

**RULES OF THE JUDICIAL COUNCIL
OF THE SECOND CIRCUIT
GOVERNING COMPLAINTS AGAINST
JUDICIAL OFFICERS UNDER 28 U.S.C. § 351 et. seq.**

Preface to the Rules

Section 351 et. seq. of Title 28 of the United States Code provides a way for any person to complain about a federal judge or magistrate judge who the person believes "has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts" or "is unable to discharge all the duties of office by reason of mental or physical disability." It also permits the judicial councils of the circuits to adopt rules for the consideration of these complaints. These rules have been adopted under that authority.

Complaints are filed with the clerk of the court of appeals on a form that has been developed for that purpose. Each complaint is referred first to the chief judge of the circuit, who decides whether the complaint raises an issue that should be investigated. (If the complaint is about the chief judge, another judge will make this decision; see Rule 18(e).)

The chief judge will dismiss a complaint if it does not properly raise a problem that is appropriate for consideration under § 351. The chief judge may also conclude the complaint proceeding if the problem has been corrected or if intervening events have made action on the complaint unnecessary. If the complaint is not disposed of in any of these ways, the chief judge will appoint a special committee to investigate the complaint. The special committee makes its report to the judicial council of the circuit, which decides what action, if any, should be taken. The judicial council is a body that consists of the chief judge and six other judges of the court of appeals and the chief judge of each of the district courts within the Second Circuit.

The rules provide, in some circumstances, for review of decisions of the chief judge or the judicial council.

Chapter I: Filing a Complaint

RULE 1. WHEN TO USE THE COMPLAINT PROCEDURE

- (a) The Purpose of the Procedure.** The purpose of the complaint procedure is to improve the administration of justice in the federal courts by taking action when judges or magistrate judges have engaged in conduct that does not meet the standards expected of federal judicial officers or are physically or mentally unable to perform their duties.

The law's purpose is essentially forward-looking and not punitive. The emphasis is on correction of conditions that interfere with the proper administration of justice in the courts.

- (b) **What May be Complained About.** The law authorizes complaints about judges or magistrate judges who have "engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts" or who are "unable to discharge all the duties of office by reason of mental or physical disability."

"Conduct prejudicial to the effective and expeditious administration of the business of the courts" does not include making wrong decisions -- even very wrong decisions -- in the course of hearings, trials, or appeals. It does not include conduct engaged in by a judicial officer prior to appointment to the bench. The law provides that a complaint may be dismissed if it is "directly related to the merits of a decision or procedural ruling."

"Mental or physical disability" may include temporary conditions as well as permanent disability.

- (c) **Who May be Complained About.** The complaint procedure applies to judges of the United States courts of appeals, judges of the United States district courts, judges of United States bankruptcy courts, and United States magistrate judges. These rules apply, in particular, only to judges of the Court of Appeals for the Second Circuit and to district judges, bankruptcy judges, and magistrate judges of federal courts within the circuit. The circuit includes Connecticut, New York and Vermont.

Complaints about other officials of federal courts should be made to their supervisors in the various courts. If such a complaint cannot be satisfactorily resolved at lower levels, it may be referred to the chief judge of the court in which the official is employed. The circuit executive, whose address is United States Courthouse, Foley Square, New York, New York 10007, is sometimes able to provide assistance in resolving such complaints. All complaints must be submitted in writing.

- (d) **Time for Filing.** Complaints should be filed promptly. A complaint may be dismissed if it is filed so long after the events in question that the delay will make fair consideration of the matter impossible. A complaint may also be dismissed if it does not indicate the existence of a current problem with the administration of the business of the courts.
- (e) **Limitations on Use of the Procedure.** The complaint procedure is not intended to

provide a means of obtaining review of a judge's or magistrate judge's decision or ruling in a case. The judicial council of the circuit, the body that takes action under the complaint procedure, does not have the power to change a decision or ruling. Only a court can do that.

The complaint procedure may not be used to have a judge or magistrate judge disqualified from sitting on a particular case. A motion for disqualification should be made in the case.

Also, the complaint procedure may not be used to force a ruling on a particular motion or other matter that has been before the judge or magistrate judge too long. A petition for mandamus can sometimes be used for that purpose.

RULE 2. HOW TO FILE A COMPLAINT

- (a) Form.** Complaints should be filed on the official form for filing complaints in the Second Circuit, which is reproduced in the appendix to these rules. Forms may be obtained by writing or telephoning the clerk of the Court of Appeals for the Second Circuit, United States Courthouse, Foley Square, New York, New York 10007 (telephone (212) 857-8702). Forms may be picked up in person at the office of the clerk of the court of appeals or any district court or bankruptcy court within the circuit.
- (b) Statement of Facts.** A statement should be attached to the complaint form, setting forth with particularity the facts upon which the claim of misconduct or disability is based. The statement should not be longer than five pages (five sides), and the paper size should not be larger than the paper the form is printed on. Normally, the statement of facts will include –

 - (1) A statement of what occurred;
 - (2) The time and place of the occurrence or occurrences;
 - (3) Any other information that would assist an investigator in checking the facts, such as the presence of a court reporter or other witness and their names and addresses.
- (c) Legibility.** Complaints should be typewritten if possible. If not typewritten, they must be legible.

