

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

**NOTICE OF AMENDMENTS TO RULES
OF THE JUDICIAL COUNCIL OF THE FOURTH
CIRCUIT GOVERNING COMPLAINTS OF
JUDICIAL MISCONDUCT AND DISABILITY**

PLEASE TAKE NOTICE that the Fourth Circuit Judicial Council amends the Rules of the Judicial Council of the Fourth Circuit Governing Complaints of Judicial Misconduct and Disability. These changes consist of new statutory references required by Judicial Improvements Act of 2002 regarding complaints against judges and judicial discipline, 28 U.S.C. §§ 351-364.

The full text, with the amendments highlighted, is attached for circulation to the list of publications and interested persons maintained by the Clerk of Court pursuant to Fourth Circuit Local Rule 47(a). The Council determines that there is an immediate need for these amendments, and the amendments are made effective immediately, subject to revision in light of any comments received.

Interested parties may submit comments on or before March 10, 2003, to:

Samuel W. Phillips
Circuit Executive
1100 East Main Street, Suite 617
Richmond, Virginia 23219

February 7, 2003
Date

/s/ Samuel W. Phillips
Samuel W. Phillips
Circuit Executive

Notice
To Persons Considering Filing a Complaint of Judicial Misconduct
or Disability

Most complaints of judicial misconduct or disability filed pursuant to 28 U.S.C. § 372(c) §§ 351-364 in the United States Court of Appeals for the Fourth Circuit in recent years have been dismissed because they did not allege conduct falling within the reach of the statute. The time and effort of complainants, and of the Court, are wasted by complaints concerning matters that do not come within the coverage of the statute. This notice is issued to draw attention to those portions of the statute, and the Fourth Circuit Judicial Council's Rules Governing Complaints of Judicial Misconduct and Disability, that describe the sorts of conduct that are, and are not, properly raised in a judicial complaint.

The law authorizes complaints about judges who have "engaged in conduct prejudicial to the effective and expeditious administration of the courts." This term includes such things as the use of a judge's office to obtain special treatment for friends and relatives, acceptance of bribes, improperly engaging in discussions with lawyers or parties to cases in the absence of representatives of opposing parties, and other abuses of judicial office. It could include habitual failure to decide matters in a timely fashion, or bias against persons of a particular class as demonstrated by actions in a series of cases over a substantial period of time.

This term does not include a judge's making wrong decisions -- even very wrong decisions -- in particular cases. A complaint that a judge has exhibited bias toward a particular person, made an improper ruling or series of procedural rulings in a case, treated a person or party unfairly, or wrongly decided a case, is not a ground for relief under the judicial complaint and disability statute. Such matters can, and should, be raised in an appeal of the judge's decision to the United States Court of Appeals for the Fourth Circuit, following the Federal Rules of Appellate Procedure.

The statute also authorizes complaints about judges who are "unable to discharge all the duties of office by reason of mental or physical disability." A judge is mentally or physically disabled if he or she is unable to comprehend the nature of the proceedings over which he or she presides, to understand the principles of law involved, or to remember testimony and argument sufficiently well to render fair judgments in the matters coming before him or her for decision. The statute is designed to cover both temporary and permanent disability. The statute does not attempt to define the conditions that could produce such disability, but they could include a mental disease or defect, senility, or drug or alcohol dependency.

These subjects are covered in further detail in Rule 1 of the Fourth Circuit Rules Governing Complaints of Judicial Misconduct or Disability and in §§ 1 and 3(B) of 28 U.S.C. § 372(c) 28 U.S.C. §§ 351-364.

Clerk

**RULES OF THE JUDICIAL COUNCIL
OF THE FOURTH CIRCUIT
GOVERNING COMPLAINTS OF
JUDICIAL MISCONDUCT AND DISABILITY**

Chapter I: FILING A COMPLAINT

RULE 1. WHEN TO USE THE COMPLAINT PROCEDURE

(a) 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 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 conditions that interfere with the proper administration of justice in the courts.

(b) What may be complained about. The law authorizes complaints about United States circuit judges, district judges, bankruptcy 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" is not a precise term. It includes such things as use of the judge's office to obtain special treatment for friends and relatives, acceptance of bribes, improperly engaging in discussions with lawyers or parties to cases in the absence of representatives of opposing parties, and other abuses of judicial office. It does not include making wrong decisions -- even very wrong decisions -- in cases. 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 court of appeals, judges of 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 United States Court of Appeals for the Fourth Circuit and to district judges, bankruptcy judges, and magistrate judges of federal courts within the Fourth Circuit. The circuit includes the federal courts in the states of Maryland, North Carolina, South Carolina, Virginia and West Virginia.

