

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

Misc. No. 09 -23

IN RE: RULES GOVERNING COMPLAINTS OF JUDICIAL MISCONDUCT AND DISABILITY

ORDER

Pursuant to 38 U.S.C. § 7253(g) and consistent with 28 U.S.C. § 2071(b), the Court has determined that there is a need to amend the Court's Rules Governing Complaints of Judicial Misconduct and Disability (Rules) as well as the Complaint Form. Accordingly, it is

ORDERED that the attached proposed Rules and Complaint Form are hereby published for public comment for a period of 30 days. Comments must be submitted to the Clerk of the Court by November 15, 2023, at comments@uscourts.cavc.gov or to 625 Indiana Avenue, NW, Suite 900, Washington, DC 20004.

DATED: October 16, 2023

FOR THE COURT:

/s/ Tiffany M. Wagner
TIFFANY M. WAGNER
Clerk of the Court

Attachments:

Proposed revised rules and complaint form

Proposed revised rules and complaint form with changes shown

Rules of the Judicial Council of the United States Court of Appeals for Veterans Claims Governing Complaints of Judicial Misconduct and Disability

(Adopted _____DATE_____)

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Preface to the Rules

On November 2, 2002, section 372(c) of title 28, United States Code, was replaced by a new chapter 16 of title 28 by the Judicial Improvements Act of 2002, Complaints Against Judges and Judicial Discipline (hereinafter referred to as "the Act" or "chapter 16") (28 U.S.C. §§ 351-64), Public Law No. 107-273, § 11042(a). The Act was reorganized as a separate chapter in order to "publicize its existence and . . . facilitate its use." H.R. REP. NO. 107-459, 107th Cong., 2d Sess., at 8 (May 14, 2002). Section 11043(f) of the Act made conforming amendments to 38 U.S.C. § 7253(g). In addition, 38 U.S.C. § 7299 was added by Public Law No. 106-117, § 1024(a) on November 30, 1999, to address the subject of restrictions on the activities of recall-eligible judges serving and not serving in recall status. Amendments to these Rules made them consistent with those statutory changes.

Chapter 16, made applicable to the Court by virtue of section 7253(g)(1), provides a way for any person to complain about a federal 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." 28 U.S.C. § 351(a). It also permits the judicial councils of the federal circuits and other affected federal courts to adopt Rules for the consideration of these complaints. These Rules have been adopted under that authority.

This Preface and the ensuing Rules, adopted by the Court on August 27, 2004, as final Rules, were initially derived from the Illustrative Rules Governing Complaints of Judicial Misconduct and Disability, proposed by the Judicial Conference of the United States Committee to Review Circuit Council Conduct and Disability Orders, and were amended to comply with the changes made by Public Law No. 107-273. Further modernizing amendments were made on _____(DATE)_____ and adopted as final that date.

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 Court 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 correction of conditions that interfere with the proper administration of justice in the Court.
- (b) **What may be complained about.** The law authorizes complaints about 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." 28 U.S.C. § 351(a); *see* Rule 20. A judge who is the subject of a complaint under these Rules is referred to herein as the "judge complained about."

"Conduct prejudicial to the effective and expeditious administration of the business of the courts" is not a precise term. It applies only to the conduct of a judge during active status, or of a retired recall-eligible judge during a period when that judge is serving in recall status (*see* 38 U.S.C. § 7299),

and 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 about cases with lawyers or parties to such 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. Also, there is a rebuttable presumption that it does not include actions of a judge that are in accordance with advice, relied upon by the judge, from the Judicial Conference of the United States' Committee on the Codes of Judicial Conduct. 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) **Complaints about others.** Complaints about other officials of the Court should be made to their supervisors in the Court. If such a complaint cannot be satisfactorily resolved at lower levels, it may be referred to the Chief Judge. The Clerk of the Court (Clerk), whose address is 625 Indiana Avenue, NW, Suite 900, Washington, DC 20004-2950, and whose telephone number is (202) 501-5980, is sometimes able to provide assistance in resolving such complaints.
- (d) **Time for filing complaints.** A complaint may be filed at any time, except as provided in Rule 4(b)(4)-(5). However, complaints should be filed promptly. A complaint will be dismissed if it is filed so long after the events in question that the delay will make fair consideration of the matter impossible.
- (e) **Limitations on use of the procedure.** The complaint procedure may not be used to provide a means of obtaining review of a judge's decision or ruling in a case. A motion for reconsideration or review, under Rule 35 of the Court's Rules of Practice and Procedure, may be used for that purpose in appropriate circumstances. The complaint procedure may not be used to seek disqualification of a judge from sitting on a particular case. A motion for disqualification, under Rule 27 of the Court's Rules of Practice and Procedure, may be used for that purpose. 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 for a long time.

RULE 2. HOW TO FILE A COMPLAINT

- (a) **Form.** Complaints must be made on the official form for filing complaints, which is reproduced in the Appendix to these Rules. Forms may be obtained from the Court's website, by writing or telephoning the Clerk (*see* Rule 1(c) for address and telephone number), or in person at the office of the Clerk.
- (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 shall not be longer than five pages (five sides), and the paper size shall be no larger than 8½" by 11". Under extraordinary circumstances an allowance for more pages may be granted by the Chief Judge, if a complainant believes he or she cannot address the alleged judicial behavior within five pages. If a complaint longer than five pages is submitted, at that time the complainant must include a separate document that explains why a longer submission should be allowed. The complainant will be notified if the request is not granted, and the complaint may be re-submitted to conform

with page and length requirements. The statement of facts shall include –

- (1) a statement of what occurred;
- (2) the time and place of the occurrence or occurrences; and
- (3) any other information that would assist an investigator in checking the facts, such as the presence of witnesses and their names and addresses.

(c) **Legibility.** Complaints should be typewritten if possible, in a font size 12-point or larger. 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 page(s) in the documents on which relevant material appears. The entire complaint must not exceed 15 pages (15 sides), unless a request to exceed the page limit is submitted with the complaint, as described in Rule 2(b), and approved by the Chief Judge.

(e) **Number of copies.** One complete copy of the complaint form, of the statement of facts, and of any supporting documents should be filed.

(f) **Signature, contact information, and oath.** The complaint form filed by the complainant must include the complainant's contact information (including telephone number, street address, and email address), the complainant's signature, and the complainant's verification in writing, under penalty of perjury, of the truth of the statements made in the complaint.

(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 for such action as the Chief Judge considers appropriate. *See* Rules 18 and 20.

(h) **Where to file.** Complaints may be filed by mail or email. Complaints filed by mail should be sent to:

Clerk, United States Court of Appeals for Veterans Claims
625 Indiana Avenue, NW, Suite 900
Washington, DC 20004-2950.

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

Complaints filed by email should be sent to efiling@uscourts.cavc.gov. The subject line of the email should be "CONFIDENTIAL: Complaint of Misconduct" or "CONFIDENTIAL: Complaint of Disability." The name of the judge complained about should *not* appear in the subject line.

(i) **No fee required.** There is no filing fee for filing 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 Court and on the basis of information available to the Chief Judge, the Chief Judge may, by nonpublic written order stating reasons therefor, identify a complaint (and its nature) as authorized by 28 U.S.C. § 351(b) and thereby dispense with the filing of a written complaint. In such event, the Chief Judge will not automatically 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 UPON RECEIPT OF COMPLAINT

- (a) **Receipt of complaint in proper form.** Upon receipt of a complaint that is filed in compliance with the requirements of Rule 2, the Clerk 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 (or the judge authorized to act as Chief Judge under Rule 18(f)) and will provide a copy (and obtain a receipt therefor) to each judge complained about. 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.

- (b) **Receipt of complaint about official other than judge of the Court.** If the Clerk receives a complaint about an official other than a judge, 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 judge of the Court and another official.** If the Clerk receives a complaint about a judge 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 that is filed on the complaint form but does not comply with the requirements of Rule 2, the Clerk will not accept the complaint for filing and will advise the complainant of the appropriate procedures. If a complaint against a judge is received in letter form or otherwise not on the official form for filing complaints, the Clerk will not accept that communication 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 form.
- (e) **Referral of pertinent information to Chief Judge.** Notwithstanding the preceding subsections of this Rule, the Clerk will refer to the Chief Judge any information, in any complaint not accepted for filing, that the Clerk believes should be brought to the attention of the Chief Judge. *See* Rule 20(a).

Chapter II: Review by Chief Judge of a Complaint

RULE 4. REVIEW BY THE CHIEF JUDGE

- (a) **Procedure for review by Chief Judge.** When a complaint in proper form is sent to the Chief

Judge by the Clerk or identified under section 351(b) (*see* Rule 2(j)), the Chief Judge will review the complaint (*see* Rule 18(a)). 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 for 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 request the judge whose conduct is complained of to file a written response to the complaint. The Chief Judge or his or her designee may also communicate orally or in writing with the complainant, the judge whose conduct is complained of, and other persons 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, after an initial limited inquiry, remains reasonably in dispute.