- (d) **Submission of Documents.** Documents such as excerpts from transcripts may be submitted as evidence of the behavior complained about; if they are, the statement of facts should refer to the specific pages in the documents on which relevant material appears.
- (e) **Number of Copies.** If the complaint is about a judge of the court of appeals, an original plus three copies of the complaint form and the statement of facts must be filed; if it is about a district judge or magistrate judge, an original plus four copies must be filed; if it is about a bankruptcy judge, an original plus five copies must be filed. One copy of any supporting transcripts, exhibits, or other documents is sufficient. A separate complaint, with the required number of copies, must be filed with respect to each judge or magistrate judge complained about.
- (f) **Signature and Oath.** The form must be signed by the complainant and the truth of the statements verified in writing under oath. As an alternative to taking an oath, the complainant may declare under penalty of perjury that the statements are true. The complainant's address must also be provided.
- (g) **Where to File.** Complaints should be sent to

Clerk of Court
United States Court of Appeals
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

The envelope should be marked "Complaint of Misconduct" or "Complaint of Disability."

- (h) **No Fee Required.** There is no filing fee for complaints of misconduct or disability.

RULE 3. ACTION BY CLERK OF COURT OF APPEALS UPON RECEIPT OF A COMPLAINT

- (a) **Receipt of Complaint in Proper Form.**

- (1) Upon receipt of a complaint against a judge or magistrate judge

filed in proper form under these rules, the clerk of the court will open a file, assign a docket number, and acknowledge receipt of the complaint. The clerk will promptly send copies of the complaint to the chief judge of the circuit (or the judge authorized to act as chief judge under rule 18(e)) and to the judge or magistrate judge whose conduct is the subject of the complaint. The original of the complaint will be retained by the clerk.

- (2) If a district judge or magistrate judge is complained about, the clerk will also send a copy of the complaint to the chief judge of the district court in which the judge or magistrate judge holds appointment. If a bankruptcy judge is complained about, the clerk will send copies to the chief judges of the district court and the bankruptcy court. However, if the chief judge of a district court or bankruptcy court is a subject of the complaint, the chief judge's copy will be sent to the judge eligible to become the next chief judge of such court.

(b) Receipt of Complaint About Official Other Than a Judge or Magistrate Judge of the Second Circuit. If the clerk receives a complaint about an official other than a judge or magistrate judge of the Second Circuit, the clerk will not accept the complaint for filing, and will so advise the complainant.

(c) Receipt of Complaint Not in Proper Form. If the clerk receives a complaint against a judge or magistrate judge of this circuit that uses a complaint form but does not comply with the requirements of Rule 2, the clerk will normally not accept the complaint for filing and will advise the complainant of the appropriate procedures. If a complaint against a judge or magistrate judge is received in letter form, the clerk will normally not accept the letter for filing as a complaint, will advise the writer of the right to file a formal complaint under these rules, and will enclose a copy of these rules and the accompanying forms.

**Chapter II: Review of a Complaint
By the Chief Judge**

RULE 4. REVIEW BY THE CHIEF JUDGE

- (a) **Purpose of Chief Judge's Review.** When a complaint in proper form is sent to the chief judge by the clerk's office, the chief judge will review the complaint to determine whether it should be (1) dismissed, (2) concluded on the ground that 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, the chief judge, with such assistance as may be appropriate, may conduct a limited inquiry for the purpose of determining (1) whether appropriate corrective action has been or can be taken without the necessity for a formal investigation, and (2) whether the facts stated in the complaint are either plainly untrue or are incapable of being established through investigation. For this purpose, the chief judge may request the judge or magistrate judge whose conduct is complained of to file a written response to the complaint. The chief judge may also communicate orally or in writing with the complainant, the judge or magistrate judge whose conduct is complained of, and other people who may have knowledge of the matter, and may review any transcripts or other relevant documents. The chief judge will not undertake to make findings of fact about any material matter that is reasonably in dispute.
- (c) **Dismissal.** A complaint will be dismissed if the chief judge concludes --
- (1) that the claimed conduct, even if the claim is true, 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;
 - (2) that the complaint is directly related to the merits of a decision or procedural ruling;

- (3) that the complaint is frivolous, a term that includes making charges that are wholly unsupported or have been ruled on in previous complaints by the same complainant; or
 - (4) that, under the statute, the complaint is otherwise not appropriate for consideration.
- (d) **Corrective Action.** The complaint proceeding will be concluded if the chief judge determines that appropriate action has been taken to remedy the problem raised by the complaint or that action on the complaint is no longer necessary because of intervening events.
- (e) **Appointment of Special Committee.** If the complaint is not dismissed or concluded, the chief judge will promptly appoint a special committee, constituted as provided in Rule 9, to investigate the complaint and make recommendations to the judicial council. However, ordinarily a special committee will not be appointed until the judge or magistrate judge complained about has been invited to respond to the complaint and has been allowed a reasonable time to do so. In the discretion of the chief judge, separate complaints may be joined and assigned to a single special committee.
- (f) **Notice of Chief Judge's Action.**
 - (1) If the complaint is dismissed or the proceeding concluded on the basis of corrective action taken or because intervening events have made action on the complaint unnecessary, the chief judge will prepare a supporting memorandum that sets forth the allegations of the complaint and the reasons for the disposition. The memorandum will not include the name of the complainant or of the judge or magistrate judge whose conduct was complained of. The order and the supporting memorandum, which may be incorporated in one document, will be filed and provided to the complainant, the judge or magistrate judge, and any judge entitled to receive a copy of the complaint pursuant to rule 3(a)(2). The complainant will be notified of the right to petition the judicial council for review of the decision and of the deadline for filing a petition.

