

RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS

ARTICLE IV. INVESTIGATION AND REPORT BY SPECIAL COMMITTEE

Fed. Jud. Con. and Disab. Proc. Rule 16 (2011)

Rule 16. Rights of Complainant in Investigation

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

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

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

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

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

RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS

ARTICLE V. JUDICIAL-COUNCIL REVIEW

Fed. Jud. Con. and Disab. Proc. Rule 18 (2011)

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

(a) Petitions for Review. After the chief judge issues an order under Rule 11(c), (d), or (e), a complainant or subject judge may petition the judicial council of the circuit to review the order. By rules promulgated under 28 U.S.C. § 358, the judicial council may refer a petition for review

filed under this Rule to a panel of no fewer than five members of the council, at least two of whom must be district judges.

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

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

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

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

(A) copies of the complaint;

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

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

(D) any memorandum in support of the chief judge's order;

(E) the petition for review; and

(F) an appropriate ballot;

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

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

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

RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS

ARTICLE V. JUDICIAL-COUNCIL REVIEW

Fed. Jud. Con. and Disab. Proc. Rule 19 (2011)

Rule 19. Judicial-Council Disposition of Petitions for Review

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

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

- (1) affirm the chief judge's disposition by denying the petition;
- (2) return the matter to the chief judge with directions to conduct a further inquiry under Rule 11(b) or to identify a complaint under Rule 5;
- (3) return the matter to the chief judge with directions to appoint a special committee under Rule 11(f); or
- (4) in exceptional circumstances, take other appropriate action.

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

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

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

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

RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS

ARTICLE V. JUDICIAL-COUNCIL REVIEW

Fed. Jud. Con. and Disab. Proc. Rule 20 (2011)

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

(a) Rights of Subject Judge. Within 21 days after the filing of the report of a special committee, the subject judge may send a written response to the members of the judicial council. The judge must also be given an opportunity to present argument through counsel, written or oral, as determined by the council. The judge must not otherwise communicate with council members about the matter.

(b) Judicial-Council Action.

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

(A) dismiss the complaint because:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) might constitute ground for impeachment; or

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

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

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

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

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

RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS

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

Fed. Jud. Con. and Disab. Proc. Rule 21 (2011)

Rule 21. Committee on Judicial Conduct and Disability

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

(b) Reviewable Matters.

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

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

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

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

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

the Chief Justice must appoint, if available, an ex-member of the Committee or, if not, another United States judge to consider the petition.

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

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

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

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

RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS

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

Fed. Jud. Con. and Disab. Proc. Rule 22 (2011)

Rule 22. Procedures for Review

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

Judicial Conference Committee on Judicial Conduct and Disability

Attn: Office of General Counsel

Administrative Office of the United States Courts

One Columbus Circle, NE

Washington, D.C. 20544

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

(b) Form and Contents of Petition for Review. No particular form is required. The petition must contain a short statement of the basic facts underlying the complaint, the history of its consideration before the appropriate judicial council, a copy of the judicial council's decision, and the grounds on which the petitioner seeks review. The petition for review must specify the

date and docket number of the judicial-council order for which review is sought. The petitioner may attach any documents or correspondence arising in the course of the proceeding before the judicial council or its special committee. A petition should not normally exceed 20 pages plus necessary attachments.

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

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

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

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