(b) Actions available to Chief Judge. After reviewing a complaint under subsection (a), the Chief Judge, by written order stating his or her reasons, may:

- (1) dismiss the complaint if the Chief Judge finds that –
 - (A) 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; or
 - (B) the complaint is directly related to the merits of a decision or procedural ruling; or
 - (C) the complaint is frivolous, a term that includes making charges that are wholly unsupported; or
 - (D) a limited inquiry conducted under subsection (a) demonstrates that the allegations in the complaint lack any factual foundation or are conclusively refuted by objective evidence; or
 - (E) the Court does not have jurisdiction; or
 - (F) the complaint is abusive or orchestrated, if reviewed by the Chief Judge following procedures outlined in Rule 4(b)(4) or 4(b)(5); or
 - (G) under chapter 16, the complaint is otherwise not appropriate for consideration; or
- (2) conclude the proceeding 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; or
- (3) 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,

a complaint or complaints about more than one judge, growing out of the same course of conduct, may be joined or severed; or

- (4) order the complainant to show cause in writing why the right to file further complaints should not be limited if the Chief Judge finds the complaint(s) abusive (for example, the complainant(s) has filed repetitive, harassing, or frivolous complaints or has otherwise abused the complaint procedure). This limitation could prohibit, restrict, or impose condition(s) on the complainant's use of the complaint procedure. Upon written request of the complainant(s), the limitation or condition(s) may be revised or withdrawn; or
- (5) order the Clerk to accept only a limited number of complaints for filing if the Chief Judge finds essentially identical complaints from different complainants have been received and appear to be part of an orchestrated effort. This restriction may occur after the first complaint or complaints have been dismissed on the merits, and further identical submissions follow – with the specific number to be accepted to be determined by the Chief Judge at that time. If the Court does not accept a complaint for this reason, any unaccepted complaint will be sent to the complainant with a copy of the limitation order and a supporting memorandum explaining the Court's reasoning.

If the Chief Judge dismisses the complaint under paragraph (1)(E), the Chief Judge, based on information in the complaint, may (i) make notification as described in Rule 14(f)(6) and/or (ii) recommend to the Board of Judges of the Court systemic corrective action (that is, action not directed against the judge complained about in particular) to ensure the effective and expeditious administration of the business of the Court. *See* Rule 20(a).

(c) Notice of Chief Judge's action.

- (1) If the Chief Judge issues an order dismissing the complaint or concluding the proceeding 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 complained about. The order and the supporting memorandum will be provided, by personal delivery, certified or registered mail with return receipt, or electronic delivery, to the complainant and the judge complained about. 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, by personal delivery, certified or registered mail with return receipt, or electronic delivery, the complainant and the judge complained about that the matter has been referred, and will inform them of the membership of the committee.

(d) 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.

(e) **Report to judicial council.** The Chief Judge will from time to time report to the judicial council on actions taken under this Rule.

(f) **Allegations of criminal conduct.** If the Chief Judge dismisses, for lack of jurisdiction, nonfrivolous allegations of criminal conduct by a judge because those allegations do not fall under the scope of 28 U.S.C. § 351(a), the Chief Judge's order of dismissal will inform the complainant that the dismissal does not prevent the complainant from bringing any allegations 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 Court by a congressional committee or member of Congress, the Chief Judge – if no petition for review of the dismissal is filed within the 30-day period specified by Rule 6(a) – will notify the congressional committee or member that the Court has concluded that it lacks jurisdiction under section 351(a).

Chapter III: Review of Chief Judge's Disposition of Complaint

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

(a) **Membership of judicial council.** Except as provided in the next sentence, the judicial council consists of all judges who are in regular active service at the time that a complaint is referred to the judicial council as a result of (1) a petition for review under Rule 8 or (2) a report of a special committee under Rule 10(e). No judge whose actions are the subject of a pending investigation or subsequent proceeding pursuant to a complaint under these Rules may serve on the judicial council during that investigation or any subsequent proceeding relating to it. The judicial council must have a minimum of five members to review a decision pursuant to Rule 8 or a recommendation of the special committee pursuant to Rule 10(e). If at least five active judges are not eligible to serve on the judicial council, the Chief Judge will direct the Clerk to randomly select and appoint enough Senior judges – first from currently recalled Senior judges and then from recall-eligible Senior judges, if necessary – to serve on the council.

(b) **When petition may be filed.** 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 by a complainant or the judge complained about.

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

(a) **Time.**

(1) Except as provided in paragraph (2) of this subsection, a petition for review must be received in the office of the Clerk not later than 30 days after the date of the Clerk's letter to the complainant transmitting the Chief Judge's order.

(2) When the complainant is located outside the United States, Puerto Rico, or the Virgin Islands, 30 additional days will be added to the period prescribed in paragraph (1) of this subsection.

(b) **Form.** A petition should be in the form of a letter, addressed to the Clerk, beginning, "I hereby petition the judicial council for review of the Chief Judge's order of [date] . . ." There is no need to enclose a copy of the original complaint.

(c) **Legibility.** Petitions should be typewritten if possible, in a font size 12-point or larger. If not typewritten, they must be legible.

(d) **Number of copies.** Only an original is required.

(e) **Statement of grounds for petition.** The petition 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 made available to members of the judicial council considering the petition. The petition should be limited to five pages (five sides), on paper not larger than 8½" by 11", with no appendix or attachment.

(f) **Signature.** The petition must be signed.

(g) **Where to file.** Petitions may be filed by mail or email. Petitions filed by mail should be sent to:

Clerk, United States Court of Appeals for Veterans Claims
625 Indiana Avenue, NW, Suite 900
Washington, DC 20004-2950

The envelope should be marked "CONFIDENTIAL: Misconduct Petition" or "CONFIDENTIAL: Disability Petition." The name of the judge complained about should *not* appear on the envelope. Petitions filed by email should be sent to efiling@uscourts.cavc.gov. The subject line of the email should be "CONFIDENTIAL: Misconduct Petition" or "CONFIDENTIAL: Disability Petition." The name of the judge complained about should *not* appear in the subject line.

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

RULE 7. ACTION BY CLERK OF COURT UPON RECEIPT OF PETITION FOR JUDICIAL COUNCIL 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 will acknowledge receipt of the petition. The Clerk will promptly provide 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 complained about,

- (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 complaint file that appear to be relevant and material to the petition,
- (8) a list of any documents in the complaint file that are not being sent because they are not considered relevant and material, and
- (9) a written ballot that conforms with Rule 8(a).

The Clerk will also provide, by personal delivery, certified or registered mail with return receipt, or electronic delivery, the same materials, except for the ballot, to the judge complained about or the complainant (if the judge complained about filed the petition), except that materials previously provided may be omitted.

- (b) Receipt of untimely petition.** The Clerk will refuse to accept 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 not later than 15 days after the date of the Clerk's letter or 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 subsection (a) of this Rule. If the deficiencies are not corrected, the Clerk will reject the petition.

RULE 8. ACTION BY JUDICIAL COUNCIL ON PETITION FOR REVIEW

- (a) Written ballot.** Each member of the judicial council to whom a ballot was provided (except for the Chief Judge) will return a signed ballot, or otherwise communicate the member's vote, to the Clerk. The ballot will provide opportunities to vote to (1) deny the petition, (2) place the petition on the agenda of a meeting of the judicial council for discussion, or (3) grant the petition and place the complaint before the judicial council (which may include referral to a special committee (*see* the last sentence of this subsection)). The ballot will also provide an opportunity for members to indicate that they have disqualified themselves from participating in consideration of the petition.

Except as otherwise provided in this subsection, votes will be tabulated when all members of the judicial council to whom ballots were provided have either voted or indicated that they are disqualified. After 20 days have elapsed from the date that the petition and related materials were provided to members of the judicial council, votes may be tabulated if they have been cast by at least two-thirds of the members to whom ballots were provided. Members who have disqualified themselves will be treated for this purpose as if ballots had not been provided to them.

If a majority of the votes cast are for denial of the petition, the Chief Judge's order will be affirmed, except as provided in the next sentence of this subsection and in subsection (g). If any of the members vote to place the petition on the agenda of a judicial council meeting or if any of the members (but less than a majority) vote to grant the petition, the petition will be placed on the agenda of a judicial council meeting. If a majority of the votes cast are to grant the petition, the complaint will be referred to a special committee (*see* Chapter IV of these Rules).

(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 judicial 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 for a discussion, judicial council action to grant or deny the petition may, subject to subsection (g), be taken by a majority of the members present and voting (except that the Chief Judge will not vote on the petition). Unless a majority votes to grant the petition, it will be denied, except as provided in subsection (g).

(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. The Clerk will promptly distribute copies of the response to each member of the judicial council who is not disqualified, to the Chief Judge (if not disqualified), and to the complainant. The judge complained about may not communicate with judicial council members individually about the matter, either orally or in writing.

(2) The 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.

(e) Notice of judicial council decision.

(1) The order stating the decision of the judicial council, together with any accompanying memorandum in support of the order, will be provided, by personal delivery, certified or registered mail with return receipt, or electronic delivery, to the complainant and the judge complained about.

(2) If the decision is unfavorable to the complainant, the complainant will be notified that the law provides for no further review as of right of the decision but only such review as is provided for in Rule 14(e)(2) in the discretion of the Judicial Conference of the United States.