(2) If a special committee is appointed, the chief judge will notify the complainant, the judge or magistrate judge whose conduct is complained of, and any judge entitled to receive a copy of the complaint pursuant to Rule 3(a)(2) that the matter has been referred, and will inform them of the membership of the committee.

(g) **Report to Judicial Council.** The chief judge will from time to time report to the judicial council of the circuit on actions taken under this rule.

CHAPTER III: Review of Chief Judge's Disposition of a Complaint

RULE 5. PETITION FOR REVIEW OF CHIEF JUDGE'S DISPOSITION

If the chief judge dismisses a complaint or concludes the proceeding on the ground that corrective action has been taken or that intervening events have made action unnecessary, a petition for review may be addressed to the judicial council of the circuit. The judicial council may deny the petition for review, or grant the petition and either return the matter to the chief judge for further action or, in exceptional cases, take other appropriate action.

RULE 6. HOW TO PETITION FOR REVIEW OF A DISPOSITION BY THE CHIEF JUDGE

(a) **Time.** A petition for review must be received in the office of the clerk of the court of appeals within 30 days of the date of the clerk's letter to the complainant transmitting the chief judge's order.

(b) **Form.** A petition should be in the form of a letter, addressed to the clerk of the court of appeals, beginning "I hereby petition the judicial council for review of the chief judge's order. . ." There is no need to enclose a copy of the original complaint.

(c) **Legibility.** Petitions should be typewritten if possible. If not typewritten, they must be legible.

- (d) **Number of Copies.** Only an original is required.
- (e) **Statement of Grounds for Petition.** The letter should set forth a brief statement of the reasons why the petitioner believes that the chief judge should not have dismissed the complaint or concluded the proceeding. It should not repeat the complaint; the complaint will be available to members of the circuit council considering the petition.
- (f) **Signature.** The letter must be signed by the complainant.
- (g) **Where to File.** Petition letters should be sent to

Clerk of Court
United States Court of Appeals
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

The envelope should be marked "Misconduct Petition" or "Disability Petition."

- (h) **No Fee Required.** There is no fee for filing a petition under this procedure.

**RULE 7. ACTION BY CLERK OF COURT OF APPEALS UPON
RECEIPT OF A PETITION FOR REVIEW**

- (a) **Receipt of Timely Petition in Proper Form.** Upon receipt of a petition for review filed within the time allowed and in proper form under these rules, the clerk of the court of appeals will acknowledge receipt of the petition. The clerk will promptly cause to be sent to each member of the judicial council, except for any member disqualified under rule 18, copies of (1) the complaint form and statement of facts, (2) any response filed by the judge or magistrate judge, (3) any record of information received by the chief judge in connection with the chief judge's consideration of the complaint, (4) the chief judge's order disposing of the complaint, (5) any memorandum in support of the chief judge's order, (6) the petition for review, (7) any other documents in the files of the clerk that appear to the circuit executive to be relevant and material to the petition or a list of such documents, (8) a list of any documents in the clerk's files that are not being sent because they are not considered by the circuit executive relevant and material, (9) a ballot that conforms with Rule

8(a). The clerk will also send the same materials, except for the ballot, to the circuit executive and the judge or magistrate judge whose conduct is at issue, except that materials previously sent to a person may be omitted.

- (b) **Receipt of Untimely Petition.** The clerk will not accept for filing a petition that is received after the deadline set forth in Rule 6(a), and will so advise the complainant.
- (c) **Receipt of Timely Petition Not in Proper Form.** Upon receipt of a petition filed within the time allowed but not in proper form under these rules (including a document that is ambiguous about whether a petition for review is intended), the clerk will acknowledge receipt of the petition, call the petitioner's attention to the deficiencies, and give the petitioner the opportunity to correct the deficiencies within fifteen days of the date of the clerk's letter 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 in accordance with paragraph (a) of this rule. If the deficiencies are not corrected, the clerk will reject the petition, and will so advise the complainant.

RULE 8. REVIEW BY THE JUDICIAL COUNCIL OF A CHIEF JUDGE'S ORDER

- (a) **Review Panel.** The Chief Judge shall designate six members of the judicial council (other than the chief judge) to serve as a review panel. A review panel shall be composed of three circuit judges and three district judges. Membership on the review panel shall be changed after four months so that all members of the council shall serve on a review panel once each year. A review panel shall act for the judicial council on all petitions for review of a chief judge's dismissal order, except those petitions referred to the full membership of the council pursuant to Rule 8(b).
- (b) **Mail Ballot.** Each member of the review panel to whom a ballot was sent will return a signed ballot, or otherwise communicate the member's vote, to the chief judge by the return date listed on the ballot. The ballot form will provide opportunities to vote to (1) deny the petition for review, or (2) refer the petition to the full membership of the judicial council. The form will also provide an opportunity for members to indicate that they have disqualified themselves from participating in consideration of the petition.

