. Data for the Federal system were provided directly to BJS through the BJS Federal Justice Statistics Program which obtained data from the Office of Probation and Pretrial Services, Administrative Office of the United States Courts.

Because many States update their population counts, the January 1, 2006, numbers may differ from those previously published for December 31, 2005.

Probation

The 2006 Annual Probation Survey was sent to 463 respondents — the Federal System, 33 central State reporters, the District of Columbia, and 428 separate State, county, or court agencies. States with multiple reporters were Alabama (3), Arizona (2), Colorado (8), Florida (41), Georgia (5), Idaho (2), Kentucky (3), Michigan (128), Missouri (2), Montana (4), New Mexico (2), Ohio (185), Oklahoma (3), Pennsylvania (2), Tennessee (3), Washington (33), and West Virginia (2).

Since 1995 the survey coverage has been expanded to include 175 additional local agencies in Ohio (131), Florida (27), Washington (11), Montana (3), Kentucky (2), and Idaho (1). The majority of agencies (161) were added in 1999. At yearend 2006, 236,014 probationers were under the supervision of the 175 local agencies added since 1995.

Parole

The 2006 Annual Parole Survey was sent to 54 respondents, including 52 central reporters, the California Youth Authority, and 1 municipal agency. States with multiple reporters were Alabama (2) and California (2). One State, Illinois, did not provide data. See *Imputing entries and exits for non-reporting agencies* for more details.

Federal parole as defined here includes supervised release, parole, military parole, special parole, and mandatory release.

Imputing entries and exits for non-reporting agencies

Entries were imputed for non-reporting agencies using one of four methods, depending on data availability. The first method estimated entries to probation by applying the ratio of entries to the January 1 population in a recent year to the January 1, 2006, population for the same agency. Exits were estimated by adding the estimated entries to the January 1, 2006, population and subtracting the December 31, 2006, population. This method was used to estimate probation entries and exits for non-reporting agencies in Arizona, Colorado, Florida (four agencies), Georgia, Illinois, Kentucky, Michigan (the State agency), Montana, New Mexico, and Pennsylvania counties. This method was also used to estimate parole entries and exits for Pennsylvania counties.

A second method was used for Illinois which did not report on its parole population for 2006. Both the ratio of entries to the January 1 population and the ratio of exits to the January 1 population were estimated for 2006 from parole data provided by Illinois for 2005. These ratios were applied to the number on parole in Illinois on January 1, 2006, (estimated from the count on December 31, 2005). The December 31, 2006, parole population was estimated by adding the estimated number of entries and subtracting the estimated number of exits from the January 1, 2006, parole population.

The third method estimated entries to probation supervision for county and district agencies which did not report entries and exits but which provided an estimate of their December 31, 2006, probation population. The ratio of entries to the January 1, 2006, population among reporting agencies in the same State was used to estimate the number of entries for non-reporting agencies having similar numbers of probationers. Exits from probation supervision were estimated in the same manner as in the first method (above). This method was used to estimate probation entries and exits for non-reporting agencies in Florida (four agencies), Michigan (localities), Ohio, and Washington.

The fourth method was used to estimate entries for one State-level agency. The number of entries for a West Virginia agency was estimated using the ratio of entries to January 1, 2006, population among reporting agencies within the same region. Exits for the non-reporting agency in West Virginia were estimated in the same manner as in the first method (above).

Estimating the adult resident population

Estimates of the adult resident population in each State on January 1, 2007, were generated by applying the July 1, 2006, ratio of persons 18 years or older to the January 1, 2007, resident population estimates within each State. The January 1, 2007, total resident population estimates were provided to BJS by the U.S. Census Bureau.