- (3) A memorandum supporting a judicial council order will not include the name of the complainant or the judge complained about. If the order of the judicial 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 judicial council decision.** Materials related to the judicial council's decision will be made public at the time and in the manner set forth in Rule 17.
- (g) **Quorum for dispositive voting.** A dispositive vote by the judicial council (to grant or deny the petition), will not take effect if less than a majority of the number of active judges participated in that vote (*see* Rule 5); in that instance, the matter will be referred to the Judicial Conference of the United States under Rule 14(e) unless the Chief Judge and all of the participating judges are in agreement on the disposition of the complaint.

Chapter IV: Investigation and Recommendation by Special Committee

RULE 9. APPOINTMENT OF SPECIAL COMMITTEE

- (a) **Membership.** A special committee appointed pursuant to Rule 4(b)(3) will consist of the Chief Judge and two additional judges, except as provided for in subsection (e).
- (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 to issue subpoenas related to proceedings of the committee.
- (c) **Notice of appointment of special committee.** If such action has not already been taken under Rule 4(c)(2), the presiding officer will notify, by personal delivery, certified or registered mail with return receipt, or electronic delivery, the complainant and the judge complained about that the matter has been referred, and will inform them of the membership of the committee.
- (d) **Provision of documents.** The Chief Judge will certify to each other member of the committee 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 will continue to serve on the committee even though the member relinquishes the position of Chief Judge or active judge, as the case may be, but only if the member continues in active service or is a recall-eligible judge serving in recall status.
- (f) **Quorum and voting requirements.** At least two members of the special committee must be present to transact business, and at least two members must vote in support of any proposed action of the committee.

- (g) **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 will determine whether to appoint a replacement member.

RULE 10. CONDUCT OF 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 may have engaged in misconduct that is beyond the scope of the complaint, the committee may, with written notice, by personal delivery, certified or registered mail with return receipt, or electronic delivery, to the judge complained about, 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. § 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 Court.
- (c) **Staff.** The committee may arrange for staff assistance in the conduct of the investigation. It may use existing staff of the Court or may arrange, through the Clerk, for the hiring of special staff to assist in the investigation.
- (d) **Delegation.** The committee may delegate duties under this Rule in its discretion to subcommittees, to staff members, or to individual committee members. The authority to exercise the committee's subpoena powers under 28 U.S.C. § 356 and 38 U.S.C. § 7253(g) 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) and 38 U.S.C. § 7265(a).
- (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 judicial council action. Any finding adverse to the judge complained about 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 hearing held pursuant to Rule 11.
- (f) **Voting.** All actions of the committee will be by vote of a majority of all 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 a joint hearing or separate hearings.
- (b) **Notice to judge complained about.** The judge complained about will be given adequate advance notice in writing, by personal delivery, certified or registered mail with return receipt, or electronic delivery, of any hearing to be held, its purposes, and the names of any witnesses whom the committee intends to call. The judge complained about will also be provided with the text of any statements that have been taken from such witnesses. The judge complained about 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 complained about will be afforded the opportunity to cross-examine committee witnesses, personally or through counsel.
- (d) **Witnesses called by the judge.** The judge complained about is entitled to call witnesses and 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 for in 28 U.S.C. § 1821 (as made applicable through 38 U.S.C. § 7253(g)(3)(A)).
- (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 hearing testimony will be under oath or affirmation.
- (g) **Record and transcript.** A record and transcript will be made of any hearing held.

RULE 12. RIGHTS OF JUDGE UNDER INVESTIGATION

- (a) **Notice.** The judge complained about is entitled to written notice of an investigation (Rule 4(c)), to written notice of expansion of the scope of an investigation (Rule 10(a)), and to written notice of any hearing (Rule 11(b)). All notices will be provided by personal delivery, certified or registered mail with return receipt, or electronic delivery.
- (b) **Representation by counsel.** The judge complained about 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 to the extent provided in Rule 14(h).
- (c) **Right to hearing; presentation of evidence.** The judge complained about 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. The judge complained about will be afforded the opportunity to cross-

examine committee witnesses, personally or through counsel. Upon request of the judge, the Chief Judge or his or her designee will direct the Clerk to issue a subpoena in accordance with 28 U.S.C. § 332(d)(1) (as made applicable through 28 U.S.C. § 356) and 38 U.S.C. § 7253(g)(1).

- (d) **Presentation of argument.** The judge complained about 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.
- (e) **Attendance at hearings.** The judge complained about will have the right to attend any hearing held by the special committee and to receive copies of the transcript and any document introduced, as well as to receive a copy of any written argument submitted by the complainant to the committee.
- (f) **Receipt of committee's report.** The judge complained about will have the right to receive the report of the special committee at the time it is filed with the judicial council.

RULE 13. RIGHTS OF COMPLAINANT DURING INVESTIGATION

- (a) **Notice.** The complainant is entitled to written notice, by personal delivery, certified or registered mail with return receipt, or electronic delivery, of the investigation as provided in Rule 4(c). Upon the filing of a special committee's report to the judicial council, the complainant will be notified, by personal delivery, certified or registered mail with return receipt, or electronic delivery, that a report has been filed and is before the judicial council for decision. Although the complainant is not entitled to a copy of a report of a special committee, the judicial council may, in its discretion, provide a copy of such report to the complainant.
- (b) **Opportunity to provide evidence and attend hearing.** The complainant is entitled to be interviewed by a representative of any special committee appointed. If it is believed that the complainant has substantial information to offer, the complainant will be called as a witness at a hearing before a special committee.
- (c) **Presentation of argument.** The complainant may submit written argument at any time to any special committee appointed or to the judicial council. In the discretion of the special committee, the complainant may be permitted to offer oral argument.
- (d) **Representation by counsel.** A complainant may submit to any special committee appointed 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) **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 under the circumstances prescribed in subsection (f). Judicial council action will be taken, subject to Rule 8(g), by a majority of those members of the judicial council who are not disqualified.

(b) Basis of judicial council action. Subject to the rights of the judge complained about to submit argument to the judicial council as provided in Rule 15(a), the judicial council may take action on the basis of the report of the special committee and the record of any hearings held. If the judicial 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, as provided in Rule 15(b).

(c) Dismissal. The judicial council will dismiss a complaint if it concludes that –

- (1) 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) the complaint is directly related to the merits of a decision or procedural ruling;
- (3) the facts on which the complaint is based have not been demonstrated; or
- (4) under chapter 16, the complaint is otherwise not appropriate for consideration.

(d) Conclusion of proceeding on basis of corrective action taken. The judicial 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 or review by Judicial Conference of the United States.

- (1) The judicial council may, in its discretion, refer a complaint to the Judicial Conference of the United States with the judicial council's recommendations for action. The judicial council must refer such a complaint to the Judicial Conference of the United States if the judicial council determines that a judge may have engaged in conduct that might constitute ground for removal from office by the President of the United States under 38 U.S.C. § 7253(f)(1), or if the judicial council cannot agree on a disposition, or if a quorum of the judicial council has not participated in the vote as provided for in Rule 8(g).
- (2) The judge complained about or the complainant may seek review of the judicial council's action by the Judicial Conference of the United States.

(f) Order of corrective action. If the complaint is not disposed of under subsections (c) through (e) of this Rule, the judicial council will take other action to ensure the effective and expeditious administration of the business of the Court. Such action may include, among other measures –

- (1) censuring or reprimanding the judge complained about, either by private communication or

by public announcement;

(2) ordering that, for a fixed temporary period, with respect to the judge complained about, no new cases be assigned or that no new cases be assigned and that existing caseload be adjusted;

(3) [Reserved]

(4) [Reserved]

(5) requesting the judge to retire voluntarily with the provision (if necessary and permissible (*see* 38 U.S.C. § 7287)) that ordinary length-of-service requirements will be waived, which request may or may not include a provision to forego recall eligibility;

(6) notifying about the complaint the bar(s) by which the judge complained about is licensed and/or any other appropriate governmental entity; and

(7) requesting, in cases involving disability, the judge to retire voluntarily under 38 U.S.C. § 7296(b)(3).

(g) Combination of actions. Referral of a complaint to the Judicial Conference of the United States under subsection (e) of this Rule will not preclude the judicial council from simultaneously taking action under subsection (f), except that where the judge complained about seeks review of the judicial council's action under subsection (e)(2), the judicial council may only simultaneously take action under subsection (f)(2)-(5).

(h) Recommendation about fees. Upon the request of a judge complained about, the judicial council may, as provided for in 28 U.S.C. § 361 (as made applicable through 38 U.S.C. § 7253(g)(3)(B)), if the complaint has been finally dismissed, direct that reimbursement, from funds appropriated to the Court, be made for those reasonable expenses, including attorney fees, incurred by that judge during the investigation, which would not have been incurred but for the requirements of 38 U.S.C. § 7253(g), 28 U.S.C. § 351 *et seq.*, and these Rules.