Any member of the review panel voting to refer the petition to the full membership of the judicial council, or after such referral, any council member voting to place the petition on the agenda of a meeting of the judicial council shall send a brief statement of reasons to all members of the council.

The petition for review shall be referred to the full membership of the judicial council upon the vote of any member of the review panel and shall be placed on the agenda of a council meeting upon the votes of at least two members of the council; otherwise, the petition for review will be denied.

Upon referral of a petition to the full membership of the judicial council, the clerk shall send to each member of the council not then serving on the review panel the materials specified in Rule 7(a).

- (c) **Availability of Documents.** Upon request, the clerk will make available to any member of the judicial council or to the judge or magistrate judge complained about any document from the files that was not sent to the council members pursuant to Rule 7(a).
- (d) **Quorum and Voting.** If a petition is placed on the agenda of a meeting of the judicial council, a majority of council members eligible to participate (see Rule 18(b)) shall constitute a quorum and is required for any effective council action.
- (e) **Rights of Judge or Magistrate Judge Complained About.**
 - (1) At any time after the filing of a petition for review by a complainant, the judge or magistrate judge complained about may file, and before the judicial council makes any decision unfavorable to the judge or magistrate judge will be invited to file, a written response with the clerk of the court of appeals. The clerk will promptly distribute copies of the response to each member of the judicial council who is not disqualified and to the complainant. The judge or magistrate judge may not communicate with council members individually about the matter, either orally or in writing.

- (2) The judge or magistrate judge complained about will be provided with copies of any communications that may be addressed to the members of the judicial council by the complainant.

(f) Notice of Council Decision.

- (1) The order of the judicial council, together with any accompanying memorandum in support of the order, will be filed and provided to the complainant, the judge or magistrate judge, and any judge entitled to receive a copy of the complaint pursuant to rule 3(a)(2).
- (2) If the decision is unfavorable to the complainant, the complainant will be notified that the law provides for no further review of the decision.
- (3) A memorandum supporting a council order will not include the name of the complainant or the judge or magistrate judge whose conduct was complained of. If the order of the council denies a petition for review of the chief judge's disposition, a supporting memorandum will be prepared only if the judicial council concludes that there is a need to supplement the chief judge's explanation.

**Chapter IV: Investigation and Recommendation
By Special Committee**

RULE 9. APPOINTMENT OF SPECIAL COMMITTEE

- (a) Membership.** A special committee appointed pursuant to rule 4(e) will consist of the chief judge of the circuit and equal numbers of circuit and district judges. If the complaint is about a district judge, bankruptcy judge, or magistrate judge, the district judge members of the committee will be from districts other than the district of the judge or magistrate judge complained about.

- (b) **Presiding officer.** At the time of appointing the committee, the chief judge will designate one of its members (who may be the chief judge) as the presiding officer. When designating another member of the committee as the presiding officer, the chief judge may also delegate to such member the authority to direct the clerk of the court of appeals to issue subpoenas related to proceedings of the committee.
- (c) **Bankruptcy Judge or Magistrate Judge as Adviser.** If the judicial officer complained about is a bankruptcy judge or magistrate judge, the chief judge may designate a bankruptcy judge or magistrate judge, as the case may be, to serve as an adviser to the committee. The chief judge will designate such an adviser if, within ten days of notification of the appointment of the committee, the bankruptcy judge or magistrate judge complained about requests that an adviser be designated. The adviser will be from a district other than the district of the judge or magistrate judge complained about. The adviser will not vote but will have the other privileges of a member of the committee.
- (d) **Provision of Documents.** The chief judge will send to each other member of the committee and to the adviser, if any, copies of (1) the complaint form and statement of facts, and (2) any other documents on file pertaining to the complaint (or to that portion of the complaint referred to the special committee).
- (e) **Continuing Qualification of Committee Members.** A member of a special committee who was qualified at the time of appointment may continue to serve on the committee even though the member relinquishes the position of chief judge, circuit judge, or 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.
- (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 of the circuit will determine whether to appoint a replacement member, either a circuit or district judge as the case may be. However, no special committee appointed under these rules will function with only a single member, and the quorum and voting requirements for a two-member committee will be applied as if the committee had three members.

RULE 10. CONDUCT OF AN INVESTIGATION

- (a) **Extent and Methods to be Determined by Committee.** Each special committee will determine the extent of the investigation and the methods of conducting it that are appropriate in the light of the allegations of the complaint. If, in the course of the investigation, the committee develops reason to believe that the judge or magistrate judge may be engaged in misconduct that is beyond the scope of the complaint, the committee may, with written notice to the judge or magistrate judge, expand the scope of the investigation to encompass such misconduct.
- (b) **Criminal Matters.** If the complaint alleges criminal conduct on the part of a judge or magistrate judge, or in the event that the committee becomes aware of possible criminal conduct, the committee will consult with the appropriate prosecuting authorities to the extent permitted by 28 U.S.C. § 351 et. seq. in an effort to avoid compromising any criminal investigation. However, the committee will make its own determination about the timing of its activities, having in mind the importance of ensuring the proper administration of the business of the courts.
- (c) **Staff.** The committee may arrange for staff assistance in the conduct of the investigation. It may use existing staff of the judicial branch or may arrange, through the Administrative Office of the United States Courts, for the hiring of special staff to assist in the investigation.
- (d) **Delegation.** The committee may delegate duties in its discretion to subcommittees, to staff members, to individual committee members, or to an adviser designated under Rule 9(c). The authority to exercise the committee's subpoena powers may be delegated only to the presiding officer. In the case of failure to comply with such subpoena, the judicial council or special committee may institute a contempt proceeding consistent with 28 U.S.C. § 332(d).
- (e) **Report.** The committee will file with the judicial council a comprehensive report of its investigation, including findings of the investigation and the committee's recommendations for council action. Any findings adverse to the judge or magistrate judge will be based on evidence in the record. The report will 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 pursuant to rule 11.