Appendix table 1. Adults leaving parole, by type of exit, 2006

Region and jurisdiction	Number of adults leaving parole, 2006								
	Total reported exits	Completion	Returned to incarceration				Other unsatisfactory[a]	Other[b]	Unknown
			Total	With new sentence	With revocation	Other			
U.S. total	469,768	205,267	179,259	51,146	119,531	8,582	8,400	71,796	5,046
Federal	39,230	26,546	8,521	3,994	4,527	0	**	4,163	0
State	430,538	178,721	170,738	47,152	115,004	8,582	8,400	67,633	5,046
Northeast	53,793	27,850	21,737	4,842	15,989	906	0	1,357	2,849
Connecticut	2,849	**	**	**	**	**	**	0	2,849
Maine	4	2	1	0	1	0	0	1	0
Massachusetts[c]	5,120	4,225	873	**	**	873	0	22	0
New Hampshire	409	57	344	344	0	0	0	8	0
New Jersey	9,842	6,374	3,321	486	2,835	~	~	147	0
New York	23,954	12,099	11,548	2,095	9,453	~	~	307	0
Pennsylvania	10,742	4,533	5,381	1,832	3,549	0	0	828	0
Rhode Island	317	206	110	27	83	0	0	1	0
Vermont[c]	556	354	159	58	68	33	~	43	0
Midwest	66,736	34,153	25,994	7,395	13,473	5,126	227	6,362	**
Illinois[d]	**	**	**	**	**	~	**	**	**
Indiana	6,900	3,820	2,120	**	**	2,120	30	930	0
Iowa	2,363	1,616	727	**	727	0	1	19	0
Kansas	5,565	2,155	1,459	181	1,273	5	133	1,818	0
Michigan	12,205	6,862	5,188	2,016	3,172	0	0	155	0
Minnesota	5,003	2,551	1,952	184	1,768	0	0	500	0
Missouri[c]	12,525	4,049	7,447	2,692	1,757	2,998	0	1,029	0
Nebraska	902	644	255	17	235	3	~	3	0
North Dakota	791	618	165	26	139	0	0	8	0
Ohio	11,621	7,783	2,185	1,624	561	0	0	1,653	0
South Dakota	1,731	751	793	118	675	0	30	157	0
Wisconsin	7,130	3,304	3,703	537	3,166	0	33	90	0
South	105,356	62,601	32,010	12,396	17,065	2,549	5,680	5,061	4
Alabama[c]	2,736	1,731	888	213	415	260	0	117	0
Arkansas	6,992	3,483	2,992	1,199	1,722	71	~	517	0
Delaware	423	194	**	**	**	**	130	99	0
District of Columbia	1,795	396	873	**	**	873	171	351	4
Florida[c]	6,469	4,181	1,740	388	1,352	0	472	76	0
Georgia	11,473	7,030	4,358	54	3,451	853	0	85	0
Kentucky[c]	5,329	1,573	3,638	446	2,988	204	0	118	0
Louisiana	13,098	7,115	2,238	1,029	1,095	114	3,475	270	0
Maryland	7,411	4,290	1,566	754	812	0	1,408	147	0
Mississippi	1,024	684	174	**	**	174	0	166	0
North Carolina	3,473	2,895	210	77	133	0	24	344	0
Oklahoma[c]	2,100	1,190	428	85	343	0	0	482	0
South Carolina	1,110	798	271	34	237	0	0	41	0
Tennessee	3,232	1,584	1,547	596	951	0	0	101	0
Texas	35,171	23,613	10,661	7,500	3161	0	0	897	0
Virginia	2,500	1,305	0	0	0	0	0	1,195	0
West Virginia	1,020	539	426	21	405	0	0	55	0
West	204,653	54,117	90,997	22,519	68,477	1	2,493	54,853	2,193
Alaska	634	**	**	**	**	**	**	0	634
Arizona[c]	12,006	9,192	2,804	166	2,638	0	0	10	0
California	163,428	34,828	78,721	19,663	59,058	0	0	49879	0
Colorado	6,572	2,477	3,921	1,012	2,909	0	0	174	0
Hawaii	601	198	191	10	181	0	0	212	0
Idaho	1,277	475	6	6	~	~	788	8	0
Montana	539	259	207	13	194	0	0	73	0
Nevada	2,332	1,604	535	353	182	0	0	193	0
New Mexico[c]	1,559	**	**	**	**	**	**	0	1,559
Oregon	8,024	4,189	2,871	865	2,005	1	677	287	0
Utah	2,485	591	1,649	420	1,229	0	127	118	0
Washington	4,880	140	**	**	**	0	901	3839	0
Wyoming	316	164	92	11	81	0	0	60	0

** Not known.

~ Not applicable.