(i) Notice of action of judicial council. Judicial council action will be by written order. Unless the judicial 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 judicial council action. The memorandum will not include the name of the complainant or of the judge complained about. The order and the supporting memorandum will be provided to the complainant, the judge complained about, and all members of the judicial council. However, if the complaint has been referred to the Judicial Conference of the United States pursuant to subsection (e) of this Rule and the judicial council determines that disclosure would be contrary to the interests of justice, such disclosure need not be made. The complainant and the judge complained about will be notified of the right to seek review of the judicial council's decision before 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 judicial 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 the judicial council dismisses for lack of jurisdiction nonfrivolous allegations of criminal conduct by a judge because those allegations do not fall under the scope of 28 U.S.C. § 351(a), the judicial council's order of dismissal will 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 Court by a congressional committee or member of Congress, the judicial council – if no petition for review of the dismissal by the judicial council lies under 28 U.S.C. § 357(a), or if no petition for review is filed – will notify the congressional committee or member that the Court has concluded that it lacks jurisdiction under section 351(a).

RULE 15. PROCEDURES FOR JUDICIAL COUNCIL; AMICUS CURIAE

- (a) Rights of judge complained about.** Not later than 10 days after the filing of the report of a special committee, the judge complained about may address a written response to all members of the judicial council. The judge complained about will also be given an opportunity to present oral argument to the judicial council, personally or through counsel, and may move for the judicial council to conduct an investigation under subsection (b), including receiving evidence submitted by the judge. The judge complained about may not otherwise communicate with judicial council members about the matter, either orally or in writing.
- (b) Conduct of additional investigation by judicial council.** If the judicial council decides to conduct additional investigation, the complainant and judge complained about will be given adequate prior notice, by personal delivery, certified or registered mail with return receipt, or electronic delivery, 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 judicial council may limit testimony to avoid unnecessary repetition of testimony presented before the special committee.
- (c) Amicus curiae.** No person may be granted the right to intervene or to appear as amicus curiae in any proceeding before the judicial 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 Court 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 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 judicial 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 of the United States.** 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 of the United States 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 of the United States or its Committee on Judicial Conduct and Disability, in connection with their consideration of a referred complaint described in 28 U.S.C. § 354(b) or a petition under 28 U.S.C. § 357(a) for review of a judicial council order, the Clerk will furnish any other records related to the investigation.
- (e) **[Reserved]**
- (f) **Removal proceedings.** The judicial council may release to the President of the United States any materials that are believed necessary to a removal proceeding conducted by the President under 38 U.S.C. § 7253(f).
- (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. 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 judicial council concludes that such disclosure is justified by special circumstances and is not prohibited by the provisions of 28 U.S.C. § 360.
- (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. § 351(a) or identified by the Chief Judge under 28 U.S.C. § 351(b) (*see* Rule 2(j)), 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 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 judicial council order dismissing the complaint for reasons other than mootness or because intervening events have made action on the complaint unnecessary (as to which, *see* paragraph (4), below), 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, pursuant to Rule 14(f), 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(f), the text of the dispositive order will be included in the materials made public, and the name of the judge complained about will be disclosed.
- (4) If, pursuant to Rule 14(d), 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 complained about 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 subsection (a) will be made public by placing them in a publicly accessible file in the office of the Clerk at 625 Indiana Avenue, NW, Suite 900, Washington, DC 20004-2950. In cases in which memoranda appear to have precedential value, the Chief Judge may cause them to be published in a manner consistent with subsection (a) of this Rule.
- (c) **Decisions of Judicial Conference of the United States standing committee.** To the extent consistent with the policy of the Judicial Conference of the United States Committee on Judicial Conduct and Disability, opinions of that Committee about complaints arising from this Court will also be made available to the public in the office of the Clerk.
- (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 of the United States within 30 days after the judicial council's action, the materials referred to in subsection (a) of this Rule will be made public in accordance with this Rule as if there were no further right of review.
- (e) **Complaints referred to Judicial Conference of the United States.** If a complaint is referred to the Judicial Conference of the United States pursuant to Rule 14(e) and the judicial council does not take further action under Rule 14(f) and (g), materials relating to the complaint will be made public only as may be ordered by the Judicial Conference of the United States.

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 Chief Judge has identified a complaint under Rule 2(j), he or she 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 complained about 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 petition for review of 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 judicial council's consideration of the petition. In such a case, the Chief Judge may address a written communication to the members of the judicial council, with copies provided, by personal delivery, certified or registered mail with return receipt, or electronic delivery, to the complainant and to the judge complained about. The Chief Judge may otherwise not communicate with individual judicial 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 judicial 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(b)(3), or (2) the judicial council. 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 30 days after the final action of the judicial council.
- (f) **Substitute for disqualified Chief Judge.** If the Chief Judge is disqualified from participating in consideration of any matter under these Rules, the duties and responsibilities of the Chief Judge under these Rules will be assigned to the judge in regular active service who is the most senior, pursuant to 38 U.S.C. § 7254(d), of those who are not disqualified.

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. NONEXCLUSIVITY; APPLICABILITY

- (a) **Considering information.** The availability of the complaint procedure under these Rules and chapter 16 will not preclude the Chief Judge or the judicial council 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 Court or is unable to discharge all the duties of office by reason of disability.
- (b) **Additional applicability.** The procedures provided by all provisions of these Rules also govern the consideration of action under 38 U.S.C. § 7299(a).

RULE 21. AVAILABILITY OF RULES AND FORMS

These Rules and copies of the complaint form prescribed by Rule 2 are available without charge on the Court's website, by writing or telephoning the Clerk (*see* Rule 1(c) for address and telephone number), or may be picked up in person at the office of the Clerk.

RULE 22. EFFECTIVE DATE

These Rules apply to complaints filed on or after _____ and to all complaints pending as of that date.

RULE 23. ADVISORY COMMITTEE

The advisory committee appointed by the Court, consistent with 28 U.S.C. § 2077(b) and pursuant to Rule 40 of the Court's Rules of Practice and Procedure, for the study of rules of practice and internal operating procedures will also constitute the advisory committee for the study of these Rules, and will make any appropriate recommendations to the judicial council of the Court concerning these Rules.

COMPLAINT FORM
JUDICIAL COUNCIL OF THE
UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS
COMPLAINT OF JUDICIAL MISCONDUCT OR DISABILITY

This Complaint Form may be filed by mail or email. It should be typewritten, if possible, or written legibly; if this form is not completed properly, the Clerk will not accept it.

*If mailing, send this Form to: Clerk, United States Court of Appeals for Veterans Claims
625 Indiana Avenue, NW, Suite 900
Washington, DC 20004-2950*

Mark the Envelope "CONFIDENTIAL: Complaint of Misconduct" or "CONFIDENTIAL: Complaint of Disability." Do not put the name of the Judge on the envelope.

If emailing, send this Form to: efiling@uscourts.cavc.gov. The subject line of the email should be "CONFIDENTIAL: Complaint of Misconduct" or "CONFIDENTIAL: Complaint of Disability." Do not put the name of the judge in the subject line.

1. Complainant's name: _____

Address: _____

Telephone: _____ Email address: _____

2. Name of Judge complained about: _____

3. Does this complaint concern the behavior of the judge in a particular case(s)? [] Yes [] No

If "yes," complete the following about each case (use reverse side if more than one):

Docket number: _____

Are (were) you a party or lawyer in the case? [] Party [] Lawyer [] Neither

If you are (were) a party in the case, give the name, address, telephone number, and email address of your representative, if any:

Representative's name: _____

Address: _____

Telephone: _____ Email address: _____

Docket numbers of any appeals to the U.S. Court of Appeals for the Federal Circuit:

(see next page)

4. Have you filed any lawsuits against the judge? [] Yes [] No

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

Court: _____

Docket number: _____

Present status of suit: _____

Name, address, telephone number, and email address of your representative, if any:

Representative's name: _____

Address: _____

Telephone: _____ Email address: _____

Court to which any appeal has been taken: _____

Docket number of the appeal: _____

Present status of the appeal: _____

5. On separate sheets of paper, not larger than 8½" by 11", describe the conduct or the evidence of disability that is the subject of this complaint and explain why you believe this conduct is prejudicial to the effective and expeditious administration of the business of the Court. *See* U.S. VET. APP. R. GOVERNING COMPLS. JUD. MISCONDUCT & DISABILITY R. 2(b), 2(d). Do not use more than 5 pages (5 sides).

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that –

(1) I have read Rules 1 and 2 of the Court's Rules Governing Complaints of Judicial Misconduct or Disability, and

(2) the statements made in this complaint are true and correct to the best of my knowledge.

(Signature)

Executed on _____
(Date)

**Rules of the Judicial Council of the United States Court of Appeals for Veterans Claims
Governing Complaints of Judicial Misconduct and Disability**
(Adopted ~~August 27, 2004~~ _____ DATE _____)

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APPENDIX A: Complaint Form

Preface to the Rules

On November 2, 2002, section 372(c) of title 28, United States Code, was replaced by a new chapter 16 of title 28 by the Judicial Improvements Act of 2002, Complaints Against Judges and Judicial Discipline (hereinafter referred to as "the Act" or "chapter 16") (28 U.S.C. §§ 351-64), Public Law No. 107-273, § 11042(a). The Act was reorganized as a separate chapter in order to "publicize its existence and . . . facilitate its use." H.R. REP. NO. 107-459, 107th Cong., 2d Sess., at 8 (May 14, 2002). Section 11043(f) of the Act made conforming amendments to 38 U.S.C. § 7253(g). In addition, 38 U.S.C. § 7299 was added by Public Law No. 106-117, § 1024(a) on November 30, 1999, to address the subject of restrictions on the activities of recall-eligible judges serving and not serving in recall status. Amendments to these Rules ~~make~~made them consistent with those statutory changes.