- (f) **Voting.** All actions of the committee will be by vote of a majority of all of the members of the committee.

RULE 11. CONDUCT OF HEARINGS BY SPECIAL COMMITTEE

- (a) **Purpose of Hearings.** The committee may hold hearings to take testimony and receive other evidence, to hear arguments, or both. If the committee is investigating allegations against more than one judge or magistrate judge it may, in its discretion, hold joint hearings or separate hearings.
- (b) **Notice to Judge or Magistrate Judge Complained About.** The judge or magistrate judge complained about will be given adequate notice in writing of any hearing held, its purposes, the names of any witnesses whom the committee intends to call, and the text of any statements that have been taken from such witnesses. The judge or magistrate judge may at any time suggest additional witnesses to the committee.
- (c) **Committee Witnesses.** All persons who are believed to have substantial information to offer will be called as committee witnesses. Such witnesses may include the complainant and the judge or magistrate judge complained about. The witnesses will be questioned by committee members, staff, or both. The judge or magistrate judge will be afforded the opportunity to cross-examine committee witnesses, personally or through counsel.
- (d) **Witnesses Called by the Judge or Magistrate Judge.** The judge or magistrate judge complained about may also call witnesses and may examine them personally or through counsel. Such witnesses may also be examined by committee members, staff, or both.
- (e) **Witness Fees.** Witness fees will be paid as provided in 28 U.S.C. § 1821.
- (f) **Rules of Evidence; Oath.** The Federal Rules of Evidence will apply to any evidentiary hearing except to the extent that departures from the adversarial format of a trial make them inappropriate. All testimony taken at such a hearing will be given under oath or affirmation.
- (g) **Record and Transcript.** A record and transcript will be made of any hearing held.

RULE 12. RIGHTS OF JUDGE OR MAGISTRATE JUDGE IN INVESTIGATION

- (a) **Notice.** The judge or magistrate judge complained about is entitled to written notice of the investigation (rule 4(f)(2)), to written notice of expansion of the scope of an investigation (rule 10(a)), and to thirty days written notice of any hearing (rule 11(b)).
- (b) **Presentation of Evidence.** The judge or magistrate judge is entitled to a hearing, and has the right to present evidence and to compel the attendance of witnesses and the production of documents at the hearing. Upon request of the judge or magistrate judge, the chief judge or a designee will direct the clerk of the court of appeals to issue a subpoena in accordance with 28 U.S.C. § 332(d)(1).
- (c) **Presentation of Argument.** The judge or magistrate judge may submit written argument to the special committee at any time, and will be given a reasonable opportunity to present oral argument at an appropriate stage of the investigation.
- (d) **Attendance at Hearings.** The judge or magistrate judge will have the right to attend any hearing held by the special committee and to receive copies of the transcript and any documents introduced, as well as to receive copies of any written arguments submitted by the complainant to the committee.
- (e) **Receipt of Committee's Report.** The judge or magistrate judge will have the right to receive the report of the special committee at the time it is filed with the judicial council.
- (f) **Representation by Counsel.** The judge or magistrate judge may be represented by counsel in the exercise of any of the rights enumerated in this rule. The costs of such representation may be borne by the United States as provided in rule 14(h).

RULE 13. RIGHTS OF COMPLAINANT IN INVESTIGATION

- (a) **Notice.** The complainant is entitled to written notice of the investigation as provided in rule 4(f)(2). Upon the filing of the special committee's report to the judicial council, the complainant will be notified that the report has been

filed and is before the council for decision. The Judicial Council may, in its discretion release the special committee's report to the complainant.

- (b) **Opportunity to Provide Evidence.** The complainant is entitled to be interviewed by a representative of the committee. If it is believed that the complainant has substantial information to offer, the complainant will be called as a witness at a hearing.
- (c) **Presentation of Argument.** The complainant may submit written argument to the special committee. In the discretion of the special committee, the complainant may be permitted 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.

Chapter V: Judicial Council Consideration of Recommendations of Special Committee

RULE 14. ACTION BY JUDICIAL COUNCIL

- (a) **Purpose of Judicial Council Consideration.** After receipt of a report of a special committee, the judicial council will determine whether to dismiss the complaint, conclude the proceeding on the ground that corrective action has been taken or that intervening events make action unnecessary, refer the complaint to the Judicial Conference of the United States, or order corrective action.
- (b) **Basis of Council Action.** Subject to the rights of the judge or magistrate judge to submit argument to the council as provided in rule 15(a), the council may take action on the basis of the report of the special committee and the record of any hearings held. If the council finds that the report and record provide an inadequate basis for decision, it may (1) order further investigation and a further report by the special committee or (2) conduct such additional investigation as it deems appropriate.
- (c) **Dismissal.** The council will dismiss a complaint if it concludes –

- (1) that the claimed conduct, even if the claim is true, 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;
- (2) that the complaint is directly related to the merits of a decision or procedural ruling;
- (3) that the facts on which the complaint is based have not been demonstrated; or
- (4) that, under the statute, the complaint is otherwise not appropriate for consideration.