Complaints about other officials of federal courts should be made to their supervisors in the various courts. If such a complaint cannot be resolved satisfactorily 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 1100 East Main Street, Suite 617, Richmond, Virginia 23219-3517, is sometimes able to provide assistance in resolving such complaints.

(d) Time for filing complaints. A complaint may be filed at any time. However, 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 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 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 too long. A petition for mandamus can sometimes be used for that purpose.

(f) Abuse of the complaint procedure. A complainant who has filed vexatious, repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may be restricted from filing further complaints. After affording the offending complainant an opportunity to show cause in writing why his or her ability to file further complaints should not be limited, the judicial council may restrict or impose conditions upon the complainant's use of the complaint procedure. Upon written request of the complainant, the judicial council may revise or withdraw any restrictions or conditions imposed.

RULE 2. HOW TO FILE A COMPLAINT

(a) Form. Complaints should be filed on the official form for filing complaints, which is reproduced in the appendix to these rules. Forms may be obtained by writing or telephoning the Clerk of the Court of Appeals, 1100 East Main Street, Richmond, Virginia 23219-3517, 804-916-2700. 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 on 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, a 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. Only an original is required.

(f) Signature and oath. The form must be signed 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) Anonymous complaints. Anonymous complaints are not handled under these rules. However, anonymous complaints received by the clerk will be forwarded to the chief judge of the circuit for such action as the chief judge considers appropriate. See Rules 2(j) and 20.

(h) Where to file. Complaints should be sent to

Clerk, United States Court of Appeals
for the Fourth Circuit
1100 East Main Street, Room 501
Richmond, Virginia 23219-3517

The envelope should be marked "Complaint of Misconduct" or "Complaint of Disability." The name of the judge complained about should not appear on the envelope.

(i) No fee required. There is no filing fee for complaints of misconduct or disability.

(j) Chief Judge's authority to initiate complaint. In the interest of effective and expeditious administration of the business of the courts and on the basis of information available to the chief judge of the circuit, the chief judge may, by written order stating reasons therefor, identify a complaint as authorized by 28 U.S.C. § 372(c)(1) **351(b)** and thereby dispense with the filing of a written complaint. A chief judge who has identified a complaint under this rule will not be considered a complainant and, subject to the second sentence of Rule 18(a), will perform all functions assigned to the chief judge under these rules for the determination of complaints filed by a complainant.

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 filed in proper form under these rules, the Clerk of the Court of Appeals 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(f)), to the circuit executive, and to each judge whose conduct is the subject of the complaint. The original of the complaint will be retained by the clerk. Upon the issuance of an order by the chief judge identifying a complaint under Rule 2(j), the clerk will thereafter expeditiously process such complaint as otherwise provided by these rules.

(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 his or her 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 a 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 of such court in regular active service who is most senior in date of commission among those who are not subjects of the complaint.

(b) Receipt of complaint about official other than a judge of the Fourth Circuit.

If the clerk receives a complaint about an official other than a judge of the Fourth Circuit, the clerk will not accept the complaint for filing and will advise the complainant in writing of the procedure for processing such complaints.

(c) Receipt of complaint about a judge of the Fourth Circuit and another official.

If a complaint is received about a judge of the Fourth Circuit and another official, the clerk will accept the complaint for filing only with regard to the judge and will advise the complainant accordingly.

(d) Receipt of complaint not in proper form. If the clerk receives a complaint against a judge of this circuit that does not comply with the requirements of Rule 2, the clerk will accept the complaint for filing, advise the complainant in writing of the defects in the submission, require that they be remedied within fifteen days of the date of the clerk's letter, and dismiss the complaint without prejudice if the complainant does not remedy them. The clerk will notify the chief judge and the circuit executive of each such dismissal. The chief judge may direct the reinstatement of any such complaint.

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 may conduct a limited inquiry for the purpose of determining (1) whether appropriate corrective action has been or can be taken without the necessity of a formal investigation, (2) whether intervening events have made action on the complaint unnecessary, and (3) 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, individually or through the circuit executive, request the judge whose conduct is complained of to file a written response to the complaint. The chief judge may also, individually or through the circuit executive, communicate orally or in writing with the complainant, the 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 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 alleging facts that are shown by a limited inquiry pursuant to 4(b) to be either plainly untrue or incapable of being established through investigation; 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 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; similarly, a single complaint about more than one judge may be severed and more than one special committee appointed.