[a]Includes parolees released from parole supervision who failed to meet all conditions of supervision, including some with only financial conditions remaining whose case may have been turned over to a business office, and other types of unsatisfactory exits; includes early terminations and expirations of sentence.

[b]Includes 51,500 parolees who had absconded (including 45,160 in California), 4,884 who had died, 2,766 who had transferred to another jurisdiction, and 12,646 others.

[c]Some or all detailed data are estimated.

[d]No data provided. An estimated 35,600 adults left parole supervision in Illinois during 2006. See *Methodology*.

Appendix table 2. Adults on probation and parole, 1995, 2000, 2005, and 2006

Region and jurisdiction	Adults on probation				Adults on parole			
	1995	2000	2005	2006	1995	2000	2005	2006
U.S. total	3,077,861	3,826,209	4,166,757	4,237,023	679,421	723,898	780,616	798,202
Federal	35,457	31,669	25,473	24,491	51,461	76,069	86,852	89,438
State	3,042,404	3,794,540	4,141,284	4,212,532	627,960	647,829	693,764	708,764
Northeast	538,941	573,280	699,933	698,428	175,207	159,653	152,033	152,563
Connecticut	54,507	47,636	52,835	54,511	1,233	1,868	2,571	2,567
Maine	8,641	7,788	8,052	7,919	55	28	34	31
Massachusetts[a]	43,680	45,233	167,960	169,522	5,256	3,703	3,579	3,223
New Hampshire	4,347	3,629	4,615	4,590	785	944	1,402	1,621
New Jersey	126,759	130,610	139,091	132,636	37,867	11,709	13,874	14,405
New York	168,012	186,955	125,314	123,418	55,568	57,858	53,533	53,001
Pennsylvania[a]	106,823	121,176	167,520	172,184	73,234	82,345	75,678	76,386
Rhode Island	18,850	20,922	25,613	26,017	591	331	302	364
Vermont	7,322	9,331	8,933	7,631	618	867	1,060	965
Midwest	675,380	896,061	975,228	992,920	86,598	103,331	131,283	131,037
Illinois	109,489	139,029	143,136	141,000	29,541	30,196	34,576	**
Indiana	95,267	109,251	117,960	120,421	3,200	4,917	7,295	7,950
Iowa	16,579	21,147	23,404	22,622	2,340	2,763	3,560	3,578
Kansas	16,547	15,992	15,010	15,518	6,094	3,829	4,666	4,886
Michigan	141,436	170,276	180,290	182,650	13,862	15,753	19,978	18,486
Minnesota	83,778	115,906	118,878	127,289	2,117	3,072	4,007	4,431
Missouri	41,728	53,299	53,614	54,963	13,001	12,563	18,374	19,063
Nebraska	13,895	21,483	18,468	18,731	661	476	662	797