Chapter 16, made applicable to the Court by virtue of section 7253(g)(1), provides a way for any person to complain about a federal 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." 28 U.S.C. § 351(a). It also permits the judicial councils of the federal circuits and other affected federal courts 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 on a form that has been developed for that purpose. Each complaint is referred first to the Chief Judge of the Court, 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(f).)~~

~~The Chief Judge will dismiss a complaint if it does not properly raise a problem that is appropriate for consideration under chapter 16. The Chief Judge will also dismiss a complaint if, after a limited inquiry, the Chief Judge concludes that the allegations in the complaint lack any factual foundation or are conclusively refuted. 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 either of these two 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 Court, which decides what action, if any, should be taken. The judicial council is a body that consists of all judges of the Court except for any judge whose actions are the subject of a pending investigation or subsequent proceeding pursuant to a complaint under these Rules. Finally, recourse may be had to the Judicial Conference of the United States.~~

This Preface and the ensuing Rules, adopted by the Court on August 27, 2004, as final Rules, were initially derived from the Illustrative Rules Governing Complaints of Judicial Misconduct and Disability, proposed by the Judicial Conference of the United States Committee to Review Circuit Council Conduct and Disability Orders, and ~~have been~~were amended to comply with the changes made by Public Law No. 107-273. ~~The ensuing Rules replace the Rules Further modernizing amendments were made on~~ (DATE) ~~and adopted on January 27, 1993, and promulgated on February 3, 1993 as final that~~ date.

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 Court 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 correction of conditions that interfere with the proper administration of justice in the Court.

(b) **What may be complained about.** The law authorizes complaints about 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". See also, " 28 U.S.C. § 351(a); see Rule 20. A judge who is the subject of a complaint under these Rules is referred to herein as the "judge complained about".

"Conduct prejudicial to the effective and expeditious administration of the business of the courts" is not a precise term. It applies only to the conduct of a judge during active status, or of a retired recall-eligible judge during a period when that judge is serving in recall status (*see* 38 U.S.C. § 7299), and 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 about cases with lawyers or parties to such 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. Also, there is a rebuttable presumption that it does not include actions of a judge that are in accordance with advice, relied upon by the judge, from the Judicial Conference of the United States' Committee on the Codes of Judicial Conduct. 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) **Complaints about others.** Complaints about other officials of the Court should be made to their supervisors in the Court. If such a complaint cannot be satisfactorily resolved at lower levels, it may be referred to the Chief Judge. The Clerk of the Court, (Clerk), whose address is 625 Indiana Avenue, NW, Suite 900, Washington, DC 20004-2950, and whose telephone number is (202) 501-5980, is sometimes able to provide assistance in resolving such complaints.

(d) **Time for filing complaints.** A complaint may be filed at any time, except as provided in Rule 4(b)(4)-(5). However, complaints should be filed promptly. A complaint will be dismissed if it is filed so long after the events in question that the delay will make fair consideration of the matter impossible.

(e) **Limitations on use of the procedure.** The complaint procedure may not be used to provide a means of obtaining review of a judge's decision or ruling in a case. A motion for reconsideration or review, under Rule 35 of the Court's Rules of Practice and Procedure, may be used for that purpose in appropriate circumstances. The complaint procedure may not be used to seek disqualification of a judge from sitting on a particular case. A motion for disqualification, under

Rule 27 of the Court's Rules of Practice and Procedure, may be used for that purpose. 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 for a long time. ~~A petition for a writ of mandamus, under Rule 21 of the Court's Rules of Practice and Procedure, may be used for that purpose in appropriate circumstances.~~

RULE 2. HOW TO FILE A COMPLAINT

- (a) **Form.** Complaints must be made on the official form for filing complaints, which is reproduced in the Appendix to these Rules. Forms may be obtained from the Court's website, by writing or telephoning the Clerk ~~of the Court~~ (see Rule 1(c) for address and telephone number). ~~Forms may be picked up,~~ or in person at the office of the Clerk.
- (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~~shall not be longer than five pages (five sides), and the paper size ~~should not~~shall be no larger than 8-½" by 11". ~~Normally,~~Under extraordinary circumstances an allowance for more pages may be granted by the Chief Judge, if a complainant believes he or she cannot address the alleged judicial behavior within five pages. If a complaint longer than five pages is submitted, at that time the complainant must include a separate document that explains why a longer submission should be allowed. The complainant will be notified if the request is not granted, and the complaint may be re-submitted to conform with page and length requirements. The statement of facts ~~will~~shall include –
- (1) a statement of what occurred;
 - (2) the time and place of the occurrence or occurrences; and
 - (3) any other information that would assist an investigator in checking the facts, such as the presence of ~~a court reporter or other witness~~witnesses and their names and addresses.
- (c) **Legibility.** Complaints should be typewritten if possible, in a font size 12-point or larger. 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 page(s) in the documents on which relevant material appears. The entire complaint must not exceed 15 pages (15 sides), unless a request to exceed the page limit is submitted with the complaint, as described in Rule 2(b), and approved by the Chief Judge.
- (e) **Number of copies.** ~~If the complaint is about only one judge of the Court, three copies~~One complete copy of the complaint form, of the statement of facts, and of any supporting documents ~~submitted must~~should be filed. ~~If the complaint is about more than one judge, in addition to the three copies, enough copies must be filed to provide one for each judge complained about in excess of one.~~
- (f) **Signature, contact information, 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, complaint form filed by the complainant may declare must include the complainant's contact information (including telephone number, street address, and email address), the complainant's signature, and the complainant's verification in writing, under penalty of perjury, pursuant to 28 U.S.C. § 1746, that of the truth of the statements are true. The complainant's address must also be provided. made in the complaint.~~

(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 for such action as the Chief Judge considers appropriate. *See* Rules 18 and 20.

(h) Where to file. Complaints may be filed by mail or email. Complaints filed by mail should be sent to:

Clerk, United States Court of Appeals for Veterans Claims
625 Indiana Avenue, NW, Suite 900
Washington, DC 20004-2950.

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

Complaints filed by email should be sent to efiling@uscourts.cavc.gov. The subject line of the email should be "CONFIDENTIAL: Complaint of Misconduct" or "CONFIDENTIAL: Complaint of Disability." The name of the judge complained about should *not* appear in the subject line.

(i) No fee required. There is no filing fee for filing 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 Court and on the basis of information available to the Chief Judge, the Chief Judge may, by nonpublic written order stating reasons therefor, identify a complaint (and its nature) as authorized by 28 U.S.C. § 351(b) and thereby dispense with the filing of a written complaint. In such event, the Chief Judge will not automatically 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 UPON RECEIPT OF COMPLAINT

(a) Receipt of complaint in proper form. Upon receipt of a complaint that is filed in compliance with the requirements of Rule 2, 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 (or the judge authorized to act as Chief Judge under Rule 18(f)) and will provide a copy (and obtain a receipt therefor) to each judge complained about. 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.

- (b) **Receipt of complaint about official other than judge of the Court.** If the Clerk receives a complaint about an official other than a judge, 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 judge of the Court and another official.** If the Clerk receives a complaint about a judge 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 that is filed on the complaint form but does not comply with the requirements of Rule 2, the Clerk will not accept the complaint for filing and will advise the complainant of the appropriate procedures. If a complaint against a judge is received in letter form or otherwise not on the official form for filing complaints, the Clerk will not accept that communication 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 form.
- (e) **Referral of pertinent information to Chief Judge.** Notwithstanding the preceding subsections of this Rule, the Clerk will refer to the Chief Judge any information, in any complaint not accepted for filing, that the Clerk believes should be brought to the attention of the Chief Judge. *See also* Rule 20(a).