(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 the judge whose conduct was complained of. The order and the supporting memorandum will be provided to the complainant, the 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 clerk will notify the complainant, the 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) Public availability of chief judge's decision. Materials related to the chief judge's decision will be made public at the time and in the manner set forth in Rule 17.

(h) Report to judicial council. The clerk will report annually to the judicial council of the circuit on actions taken under this rule.

(i) Allegations of criminal conduct. If a chief judge dismisses, solely for lack of jurisdiction under 28 U.S.C. ~~§ 372(e)~~ §§ 351-364, non-frivolous allegations of criminal conduct by a judge, the chief judge's order of dismissal shall inform the complainant that the dismissal does not prevent the complainant from bringing any allegation of criminal conduct to the attention of appropriate federal or state criminal authorities. If, in this situation, the allegations of criminal conduct were originally referred to the circuit by a Congressional committee or member of Congress, the chief judge – if no petition for review of the dismissal is filed within the thirty-day period specified by Rule 6(a) – shall notify the Congressional committee or member that the Judiciary has concluded that it lacks jurisdiction under ~~§ 372(e)~~ §§ 351-364.

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 affirm the order of the chief judge, 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.

(g) Where to file. Petition letters should be sent to

Clerk, United States Court of Appeals
for the Fourth Circuit
1100 East Main Street, Room 501
Richmond, Virginia 23219-3517

The envelope should be marked "Misconduct Petition" or "Disability Petition." The name of the judge complained of should not appear on the envelope.

(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 send to the circuit executive copies of (1) the complaint form and statement of facts, (2) any response filed by the 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 be relevant and material to the petition, and (8) a list of any documents in the clerk's files that are not being sent because they are not considered relevant and material. Upon receipt of these materials, the circuit executive will promptly send copies to each member of the judicial council except for any member disqualified under Rule 18. The clerk will also send the same materials to the chief judge of the circuit, and each 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 dismiss a petition that is received after the deadline set forth in Rule 6(a).

(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 15 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 dismiss the petition.

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

(a) Mail ballot. Each member of the judicial council to whom a ballot was sent will return a signed ballot, or otherwise communicate the member's vote, to the circuit executive. The ballot form will provide opportunities to vote to (1) affirm the chief judge's disposition, or (2) place the petition on the agenda of a meeting 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.

Votes will be tabulated when all members of the judicial council to whom ballots were sent have either voted or indicated that they are disqualified. Members who have disqualified themselves will be treated for this purpose as if ballots had not been sent to them.

If all of the votes cast should be for affirmance, the chief judge's order will be affirmed, and the circuit executive will prepare an appropriate order to that effect. If any of the members vote to place the petition on the agenda of a council meeting, that will be done.

(b) Availability of documents. Upon request, the clerk will make available to any member of the judicial council or to the judge complained about any document from the files that was not sent to the council members pursuant to Rule 7(a).

(c) Vote at meeting of judicial council. If a petition is placed on the agenda of a meeting of the judicial council, council action may be taken by a majority of the members present and voting.

(d) Rights of judge complained about.

(1) At any time after the filing of a petition for review by a complainant, the judge complained about may file a written response with the Clerk of the Court of Appeals and shall do so if requested by the judicial council. The clerk will promptly distribute copies of the response to each member of the judicial council who is not disqualified, to the chief judge, and to the complainant. The judge may not otherwise communicate with council members about the matter, either orally or in writing.

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

(e) Notice of council decision.

(1) The circuit executive will transmit the council's order, any accompanying memorandum in support of the order, and any ballots returned, to the Clerk of the Court of Appeals for inclusion in the official file.

(2) The order of the judicial council, together with any accompanying memorandum in support of the order, will be provided by the clerk to the complainant, the judge, and any judge entitled to receive a copy of the complaint pursuant to Rule 3(a)(2).

(3) If the decision is unfavorable to the complainant, the complainant will be notified by the clerk that the law provides for no further review of the decision.

(4) A memorandum supporting a council order will not include the name of the complainant or the judge whose conduct was complained of. If the order of the council affirms 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.

(f) Public availability of council decision. Materials related to the council's decision will be made public at the time and in the manner set forth in Rule 17.

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 a 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 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 two 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 bankruptcy 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 clerk will send to each 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, 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.

(f) Inability of committee member to complete service. In the event that 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 light of the allegations of the complaint. If, in the course of the investigation, the committee develops reason to believe that the judge may have engaged in misconduct that is beyond the scope of the complaint, the committee may, with written notice to the judge, expand the scope of the investigation to encompass such misconduct.