North Dakota	2,320	2,847	4,085	4,303	114	110	302	370
Ohio[b]	103,327	189,375	240,706	243,956	7,432	18,248	19,512	17,603
South Dakota	3,745	4,214	5,308	5,661	688	1,481	2,444	2,767
Wisconsin	47,269	53,242	54,369	55,806	7,548	9,923	15,907	16,206
South	1,248,608	1,573,215	1,685,782	1,702,430	240,478	225,955	235,061	237,821
Alabama	33,410	40,178	48,607	55,766	7,793	5,484	7,795	8,658
Arkansas	22,397	28,409	30,735	31,508	4,685	8,659	16,666	18,405
Delaware	16,124	20,052	18,462	16,958	1,033	579	600	544
District of Columbia	10,414	10,664	7,006	6,883	6,340	5,332	4,926	5,387
Florida[b]	243,736	296,139	279,613	272,977	11,197	5,982	4,785	4,790
Georgia[c]	142,954	321,407	414,409	422,790	19,434	21,556	22,851	22,958
Kentucky[b]	11,499	19,620	37,030	41,162	4,257	4,614	10,162	11,867
Louisiana	33,753	35,854	38,366	38,057	19,028	22,860	24,072	24,663
Maryland	71,029	81,523	75,593	75,698	15,748	13,666	14,271	14,351
Mississippi	9,595	15,118	23,864	24,107	1,510	1,596	1,970	1,899
North Carolina	97,921	105,949	111,626	110,419	18,501	3,352	3,101	3,236
Oklahoma	27,866	30,969	28,996	27,415	2,356	1,825	4,329	3,072
South Carolina	39,821	44,632	39,308	38,353	5,545	4,378	3,072	2,735
Tennessee	36,485	40,682	48,631	52,558	8,851	8,093	8,630	9,702
Texas	421,213	441,848	430,301	431,967	103,089	111,719	101,916	100,053
Virginia	24,264	33,955	45,589	48,144	10,188	5,148	4,499	3,978
West Virginia	6,127	6,216	7,646	7,668	923	1,112	1,416	1,523
West	579,475	751,984	780,341	818,754	125,677	158,890	175,387	187,343
Alaska	3,481	4,779	5,680	6,095	459	525	973	1,044
Arizona	40,614	59,810	71,115	73,265	4,109	3,474	6,213	6,463
California	280,545	343,145	388,260	401,707	91,807	117,647	111,744	118,592
Colorado	42,687	50,460	56,438	63,032	3,024	5,500	8,196	9,551
Hawaii	12,957	15,525	16,825	18,598	1,689	2,504	2,119	2,316
Idaho[b,d]	5,308	35,103	43,712	48,609	619	1,409	2,482	2,732
Montana[b]	4,318	6,108	8,316	8,770	744	621	703	844
Nevada	8,634	12,189	12,616	13,208	2,863	4,056	3,518	3,824
New Mexico	8,524	10,461	14,982	16,493	1,366	1,670	2,831	2,922
Oregon	39,725	46,023	43,606	45,250	15,019	17,579	21,189	22,396
Utah	8,562	9,800	10,083	10,426	2,700	3,231	3,242	3,374
Washington[a,b]	120,466	154,466	103,882	108,076	875	160	11,568	12,611
Wyoming	3,654	4,115	4,826	5,225	403	514	609	674