Chapter II: Review by Chief Judge of a Complaint

RULE 4. REVIEW BY THE CHIEF JUDGE

- (a) **Procedure for review by Chief Judge.** When a complaint in proper form is sent to the Chief Judge by the Clerk ~~of the Court~~ or identified under section 351(b), *(see Rule 2(j))*, the Chief Judge will review the complaint (*see* Rule 18(a)). 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 for 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 request the judge whose conduct is complained of to file a written response to the complaint. The Chief Judge or his or her designee may also communicate orally or in writing with the complainant, the judge whose conduct is complained of, and other persons 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, after an initial limited inquiry, remains reasonably in dispute.
- (b) **Actions available to Chief Judge.** After reviewing a complaint under subsection (a), the Chief Judge, by written order stating his or her reasons, may:

(1) dismiss the complaint if the Chief Judge finds that –

(A) ~~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; or

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

(C) ~~that~~ the complaint is frivolous, a term that includes making charges that are wholly unsupported; or

(D) ~~that~~ a limited inquiry conducted under subsection (a) demonstrates that the allegations in the complaint lack any factual foundation or are conclusively refuted by objective evidence; or

(E) ~~that~~ the Court does not have jurisdiction; or

(F) ~~that~~, the complaint is abusive or orchestrated, if reviewed by the Chief Judge following procedures outlined in Rule 4(b)(4) or 4(b)(5); or

~~(F)~~(G) _____ under chapter 16, the complaint is otherwise not appropriate for consideration;
or

(2) conclude the proceeding 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; or

(3) 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, a complaint or complaints about more than one judge, growing out of the same course of conduct, may be joined or severed; or

(4) order the complainant to show cause in writing why the right to file further complaints should not be limited if the Chief Judge finds the complaint(s) abusive (for example, the complainant(s) has filed repetitive, harassing, or frivolous complaints or has otherwise abused the complaint procedure). This limitation could prohibit, restrict, or impose condition(s) on the complainant's use of the complaint procedure. Upon written request of the complainant(s), the limitation or condition(s) may be revised or withdrawn; or

(5) order the Clerk to accept only a limited number of complaints for filing if the Chief Judge finds essentially identical complaints from different complainants have been received and appear to be part of an orchestrated effort. This restriction may occur after the first complaint or complaints have been dismissed on the merits, and further identical submissions follow – with the specific number to be accepted to be determined by the Chief Judge at that time. If the Court does not accept a complaint for this reason, any unaccepted complaint will be sent to the complainant with a copy of the limitation order and a supporting memorandum explaining the Court's reasoning.

If the Chief Judge dismisses the complaint under paragraph (1)(E), the Chief Judge, based on information in the complaint, may (i) make notification as described in Rule 14(f)(6) and/or (ii) recommend to the Board of Judges of the Court systemic corrective action (that is, action not directed against the judge complained about in particular) to ensure the effective and expeditious administration of the business of the Court. ~~See also~~ Rule 20(a).

(c) Notice of Chief Judge's action.

- (1) If the Chief Judge issues an order dismissing the complaint or concluding the proceeding 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 complained about. The order and the supporting memorandum will be provided by personal delivery, ~~or~~ certified or registered mail, with return receipt, or electronic delivery, to the complainant and the judge complained about. 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 by personal delivery, ~~or~~ certified or registered mail, with return receipt, or electronic delivery, the complainant and the judge complained about that the matter has been referred, and will inform them of the membership of the committee.

(d) 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.

(e) Report to judicial council. The Chief Judge will from time to time report to the judicial council on actions taken under this Rule.

(f) Allegations of criminal conduct. If the Chief Judge dismisses, for lack of jurisdiction, nonfrivolous allegations of criminal conduct by a judge because those allegations do not fall under the scope of 28 U.S.C. § 351(a), the Chief Judge's order of dismissal will inform the complainant that the dismissal does not prevent the complainant from bringing any allegations 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 Court by a congressional committee or member of Congress, the Chief Judge – if no petition for review of the dismissal is filed within the ~~thirty~~30-day period specified by Rule 6(a) – will notify the congressional committee or member that the Court has concluded that it lacks jurisdiction under section 351(a).

Chapter III: Review of Chief Judge's Disposition of Complaint

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

(a) Membership of judicial council. Except as provided in the next sentence, the judicial council

consists of ~~(1)~~ all judges who are in regular active service at the time that a complaint is referred to the judicial council as a result of ~~(A1)~~ a petition for review under Rule 8 or ~~(B2)~~ a report of a special committee under Rule 10(e), ~~and (2) any recall-eligible retired judge who was serving in recall status when the conduct complained about occurred and is so serving at the time that a complaint is referred to the judicial council as described in clause (1).~~ No judge whose actions are the subject of a pending investigation or subsequent proceeding pursuant to a complaint under these Rules may serve on the judicial council during that investigation or any subsequent proceeding relating to it. The judicial council must have a minimum of five members to review a decision pursuant to Rule 8 or a recommendation of the special committee pursuant to Rule 10(e). If at least five active judges are not eligible to serve on the judicial council, the Chief Judge will direct the Clerk to randomly select and appoint enough Senior judges – first from currently recalled Senior judges and then from recall-eligible Senior judges, if necessary – to serve on the council.

(b) When petition may be filed. 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 by a complainant or the judge complained about.

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

(a) Time. ~~(1)~~

(1) Except as provided in paragraph (2) of this subsection, a petition for review must be received in the office of the Clerk ~~of the Court~~ not later than 30 days after the date of the Clerk's letter to the complainant transmitting the Chief Judge's order.

(2) ~~(2)~~ When the complainant is located outside the United States, Puerto Rico, or the Virgin Islands, 30 additional days will be added to the period prescribed in paragraph (1) of this subsection.

(b) Form. A petition should be in the form of a letter, addressed to the Clerk ~~of the Court~~, beginning, "I hereby petition the judicial council for review of the Chief Judge's order of [date]" There is no need to enclose a copy of the original complaint.

(c) Legibility. Petitions should be typewritten if possible, in a font size 12-point or larger. If not typewritten, they must be legible.

(d) Number of copies. Only an original is required.

(e) Statement of grounds for petition. The petition 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 made available to members of the judicial council considering the petition. The petition should be limited to five pages (five sides), on paper not larger than 8½" by 11", with no appendix or attachment.

(f) Signature. The petition must be signed.

(g) Where to file. Petitions may be filed by mail or email. Petitions filed by mail should be sent to:

Clerk, United States Court of Appeals for Veterans Claims
625 Indiana Avenue, NW, Suite 900
Washington, DC 20004-2950

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

Petitions filed by email should be sent to efiling@uscourts.cavc.gov. The subject line of the email should be "CONFIDENTIAL: Misconduct Petition" or "CONFIDENTIAL: Disability Petition." The name of the judge complained about should *not* appear in the subject line.

(h) No fee required. There is no fee for filing a petition under this procedure.

RULE 7. ACTION BY CLERK OF COURT UPON RECEIPT OF PETITION FOR JUDICIAL COUNCIL 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~~ will acknowledge receipt of the petition. The Clerk will promptly provide 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 complained about,
- (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 complaint file that appear to be relevant and material to the petition,
- (8) a list of any documents in the complaint file that are not being sent because they are not considered relevant and material, and
- (9) a written ballot that conforms with Rule 8(a).

The Clerk will also provide, by personal delivery, ~~or~~ certified or registered mail, with return receipt, or electronic delivery, the same materials, except for the ballot, to the judge complained about or the complainant (if the judge complained about filed the petition), except that materials previously provided may be omitted.

- (b) **Receipt of untimely petition.** The Clerk will refuse to accept 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 not later than ~~fifteen~~15 days after the date of the Clerk's letter or 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 subsection (a) of this Rule. If the deficiencies are not corrected, the Clerk will reject the petition.

RULE 8. ACTION BY JUDICIAL COUNCIL ON PETITION FOR REVIEW

- (a) **Written ballot.** Each member of the judicial council to whom a ballot was provided (except for the Chief Judge) will return a signed ballot, or otherwise communicate the member's vote, to the Clerk ~~of the Court.~~ The ballot will provide opportunities to vote to (1) deny the petition, (2) place the petition on the agenda of a meeting of the judicial council for discussion, or (3) grant the petition and place the complaint before the judicial council (which may include referral to a special committee (*see* the last sentence of this subsection)). The ballot will also provide an opportunity for members to indicate that they have disqualified themselves from participating in consideration of the petition.

Except as otherwise provided in this subsection, votes will be tabulated when all members of the judicial council to whom ballots were provided have either voted or indicated that they are disqualified. After 20 days have elapsed from the date that the petition and related materials were provided to members of the judicial council, votes may be tabulated if they have been cast by at least two-thirds of the members to whom ballots were provided. Members who have disqualified themselves will be treated for this purpose as if ballots had not been provided to them.

If a majority of the votes cast are for denial of the petition, the Chief Judge's order will be affirmed, except as provided in the next sentence of this subsection and in subsection (g). If any of the members ~~votes~~vote to place the petition on the agenda of a judicial council meeting or if any of the members (but less than a majority) ~~votes~~vote to grant the petition, the petition will be placed on the agenda of a judicial council meeting. If a majority of the votes cast are to grant the petition, the complaint will be referred to a special committee (*see* Chapter IV of these Rules).

- (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 judicial 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 for a discussion, judicial council action to grant or deny the petition may, subject to subsection (g), be taken by a majority of the members present and voting (except that the Chief Judge will not vote on the petition). Unless a majority votes to grant the petition, it will be denied, except as provided in subsection (g).

(d) Rights of judge complained about. ~~(1)~~

- (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. The Clerk will promptly distribute copies of the response to each member of the judicial council who is not disqualified, to the Chief Judge (if not disqualified), and to the complainant. The judge complained about may not communicate with judicial council members individually about the matter, either orally or in writing.
- (2) The 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.