(d) Conclusion of the Proceeding on the Basis of Corrective Action Taken.

The council will conclude the complaint proceeding if it determines that appropriate action has already been taken to remedy the problem identified in the complaint, or that intervening events make such action unnecessary.

(e) Referral to Judicial Conference of the United States. The judicial council may, in its discretion, refer a complaint to the Judicial Conference of the United States with the council's recommendations for action. It is required to refer such a complaint to the Judicial Conference of the United States if the council determines that a circuit judge or district judge may have engaged in conduct –

- (1) that might constitute grounds for impeachment; or
- (2) that, in the interest of justice, is not amenable to resolution by the judicial council.

(f) Order of Corrective Action. If the complaint is not disposed of under paragraphs (c) through (e) of this rule, the judicial council will take such other action as is authorized by law to assure the effective and expeditious administration of the business of the courts.

- (g) Combination of Actions.** Referral of a complaint to the Judicial Conference of the United States under paragraph (e) or to a district court under paragraph (f) of this rule will not preclude the council from simultaneously taking such other action under paragraph (f) as is within its power.
- (h) Recommendation About Fees.** If the complaint has been finally dismissed, the judicial council, upon request of the judicial officer, shall consider whether to recommend that the Director of the Administrative Office reimburse the judicial officer for attorney's fees and expenses.
- (i) Notice of Action of Judicial Council.** Council action will be by written order. Unless the council finds that, for extraordinary reasons, it would be contrary to the interests of justice, the order will be accompanied by a memorandum, which may be incorporated into one document, setting forth the factual determinations on which it is based and the reasons for the council action. The memorandum will not include the name of the complainant or of the judge or magistrate judge whose conduct was complained about. The order and the supporting memorandum will be filed and provided to the complainant, the judge or magistrate judge, and any judge entitled to receive a copy of the complaint pursuant to rule 3(a)(2). However, if the complaint has been referred to the Judicial Conference of the United States pursuant to paragraph (e) of this rule and the council determines that disclosure would be contrary to the interests of justice, such disclosure need not be made. The complainant and the judge or magistrate judge will be notified of any right to seek review of the judicial council's decision by the Judicial Conference of the United States and of the procedure for filing a petition for review.
- (j) Public Availability of Council Action.** Materials related to the council's action will be made public at the time and in the manner set forth in rule 17.

RULE 15. PROCEDURES FOR JUDICIAL COUNCIL CONSIDERATION OF A SPECIAL COMMITTEE'S REPORT

- (a) Rights of Judge or Magistrate Judge Complained About.** Within ten days after the filing of the report of a special committee, the judge or magistrate judge complained about may address a written response to all of the members of the judicial council. The judge or magistrate judge will also be given an opportunity to present oral argument to the council, personally or through counsel. The judge or magistrate judge may not communicate with council

members individually about the matter, either orally or in writing, except as the judicial council has authorized one or more of its members to engage in such communications on its behalf.

- (b) **Conduct of Additional Investigation by the Council.** If the judicial council decides to conduct additional investigation, the judge or magistrate judge complained about will 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 10 through 13 for the conduct of an investigation by a special committee. However, if hearings are held, the council may limit testimony to avoid unnecessary repetition of testimony presented before the special committee.
- (c) **Quorum and Voting.** A majority of council members eligible to participate (see Rule 18(b)) shall constitute a quorum and is required for any effective council action, except that, in accordance with 28 U.S.C. § 152(e), a decision to remove a bankruptcy judge from office requires a majority of all the members of the council.

Chapter VI: Miscellaneous Rules

RULE 16. CONFIDENTIALITY

- (a) **General Rule.** Consideration of a complaint by the chief judge, a special committee, or the judicial council will be treated as confidential business, and information about such consideration will not be disclosed by any judge, magistrate judge, or employee of the judicial branch or any person who records or transcribes testimony except in accordance with these rules.
- (b) **Files.** All files related to complaints of misconduct or disability, whether maintained by the clerk, the chief judge, members of a special committee, members of the judicial council, or staff, and whether or not the complaint was accepted for filing, will be maintained separate and apart from all other files and records, with appropriate security precautions to ensure confidentiality.
- (c) **Disclosure of Memoranda of Reasons.** Memoranda supporting orders of the chief judge or the judicial council, and dissenting opinions or separate

statements of members of the council, may contain such information and exhibits as the authors deem appropriate.