Note: Counts for 1995, 2000, and 2005 are for January 1 and may have been updated from previously published yearend counts.

**Not known.

[a]Due to a change in recordkeeping procedures, probation and parole counts for 2005 and 2006 are not comparable to previous years.

[b]Due to expanded coverage, probation counts for 2000, 2005, and 2006 are not comparable to 1995.

[c]Probation counts for 2000, 2005, and 2006 include private agency cases and may overstate the number under supervision.

[d]Probation counts for 2000, 2005, and 2006 include estimates for misdemeanors based on admissions.

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This Bulletin was written by Lauren E. Glaze and Thomas P. Bonczar. William J. Sabol and Heather Couture provided statistical verification. Christopher J. Mumola provided statistical review. Tina Dorsey edited the report, under the supervision of Doris J. James. Jayne E. Robinson prepared the report for final printing.

December 2007, NCJ 220218

Table 1.1

Total Judicial Officers. Courts of Appeals, District Courts, Bankruptcy Courts

Fiscal Year	Courts of Appeals			District Courts							Bankruptcy Courts		
				Article III Judges			Magistrate Judges						
							Authorized Positions						
	Authorized Judgeships	Active Judges	Senior Judges[1]	Authorized Judgeships	Active Judges	Senior Judges[2]	Full-Time	Part-Time	Clerk/ Magistrate Judge	Recalled Judges	Authorized Judgeships	Active Judges	Recalled Judges
1990	168	158	63	575	541	201	329	146	8	5	291	289	13
1995	179	168	81	649	603	255	416	78	3	16	326	315	23
2000	179	156	86	655	612	274	466	60	3	23	325	307	30
2002	179	151*	92	665	615*	278*	486	51	3	24	324	302*	31
2003	179	162*	91	680	651	287*	491	49	3	40	324	309	35
2004	179	166	102	679	663*	294*	500	45	3	32	324	313	35
2005	179	166*	106*	678	642	300*	503	45	3	34	352	315	32
2006	179	165	103	678	645	311	505	45	3	36	352	337	25
Percent Change - 2006 over 1990													
	6.5%	**	63.5%	17.9%	19.2%	54.7%	53.5%	-69.2%	**	620.0%	21.0%	16.6%	92.3%

[1] Sitting senior judges who participated in appeals dispositions

[2] Senior judges with staff

* Revised

**Percentage is not computed when the total is fewer than 10.

Source: Text Narrative and Tables - Annual Report of the Director.

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The Dynamics of Organized Corruption in the Courts

How judicial wrongdoing tolerated or supported in one instance gives rise to the mentality of judicial impunity that triggers generalized wrongdoing and weaves relationships among the judges of multilateral interdependency of survival where any subsequent unlawful act is allowed and must be covered up

A judge that engages in wrongdoing once and gets away with it because the other judges will not discipline him or her, will be more likely to do wrong again because they realize that as a matter of practice wrongdoing is an easy or profitable way of handling judicial business and can be engaged in with impunity regardless of the harm caused to third parties. An example is set for their fellow judges to follow. In time, everyone knows about the wrongdoing of the others, whether it be bias, abuse of power, or disregard for the law and the facts. Then they must cover for each other, for if one were allowed to be indicted, he or she could tell on another who could tell on another and with domino effect all would fall. This effect would take place even if the incriminated judge were low in the judicial hierarchy, for he or she could trade up in a plea bargain by incriminating those higher up, whether appellate judges or a chief judge, who knew about that one's wrongdoing, or though ignoring it, knew about the wrongdoing of other judges subject to the domino effect, but passively tolerated, or even actively supported them through a cover up or participation, despite their duty to safeguard the integrity of judicial process.

In a hierarchy where integrity is of the essence for the court's single business, that is, administrating justice in accordance with due process, the incrimination of a chief judge would give rise to a most threatening question, to wit, what else did he or she tolerate or support that impaired or denied due process in any other case or all other cases of the indicted judge and, by the same token, of any other judge and all the other judges of the court. In one single step, the trade up, the whole court would come under scrutiny and with it the validity-determinative due process element of the decision in every one of its cases.

This illustrates the dynamics of multilateral interdependency of survival in a practically closed and stable group of people, such as the federal judiciary, where no member, however low in the hierarchy, is expendable: If one judge falls, all fall, unless that one was the odd man out who went outside the group on a folly of his own and never became privy to the wrongdoing of the other judges. Once those dynamics are allowed to determine the relationships among judges, the mentality of everything goes develops, for another, even a more egregious, act of wrongdoing must be tolerated or supported. Were it not, a complaint that was investigated and led to disciplinary action would set a precedent that other complaints could cite in their support, each one of which could support other complaints, thus triggering a chain reaction and uncovering a pattern of wrongdoing that could lead to the fall of a court or the judiciary.

The everything goes mentality gives a boost to a degenerative trend that leads from judicial wrongdoing to organized corruption. In such organization, even third parties outside the court, whether it be court staff, lawyers, others frequently before the court, such as bankruptcy trustees, or litigants, are allowed in the corruption in exchange for a material or moral benefit payable or receivable in the case at hand or in IOUs for future cases. By then, the force dominating the court and its judges' business is not the law of Congress under the Constitution, but rather their interest in surviving and thriving. The court becomes a racketeer influenced and corrupt organization.*

See The Supreme Court Tolerates the Systematic Dismissal of Judicial Misconduct Complaints, http://Judicial-Discipline-Reform.org/docs/SCt_knows_of_dismissals.pdf

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Bankruptcy Judges

Milestones of Judicial Service

Impeachments of Judges

A Guide to the Preservation of Judges' Papers (pdf)

Impeachments of Federal Judges

John Pickering, U.S. District Court for the District of New Hampshire.