(b) Criminal matters. In the event that the complaint alleges criminal conduct on the part of a 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. § ~~372(e)(14)~~ 360 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 circuit executive 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 sub-committees, 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 clerk for transmission through the circuit executive to 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 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 argument, or both. If the committee is investigating allegations against more than one judge it may, in its discretion, hold joint hearings or separate hearings.

(b) Notice to judge complained about. The 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 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 complained about. The witnesses will be questioned by committee members, staff, or both. The judge will be afforded the opportunity to cross-examine committee witnesses, personally or through counsel.

(d) Witnesses called by the judge. The 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.

(h) Supporting personnel. The Clerk of the Court of Appeals will arrange for the attendance at such hearings of deputy clerks, court reporters, and other necessary staff, from the staff of the court of appeals or the staff of a district court proximate to the location of the hearing.

RULE 12. RIGHTS OF JUDGE IN INVESTIGATION

(a) Notice. The judge complained about is entitled to written notice of the investigation (Rule 4(f)), to written notice of expansion of the scope of an investigation (Rule 10(a)), and to written notice of any hearing (Rule 11(b)).

(b) Presentation of evidence. The 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, the chief judge or his 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 may, at any time, submit to the clerk written argument for consideration by the special committee, and will be given a reasonable opportunity to present oral argument at an appropriate stage of the investigation.

(d) Attendance at hearings. The 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 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 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). Upon the filing of the special committee's report to the judicial council, the complainant will be notified by the clerk that the report has been filed and is before the council for decision. Although the complainant is not entitled to a copy of the report of the special committee, the judicial council may, in its discretion, release a copy of the report of the special committee 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 at any time submit to the clerk written argument for consideration by 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 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 ground 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 other action to assure the effective and expeditious administration of the business of the courts. Such action may include, among other measures --

- (1) Censuring or reprimanding the judge, either by private communication or by public announcement;
- (2) Ordering that, for a fixed temporary period, no new cases be assigned to the judge;
- (3) 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 pursuant to 28 U.S.C. § 631(i);
- (4) In the case of a bankruptcy judge, removing the judge from office pursuant to 28 U.S.C. § 152;
- (5) 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;
- (6) 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.

(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)(3) 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. Upon the request of a judge whose conduct is the subject of a complaint, the judicial council may, if the complaint has been finally dismissed, recommend that the Director of the Administrative Office of the United States Courts award reimbursement, from funds appropriated to the judiciary, for those reasonable expenses, including attorneys' fees, incurred by that judge during the investigation, which would not have been incurred but for the requirements of 28 U.S.C. § 372(e) §§ 351-364 and these rules.

(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 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 whose conduct was complained about. The order and the supporting memorandum will be provided by the clerk to the complainant, the 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 will be notified by the clerk 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.

(k) Allegations of criminal conduct. If a judicial council dismisses, solely for lack of jurisdiction under 28 U.S.C. § 372(e) §§ 351-364, non-frivolous allegations of criminal conduct

by a judge, the judicial council's order of dismissal shall inform the complainant that the dismissal does not prevent the complainant from bringing any allegation of criminal conduct to the attention of appropriate federal or state criminal authorities. If, in this situation, the allegations of criminal conduct were originally referred to the circuit by a Congressional committee or member of Congress, the judicial council – if no petition for review of the dismissal by the Judicial Conference lies under 28 U.S.C. § 372(c)(10) 357, or if no petition for review is filed – shall notify the Congressional committee or member that the Judiciary has concluded that it lacks jurisdiction under § 372(c) §§ 351-364.

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

(a) Rights of judge complained about. Within 15 days after the receipt of the report of a special committee, the judge complained about may file a written response with the Clerk of the Court of Appeals, who will forward it to all members of the judicial council and to the circuit executive. The judge will also be given an opportunity to present oral argument to the council, personally or through counsel. The judge may not otherwise communicate with council members about the matter, either orally or in writing.

(b) Conduct of additional investigation by the council. If the judicial council decides to conduct additional investigation, the 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) Voting. Council action will 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.

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, 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 circuit executive, the chief judge, members of a special committee, members of the judicial council, or staff, will be maintained separate and apart from all other files and records, with appropriate security precautions to ensure confidentiality.

(c) Disclosure in 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, and such information and exhibits may be made public pursuant to Rule 17.