- (d) **Availability to Judicial Conference.** If a complaint is referred under rule 14(e) to the Judicial Conference of the United States, the clerk will provide the Judicial Conference with 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 determination. Upon request of the Judicial Conference or its Committee to Review Circuit Council Conduct and Disability Orders, in connection with their consideration of a referred complaint or a petition under 28 U.S.C. § 355 for review of a council order, the clerk will furnish any other records related to the investigation.
- (e) **Availability to District Court.** If the judicial council directs the initiation of proceedings for removal of a magistrate judge under Rule 14(f)(3), the clerk will 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 determination. Upon request of the chief judge of the district court, the judicial council may authorize release of any other records relating to the investigation.
- (f) **Impeachment Proceedings.** The judicial council may release to the legislative branch any materials that are believed necessary to an impeachment investigation of a judge or a trial on articles of impeachment.
- (g) **Consent of Judge or Magistrate Judge Complained About.** Any materials from the files may be disclosed to any person upon the written consent of both the judge or magistrate judge complained about and the chief judge of the circuit. The chief judge may require that the identity of the complainant be shielded in any materials disclosed.
- (h) **Disclosure by Judicial Council in Special Circumstances.** The 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 the council concludes that such disclosure is justified by special circumstances and is not prohibited by 28 U.S.C. § 355.
- (i) **Disclosure of Identity by Judge or Magistrate Judge Complained About.** Nothing in this rule will preclude the judge or magistrate judge complained about from acknowledging that such judge is the judge or magistrate judge

referred to in documents made public pursuant to rule 17.

RULE 17. PUBLIC AVAILABILITY OF DECISIONS

- (a) **General Rule.** A docket-sheet record of orders of the chief judge and the judicial council and the texts of any memoranda supporting such orders and any dissenting opinions or separate statements by members of the judicial council will be made public when final action on the complaint has been taken and is no longer subject to review.
- (1) If the complaint is finally disposed of without appointment of a special committee or of it is disposed of by council order dismissing the complaint for reasons other than mootness, or because intervening events have made action on the complaint unnecessary, the publicly available materials will not disclose the name of the judge or magistrate judge complained about without such judge's consent.
 - (2) If the complaint is finally disposed of by censure or reprimand by means of private communication, the publicly available materials will not disclose either the name of the judge or magistrate judge complained about or the text of the reprimand.
 - (3) If the complaint is finally disposed of by any other action taken pursuant to rule 14(d) or (f) except dismissal because intervening events have made action on the complaint unnecessary, the text of the dispositive order will be included in the materials made public, and the name of the judge or magistrate judge will be disclosed.
 - (4) If the complaint is dismissed as moot at any time after the appointment of a special committee, the judicial council will determine whether the name of the judge or magistrate judge is to be disclosed.
 - (5) The name of the complainant will not be disclosed in materials made public under this rule unless the chief judge orders such disclosure.

- (b) **Manner of Making Public.** The records referred to in paragraph (a) will be made public by placing them in a publicly accessible file in the office of the clerk of the court of appeals at the United States Courthouse, Foley Square, New York, New York 10007. The clerk will send copies of the publicly available materials to the Administrative Office of the United States Courts, Office of the General Counsel, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E., Washington, DC 20544, where such materials will also be available for public inspection. In cases in which memoranda appear to have precedential value, the chief judge may cause them to be published.
- (c) **Decisions of Judicial Conference Standing Committee.** To the extent consistent with the policy of the Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders, opinions of that committee about complaints arising from this circuit will also be made available to the public in the office of the clerk of the court of appeals.
- (d) **Special Rule for Decisions of Judicial Council.** When the judicial council has taken final action on the basis of a report of a special committee, and no petition for review has been filed with the Judicial Conference within thirty days of the council's action, the materials referred to in paragraph (a) will be made public in accordance with this rule as if there were no further right of review.
- (e) **Complaints Referred to the Judicial Conference of the United States.** If a complaint is referred to the Judicial Conference of the United States pursuant to rule 14(e), materials relating to the complaint will be made public only as may be ordered by the Judicial Conference.

RULE 18. DISQUALIFICATION

- (a) **Complainant.** If the complaint is filed by a judge, that judge will be disqualified from participation in any consideration of the complaint except to the extent that these rules provide for participation by a complainant. If the complaint is filed by a judge, or identified by the chief judge pursuant to 28 U.S.C. § 351(a), that judge will be disqualified from participation in any consideration of the complaint except to the extent that these rules provide for participation by a complainant.

- (b) **Judge Complained About.** A judge whose conduct is the subject of a complaint will be disqualified from participating in any consideration of the complaint except to the extent that these rules provide for participation by a judge or magistrate judge who is complained about. This subsection shall not apply where a complainant files complaints against a majority of the members of the judicial council, in which event, the council members, including those complained against, may refer the complaints, with or without a recommendation for appropriate action, to the Judicial Conference of the United States or to the judicial council of another circuit, or may take other appropriate action, including disposition of the complaints on their merits.
- (c) **Member of Special Committee Not Disqualified.** A member of the judicial council who is appointed to a special committee will not be disqualified from participating in council consideration of the committee's report.
- (d) **Judge or Magistrate Judge Under Investigation.** Upon appointment of a special committee, the judge or magistrate judge complained about will automatically be disqualified from serving on (1) any special committee appointed under Rule 4(e), (2) the judicial council of the circuit, (3) the Judicial Conference of the United States, and (4) the Committee to Review Circuit Council Conduct and Disability Orders of the Judicial Conference of the United States. The disqualification will continue until all proceedings regarding the complaint are finally terminated, with no further right of review. The proceedings will be deemed terminated thirty days after the final action of the judicial council if no petition for review has at that time been filed with the Judicial Conference.
- (e) **Substitute for Chief Judge.** If the chief judge of the circuit is disqualified or otherwise unable to participate in consideration of the complaint, the duties and responsibilities of the chief judge under these rules will be assigned to the circuit judge eligible to become the next chief judge of the circuit.