Impeached by the U.S. House of Representatives on March 2, 1803, on charges of mental instability and intoxication on the bench; Trial in the U.S. Senate, March 3, 1803, to March 12, 1803; Convicted and removed from office on March 12, 1803.

Samuel Chase, Associate Justice, Supreme Court of the United States.

Impeached by the U.S. House of Representatives on March 12, 1804, on charges of arbitrary and oppressive conduct of trials; Trial in the U.S. Senate, November 30, 1804, to March 1, 1805; Acquitted on March 1, 1805.

James H. Peck, U.S. District Court for the District of Missouri.

Impeached by the U.S. House of Representatives on April 24, 1830, on charges of abuse of the contempt power; Trial in the U.S. Senate, April 26, 1830, to January 31, 1831; Acquitted on January 31, 1831.

West H. Humphreys, U.S. District Court for the Middle, Eastern, and Western Districts of Tennessee.

Impeached by the U.S. House of Representatives, May 6, 1862, on charges of refusing to hold court and waging war against the U.S. government; Trial in the U. S. Senate, May 7, 1862, to June 26, 1862; Convicted and removed from office, June 26, 1862.

Mark W. Delahay, U.S. District Court for the District of Kansas.

Impeached by the U.S. House of Representatives, February 28, 1873, on charges of intoxication on the bench; Resigned from office, December 12, 1873, before opening of trial in the U.S. Senate.

Charles Swayne, U.S. District Court for the Northern District of Florida.

Impeached by the U.S. House of Representatives, December 13, 1904, on charges of abuse of contempt power and other misuses of office; Trial in the U.S. Senate, December 14, 1904, to February 27, 1905; Acquitted February 27, 1905.

Robert W. Archbald, U.S. Commerce Court.

Impeached by the U.S. House of Representatives, July 11, 1912, on charges of improper business relationship with litigants; Trial in the U.S. Senate, July 13, 1912, to January 13, 1913; Convicted and removed from office, January 13, 1913.

George W. English, U.S. District Court for the Eastern District of Illinois.

Impeached by the U.S. House of Representatives, April 1, 1926, on charges of abuse of power; resigned office November 4, 1926; Senate Court of Impeachment adjourned to December 13, 1926, when, on request of the House manager, impeachment proceedings were dismissed.

Harold Louderback, U.S. District Court for the Northern District of California.

Impeached by the U.S. House of Representatives, February 24, 1933, on charges of favoritism in the appointment of bankruptcy receivers; Trial in the U.S. Senate, May 15, 1933, to May 24, 1933; Acquitted, May 24, 1933.

Halsted L. Ritter, U.S. District Court for the Southern District of Florida.

Impeached by the U.S. House of Representatives, March 2, 1936, on charges of favoritism in the appointment of bankruptcy receivers and practicing law while sitting as a judge; Trial in the U.S. Senate, April 6, 1936, to April 17, 1936; Convicted and removed from office, April 17, 1936.

Harry E. Claiborne, U.S. District Court for the District of Nevada.

Impeached by the U.S. House of Representatives, October 9, 1986, on charges of income tax evasion and of remaining on the bench following criminal conviction; Trial in the U.S. Senate, October 7, 1986, to October 9, 1986; Convicted and removed from office, October 9, 1986.

Alcee L. Hastings, U.S. District Court for the Southern District of Florida.

Impeached by the U.S. House of Representatives, August 3, 1988, on charges of perjury and conspiring to solicit a bribe; Trial in the U.S. Senate, October 18, 1989, to October 20, 1989; Convicted and removed from office, October 20, 1989.

Walter L. Nixon, U.S. District Court for the Southern District of Mississippi.

Impeached by the U.S. House of Representatives, May 10, 1989, on charges of perjury before a federal grand jury; Trial in the U.S. Senate, November 1, 1989, to November 3, 1989; Convicted and removed from office, November 3, 1989.

Blank