(e) Notice of judicial council decision. ~~(1)~~

- (1) The order stating the decision of the judicial council, together with any accompanying memorandum in support of the order, will be provided, by personal delivery, ~~or~~ certified or registered mail, with return receipt, or electronic delivery, to the complainant and the judge complained about.
- (2) If the decision is unfavorable to the complainant, the complainant will be notified that the law provides for no further review as of right of the decision but only such review as is provided for in Rule 14(e)(2) in the discretion of the Judicial Conference of the United States.
- (3) A memorandum supporting a judicial council order will not include the name of the complainant or the judge complained about. If the order of the judicial 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.

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

~~(e)~~(g) Quorum for dispositive voting. A dispositive vote by the judicial council (to grant or deny the petition), will not take effect if less than a majority of the number of active judges participated in that vote (*see* Rule 5~~3~~); in that instance, the matter will be referred to the Judicial Conference of the United States under Rule 14(e) unless the Chief Judge and all of the participating judges are in agreement on the disposition of the complaint.

Chapter IV: Investigation and Recommendation by Special Committee-

RULE 9. APPOINTMENT OF SPECIAL COMMITTEE

- (a) Membership.** A special committee appointed pursuant to Rule 4(b)(3) will consist of the Chief Judge and two additional judges, except as provided for in subsection (e).
- (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~~ to issue subpoenas related to proceedings of the committee.

- (c) **Notice of appointment of special committee.** If such action has not already been taken under Rule 4(c)(2), the presiding officer will notify, by personal delivery, ~~or certified or registered mail,~~ with return receipt, or electronic delivery, the complainant and the judge complained about that the matter has been referred, and will inform them of the membership of the committee.
- (d) **Provision of documents.** The Chief Judge will certify to each other member of the committee 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 will continue to serve on the committee even though the member relinquishes the position of Chief Judge or active judge, as the case may be, but only if the member continues in active service or is a recall-eligible judge serving in recall status.
- (f) **Quorum and voting requirements.** At least two members of the special committee must be present to transact business, and at least two members must vote in support of any proposed action of the committee.
- ~~(g)~~
- (g) **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 will determine whether to appoint a replacement member.

RULE 10. CONDUCT OF 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 may have engaged in misconduct that is beyond the scope of the complaint, the committee may, with written notice, by personal delivery, certified or registered mail, with return receipt, or electronic delivery, to the judge complained about, 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. § 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 Court.
- (c) **Staff.** The committee may arrange for staff assistance in the conduct of the investigation. It may

use existing staff of the Court or may arrange, through the Clerk~~of the Court~~, for the hiring of special staff to assist in the investigation.

- (d) **Delegation.** The committee may delegate duties under this Rule in its discretion to subcommittees, to staff members, or to individual committee members. The authority to exercise the committee's subpoena powers under 28 U.S.C. § 356 and 38 U.S.C. § 7253(g) 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) and 38 U.S.C. § 7265(a).
- (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 judicial council action. Any finding adverse to the judge complained about 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 hearing held pursuant to Rule 11.
- (f) **Voting.** All actions of the committee will be by vote of a majority of all 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 a joint hearing or separate hearings.
- (b) **Notice to judge complained about.** The judge complained about will be given adequate advance notice in writing, by personal delivery, ~~or~~ certified or registered mail, with return receipt, or electronic delivery, of any hearing to be held, its purposes, and the names of any witnesses whom the committee intends to call. The judge complained about will also be provided with the text of any statements that have been taken from such witnesses. The judge complained about 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 complained about will be afforded the opportunity to cross-examine committee witnesses, personally or through counsel.
- (d) **Witnesses called by the judge.** The judge complained about is entitled to call witnesses and 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 for in 28 U.S.C. § 1821 (as made applicable through 38 U.S.C. § 7253(g)(3)(A)).
- (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 hearing testimony will be under oath or affirmation.

(g) Record and transcript. A record and transcript will be made of any hearing held.

RULE 12. RIGHTS OF JUDGE UNDER INVESTIGATION

(a) Notice. The judge complained about is entitled to written notice of an investigation (Rule 4(c)), to written notice of expansion of the scope of an investigation (Rule 10(a)), and to written notice of any hearing (Rule 11(b)). All notices will be provided by personal delivery, ~~or~~ certified or registered mail, with return receipt, or electronic delivery.

(b) Representation by counsel. The judge complained about 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 to the extent provided in Rule 14(h).

(c) Right to hearing; presentation of evidence. The judge complained about 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. The judge complained about will be afforded the opportunity to cross-examine committee witnesses, personally or through counsel. Upon request of the judge, the Chief Judge or his or her designee will direct the Clerk ~~of the Court~~ to issue a subpoena in accordance with 28 U.S.C. § 332(d)(1) (as made applicable through 28 U.S.C. § 356) and 38 U.S.C. § 7253(g)(1).

(d) Presentation of argument. The judge complained about 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.

(e) Attendance at hearings. The judge complained about will have the right to attend any hearing held by the special committee and to receive copies of the transcript and any document introduced, as well as to receive a copy of any written argument submitted by the complainant to the committee.

(f) Receipt of committee's report. The judge complained about will have the right to receive the report of the special committee at the time it is filed with the judicial council.

RULE 13. RIGHTS OF COMPLAINANT DURING INVESTIGATION

(a) Notice. The complainant is entitled to written notice, by personal delivery, ~~or~~ certified or registered mail, with return receipt, or electronic delivery, of the investigation as provided in Rule 4(c). Upon the filing of a special committee's report to the judicial council, the complainant will be notified, by personal delivery, ~~or~~ certified or registered mail, with return receipt, or electronic delivery, that a report has been filed and is before the judicial council for decision. Although the complainant is not entitled to a copy of a report of a special committee, the judicial council may, in its discretion, provide a copy of such report to the complainant.

(b) Opportunity to provide evidence and attend hearing. The complainant is entitled to be

interviewed by a representative of any special committee appointed. If it is believed that the complainant has substantial information to offer, the complainant will be called as a witness at a hearing before a special committee.

(c) Presentation of argument. The complainant may submit written argument at any time to any special committee appointed or to the judicial council. In the discretion of the special committee, the complainant may be permitted to offer oral argument.

(d) Representation by counsel. A complainant may submit to any special committee appointed 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) 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 under the circumstances prescribed in subsection (ef). Judicial council action will be taken, subject to Rule 8(g), by a majority of those members of the judicial council who are not disqualified.

(b) Basis of judicial council action. Subject to the rights of the judge complained about to submit argument to the judicial council as provided in Rule 15(a), the judicial council may take action on the basis of the report of the special committee and the record of any hearings held. If the judicial 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, as provided in Rule 15(b).

(c) Dismissal. The judicial council will dismiss a complaint if it concludes ~~that~~ –

(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 chapter 16, the complaint is otherwise not appropriate for consideration.

(d) Conclusion of proceeding on basis of corrective action taken. The judicial 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 or review by Judicial Conference of the United States.

- (1) The judicial council may, in its discretion, refer a complaint to the Judicial Conference of the United States with the judicial council's recommendations for action. The judicial council must refer such a complaint to the Judicial Conference of the United States if the judicial council determines that a judge may have engaged in conduct that might constitute ground for removal from office by the President of the United States under 38 U.S.C. § 7253(f)(1), or if the judicial council cannot agree on a disposition, or if a quorum of the judicial council has not participated in the vote as provided for in Rule 8(g).
- (2) The judge complained about or the complainant may seek review of the judicial council's action by the Judicial Conference of the United States.

(f) Order of corrective action. If the complaint is not disposed of under subsections (c) through (e) of this Rule, the judicial council will take other action to ensure the effective and expeditious administration of the business of the Court. Such action may include, among other measures –

- (1) censuring or reprimanding the judge complained about, either by private communication or by public announcement;
- (2) ordering that, for a fixed temporary period, with respect to the judge complained about, no new cases be assigned or that no new cases be assigned and that existing caseload be adjusted;
- (3) [Reserved]
- (4) [Reserved]
- (5) requesting the judge to retire voluntarily with the provision (if necessary and permissible (*see* 38 U.S.C. § 7287)) that ordinary length-of-service requirements will be waived, which request may or may not include a provision to forego recall eligibility;
- (6) notifying about the complaint the bar(s) by which the judge complained about is licensed and/or any other appropriate governmental entity; and
- (7) requesting, in cases involving disability, the judge to retire voluntarily under 38 U.S.C. § 7296(b)(3).

(g) Combination of actions. Referral of a complaint to the Judicial Conference of the United States under subsection (e) of this Rule will not preclude the judicial council from simultaneously taking action under subsection ~~(f)-(5)~~, except that where the judge complained about seeks review of the judicial council's action under subsection (e)(2), the judicial council may only simultaneously take action under subsection (f)(2)-(5).

(h) Recommendation about fees. Upon the request of a judge complained about, the judicial council may, as provided for in 28 U.S.C. § 361 (as made applicable through 38 U.S.C. § 7253(g)(3)(B)), if the complaint has been finally dismissed, direct that reimbursement, from funds appropriated to the Court, be made for those reasonable expenses, including attorney fees, incurred by that

judge during the investigation, which would not have been incurred but for the requirements of 38 U.S.C. § 7253(g), 28 U.S.C. § 351 *et seq.*, and these Rules.