RULE 19. WITHDRAWAL OF COMPLAINTS AND PETITIONS FOR REVIEW

- (a) **Complaint Pending Before Chief Judge.** A complaint that is before the chief judge for a decision under rule 4 may be withdrawn by the complainant with the consent of the chief judge.

- (b) **Complaint Pending Before Special Committee or Judicial Council.** After a complaint has been referred to a special committee for investigation, the complaint may be withdrawn by the complainant only with the consent of both (1) the judge or magistrate judge complained about and (2) the special committee (before its report has been filed) or the judicial council.
- (c) **Petition for Review of Chief Judge's Disposition.** A petition to the judicial council for review of the chief judge's disposition of a complaint may be withdrawn by the petitioner at any time before the judicial council acts on the petition.

RULE 19A. ABUSE OF THE COMPLAINT PROCEDURE

If a complainant files vexatious, harassing, or scurrilous complaints, or otherwise abuses the complaint procedure, the council, after affording the complainant an opportunity to respond in writing, may restrict or impose conditions upon the complainant's use of the complaint procedure. Any restrictions or conditions imposed upon a complainant shall be reconsidered by the council periodically.

RULE 20. AVAILABILITY OF OTHER PROCEDURES

The availability of the complaint procedure under these rules and 28 U.S.C. § 351 et. seq. will not preclude the chief judge of the circuit or the judicial council of the circuit from considering any information that may come to their attention suggesting that a judge or magistrate judge has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts or is unable to discharge all the duties of office by reason of disability.

RULE 21. AVAILABILITY OF RULES AND FORMS

These rules and copies of the complaint form prescribed by rule 2 will be available without charge in the office of the clerk of the court of appeals, United States Courthouse, Foley Square, New York, New York 10007, and in each office of the clerk of a district court or bankruptcy court within this circuit.

RULE 21A. NO IMPLICATION OF CONSTITUTIONALITY

The adoption of these rules shall not be construed as indicating any views with respect to the constitutionality of 28 U.S.C. § 351 et. seq. or any action taken hereunder.

RULE 22. EFFECTIVE DATE

These rules apply to complaints filed on or after November 2, 2002. The handling of complaint filed before that date will be governed by the rules previously in effect.

RULE 23. ADVISORY COMMITTEE

The advisory committee appointed by the Court of Appeals for the Second Circuit for the study of rules of practice and internal operating procedures shall also constitute the advisory committee for the study of these rules, as provided by 28 U.S.C. § 2077(b), and shall make any appropriate recommendations to the circuit judicial council concerning these rules.

COMPLAINT FORM

JUDICIAL COUNCIL OF THE SECOND CIRCUIT

COMPLAINT AGAINST JUDICIAL OFFICER

UNDER 28 U.S.C. § 351 et. seq.

INSTRUCTIONS:

- (a) All questions on this form must be answered.
- (b) A separate complaint form must be filled out for each judicial officer complained against.
- (c) Submit the correct number of copies of this form and the statement of facts.
For a complaint against:

- a court of appeals judge -- original and 3 copies
- a district court judge or magistrate judge -- original and 4 copies
- a bankruptcy judge -- original and 5 copies

(For further information see Rule 2(e)).

- (d) Service on the judicial officer will be made by the Clerk's Office. (For further information See Rule 3(a)(1)).
- (e) Mail this form, the statement of facts and the appropriate number of copies to the Clerk, United States Court of Appeals, Thurgood Marshall U.S. Courthouse, 40 Foley Square, New York, NY 10007.

1. Complainant's Name: _____
Address: _____

Daytime Telephone No. (include area code): _____

2. Judge or magistrate judge complained about:

Name: _____

Court: _____

3. Does this complaint concern the behavior of the judge or magistrate judge in a particular lawsuit or lawsuits?

Yes No

If "yes," give the following information about each lawsuit (use the reverse side if there is more than one):

Court: _____

Docket number: _____

Docket numbers of any appeals to the Second Circuit:

Did a lawyer represent you?

Yes No

If "yes" give the name, address, and telephone number of your lawyer:

4. Have you previously filed any complaints of judicial misconduct or disability against any judge or magistrate judge?

Yes No

If "Yes," give the docket number of each complaint.

5. You should attach a statement of facts on which your complaint is based, see rule 2(b), and

EITHER

- (1) check the box and sign the form. You do not need a notary public if you check this box.

[] I declare under penalty of perjury that:

- (i) I have read rules 1 and 2 of the Rules of the Judicial Council of the Second Circuit Governing Complaints of Judicial Misconduct or Disability, and
- (2) The statements made in this complaint and attached statement of facts are true and correct to the best of my knowledge.

(signature)

Executed on _____
(date)

OR

- (2) check the box below and sign this form in the presence of a notary public;

[] I swear (affirm) that--

- (i) I have read rules 1 and 2 of the Rules of the Judicial Council of the Second Circuit Governing Complaints of Judicial Misconduct or Disability, and

- (3) The statements made in this complaint and attached statement of facts are true and correct to the best of my knowledge.

(signature)

Executed on _____
(date)

Sworn and subscribed to before me
this ____ day of _____ 200_.

(Notary Public)

My commission expires: _____