(d) Availability to Judicial Conference. In the event that 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. § 372(c)(10) 357 for review of a council order, the clerk will furnish any other records related to the investigation.

(e) Availability to district court. In the event that 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 complained about. Any materials from the files may be disclosed to any person upon the written consent of both the judge complained about and the chief judge of the circuit. In any disclosure the chief judge may require that the identity of the complainant, or of witnesses in an investigation conducted by a special committee or the judicial council, be shielded.

(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. § 372(c)(14) 360.

Such disclosure may be made to Judiciary researchers engaged in the study or evaluation of experience under 28 U.S.C. § 372(c) §§ 351-364 and related modes of judicial discipline, but only where such study or evaluation has been specifically approved by the Judicial Conference or by the Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders. The judicial council should take appropriate steps (to the extent the Judicial Conference or its Committee has not already done so) to shield the identities of the judge complained against, the complainant, and witnesses from public disclosure, and may impose other appropriate safeguards to protect against the dissemination of confidential information.

(i) Disclosure of identity by judge complained about. Nothing in this rule will preclude the judge complained about from acknowledging that he or she is the judge referred to in documents made public pursuant to Rule 17.

(j) Assistance and consultation. Nothing in this rule precludes the chief judge or judicial council, for purposes of acting on a complaint filed under 28 U.S.C. § 372(c) 351, from seeking the assistance of qualified staff, or from consulting other judges who may be helpful in the process of complaint disposition.

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 if 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 complained about without his or her 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 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 will be disclosed.

(4) If the complaint is dismissed as moot, or because intervening events have made action on the complaint unnecessary, at any time after the appointment of a special committee, the judicial council will determine whether the name of the judge is to be disclosed.

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 1100 East Main Street, Room 501, Richmond, Virginia 23219-3517. The clerk will

send copies of the publicly available materials to the Federal Judicial Center, Thurgood Marshall Federal Judiciary Building, Washington, DC 20002-8003, 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) Decision 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) 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. A chief judge who has identified a complaint under Rule 2(j) will not be automatically disqualified from participating in the consideration of the complaint but may consider in his or her discretion whether the circumstances warrant disqualification.

(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 who is complained about.

(c) Disqualification of chief judge on consideration of a petition for review of a chief judge's order. If a petition for review of a chief judge's order dismissing a complaint or concluding a proceeding is filed with the judicial council pursuant to Rule 5, the chief judge will not participate in the council's consideration of the petition. In such a case, the chief judge may file a written communication with the clerk for transmission to all of the members of the judicial council and the circuit executive, with copies provided to the complainant and to the judge complained about. The chief judge may not otherwise communicate with council members about the matter, either orally or in writing.

(d) 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.

(e) Judge under investigation. Upon appointment of a special committee, the 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.

(f) Substitute for disqualified chief judge. If the chief judge of the circuit is disqualified from participating in consideration of the complaint, the duties and responsibilities of the chief judge under these rules will be assigned to the circuit judge in regular active service who is the most senior in date of commission of those who are not disqualified. If all circuit judges in regular active service are disqualified, the judicial council may determine whether to refer the complaint to a circuit judge from another circuit pursuant to 28 U.S.C. § 291(a), or whether it is necessary, appropriate, and 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 where multiple judges are disqualified. Notwithstanding any other provision in these rules to the contrary, a member of the judicial council who is a subject of the complaint may participate in the disposition thereof if (a) participation by members who are subjects of the complaint is necessary to obtain a quorum of the judicial council, and (b) the judicial council votes that it is necessary, appropriate, and in the interest of sound judicial administration that such complained-against members be eligible to act. Members of the judicial council who are subjects of the complaint may participate in this determination if necessary to obtain a quorum of the judicial council. Under no circumstances, however, shall the judge who acted as chief judge of the circuit in ruling on the complaint under Rule 4 be permitted to participate in this determination.

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 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 20. AVAILABILITY OF OTHER PROCEDURES

The availability of the complaint procedure under these rules and 28 U.S.C. § 372(e) §§ 351-364 will not preclude the chief judge of the circuit or the judicial council of the circuits from considering any information that may come to their attention suggesting that a 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, 1100 East Main Street, Room 501, Richmond, Virginia 23219-3517, and in each office of the clerk of a district court or bankruptcy court within this circuit.

RULE 22. EFFECTIVE DATE

These rules apply to complaints filed on or after ~~January 19, 2001~~ **February 7, 2003**. The handling of complaints 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 Fourth Circuit for the study of rules of practice and internal operating procedures under Fourth Circuit Local Rule 47(b) 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.