- (i) **Notice of action of judicial council.** Judicial council action will be by written order. Unless the judicial 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 judicial council action. The memorandum will not include the name of the complainant or of the judge complained about. The order and the supporting memorandum will be provided to the complainant, the judge complained about, and all members of the judicial council. However, if the complaint has been referred to the Judicial Conference of the United States pursuant to subsection (e) of this Rule and the judicial council determines that disclosure would be contrary to the interests of justice, such disclosure need not be made. The complainant and the judge complained about will be notified of the right to seek review of the judicial council's decision before 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 judicial 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 the judicial council dismisses for lack of jurisdiction nonfrivolous allegations of criminal conduct by a judge because those allegations do not fall under the scope of 28 U.S.C. ~~§~~ § 351(a), the judicial council's order of dismissal will 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 Court by a congressional committee or member of Congress, the judicial council – if no petition for review of the dismissal by the judicial council lies under 28 U.S.C. § 357(a), or if no petition for review is filed – will notify the congressional committee or member that the Court has concluded that it lacks jurisdiction under section 351(a).

RULE 15. PROCEDURES FOR JUDICIAL COUNCIL; AMICUS CURIAE

- (a) **Rights of judge complained about.** Not later than ~~ten~~10 days after the filing of the report of a special committee, the judge complained about may address a written response to all members of the judicial council. The judge complained about will also be given an opportunity to present oral argument to the judicial council, personally or through counsel, and may move for the judicial council to conduct an investigation under subsection (b), including receiving evidence submitted by the judge. The judge complained about may not otherwise communicate with judicial council members about the matter, either orally or in writing.
- (b) **Conduct of additional investigation by judicial council.** If the judicial council decides to conduct additional investigation, the complainant and judge complained about will be given adequate prior notice, by personal delivery, ~~or~~ certified or registered mail, with return receipt, or electronic delivery, 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 judicial council may limit testimony to avoid unnecessary

repetition of testimony presented before the special committee.

- (c) **Amicus curiae.** No person may be granted the right to intervene or to appear as amicus curiae in any proceeding before the judicial 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 Court 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 ~~of the Court~~, 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 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 judicial 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 of the United States.** 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 of the United States 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 of the United States or its Committee ~~to Review Circuit Council on Judicial Conduct and Disability Orders~~, in connection with their consideration of a referred complaint described in 28 U.S.C. § 354(b) or a petition under 28 U.S.C. § 357(a) for review of a judicial council order, the Clerk will furnish any other records related to the investigation.
- (e) **[Reserved]**
- (f) **Removal proceedings.** The judicial council may release to the President of the United States any materials that are believed necessary to a removal proceeding conducted by the President under 38 U.S.C. § 7253(f).
- (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. 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 judicial council concludes that such disclosure is justified by special circumstances and is not prohibited by the provisions of 28 U.S.C. § 360.

- (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. § 351(a) or identified by the Chief Judge under 28 U.S.C. § 351(b), ~~(see Rule 2(j)),~~ 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 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 judicial council order dismissing the complaint for reasons other than mootness or because intervening events have made action on the complaint unnecessary (as to which, *see* paragraph (4), below), 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, pursuant to Rule 14(f), 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(f), the text of the dispositive order will be included in the materials made public, and the name of the judge complained about will be disclosed.
- (4) If, pursuant to Rule 14(d), 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 complained about 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 subsection (a) will be made public by placing them in a publicly accessible file in the office of the Clerk ~~of the Court~~ at 625 Indiana Avenue, NW, Suite 900, Washington, DC 20004-2950. ~~The Clerk will send copies of the publicly available materials to the Federal Judicial Center, One Columbus Circle, NE, Washington, DC 20002, 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 in a manner consistent with subsection (a) of this Rule.

- (c) **Decisions of Judicial Conference of the United States standing committee.** To the extent consistent with the policy of the Judicial Conference of the United States Committee ~~to Review Circuit Council on Judicial Conduct and Disability Orders~~, opinions of that Committee about complaints arising from this Court will also be made available to the public in the office of the Clerk.
- (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 of the United States within 30 days after the judicial council's action, the materials referred to in subsection (a) of this Rule will be made public in accordance with this Rule as if there were no further right of review.
- (e) **Complaints referred to Judicial Conference of the United States.** If a complaint is referred to the Judicial Conference of the United States pursuant to Rule 14(e) and the judicial council does not take further action under Rule 14(f) and (g), materials relating to the complaint will be made public only as may be ordered by the Judicial Conference of the United States.

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 Chief Judge has identified a complaint under Rule 2(j), he or she 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 complained about 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 petition for review of 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 judicial council's consideration of the petition. In such a case, the Chief Judge may address a written communication to the members of the judicial council, with copies provided, by personal delivery, ~~or certified or registered mail~~, with return receipt, or electronic delivery, to the complainant and to the judge complained about. The Chief Judge may otherwise not communicate with individual judicial 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 judicial 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(eb)(3), or (2) the judicial council. 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 30 days after the final action of the judicial council.

- (f) **Substitute for disqualified Chief Judge.** If the Chief Judge is disqualified from participating in consideration of any matter under these Rules, the duties and responsibilities of the Chief Judge under these Rules will be assigned to the judge in regular active service who is the most senior, pursuant to 38 U.S.C. § 7254(d), of those who are not disqualified.

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. NONEXCLUSIVITY; APPLICABILITY

- (a) **Considering information.** The availability of the complaint procedure under these Rules and chapter 16 will not preclude the Chief Judge or the judicial council 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 Court or is unable to discharge all the duties of office by reason of disability.
- (b) **Additional applicability.** The procedures provided by all provisions of these Rules also govern the consideration of action under 38 U.S.C. § 7299(a).

RULE 21. AVAILABILITY OF RULES AND FORMS

These Rules and copies of the complaint form prescribed by Rule 2 ~~will be~~ available without charge on the Court's website, by writing or telephoning the Clerk (see Rule 1(c) for address and telephone number), or may be picked up in person at the office of the Clerk of the Court, 625 Indiana Avenue, NW, Suite 900, Washington, D.C. 20004-2950.

RULE 22. EFFECTIVE DATE

These Rules apply to complaints filed on or after August 27, 2004, and to all complaints pending as of that date.

RULE 23. ADVISORY COMMITTEE

The advisory committee appointed by the Court, consistent with 28 U.S.C. § 2077(b) and pursuant to Rule 40 of the Court's Rules of Practice and Procedure, for the study of rules of practice and internal operating procedures will also constitute the advisory committee for the study of these Rules, and will make any appropriate recommendations to the judicial council of the Court concerning these Rules.

COMPLAINT FORM
JUDICIAL COUNCIL OF THE
UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS
COMPLAINT OF JUDICIAL MISCONDUCT OR DISABILITY

~~Mail~~This Complaint Form may be filed by mail or email. It should be typewritten, if possible, or written legibly; if this form is not completed properly, the Clerk will not accept it.

If mailing, send this Form to~~the~~: Clerk, United States Court of Appeals for Veterans Claims,
625 Indiana Avenue, NW, Suite 900,
Washington, DC 20004-2950.

Mark the Envelope "~~CONFIDENTIAL: Judicial Complaint of Misconduct-Complaint~~" or "~~CONFIDENTIAL: Judicial Complaint of Disability-Complaint.~~" Do ~~Not Put~~not put the ~~Name~~name of the Judge on the ~~Envelope.~~ See Rule 2(e) ~~forenvelope.~~

If emailing, send this Form to: efiling@uscourts.cavc.gov. The subject line of the ~~Number of Copies Required. This complaint email should be typewritten if possible~~ "~~CONFIDENTIAL: Complaint of Misconduct~~" or ~~written legibly; if this form is~~ "~~CONFIDENTIAL: Complaint of Disability.~~" Do ~~not completed properly, put the~~ ~~Clerk will not accept it~~name of the judge in the subject line.

1. Complainant's name: _____

Address: _____

Telephone: _____ Email address: _____

2. Name of Judge complained about: _____

3. Does this complaint concern the behavior of the judge in a particular case ~~or cases?~~(s)? Yes No

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

Docket number: _____

Are (were) you a party or lawyer in the case? Party Lawyer Neither

If you are (were) a party in the case, give the name, address, ~~and~~ telephone number, and email address of your representative, if any:

Representative's name: _____

Address: _____

(see next page)

Telephone: _____ Email address: _____

Docket numbers of any appeals to the U.S. Court of Appeals for the Federal Circuit:

4. Have you filed any lawsuits against the judge? [] Yes [] No

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

Court: _____

Docket number: _____

Present status of suit: _____

Name, address, ~~and~~ telephone number, and email address of your representative, if any:

Representative's name: _____

Address: _____

Telephone: _____ Email address: _____

Court to which any appeal has been taken: _____

Docket number of the appeal: _____

Present status of the appeal: _____

5. On separate sheets of paper, not larger than ~~the paper this form is printed on~~, 8½" by 11", describe the conduct or the evidence of disability that is the subject of this complaint and explain why you believe this conduct is prejudicial to the effective and expeditious administration of the business of the Court. See Rule U.S. VET. APP. R. GOVERNING COMPLS. JUD. MISCONDUCT & DISABILITY R. 2(b) and 2(d). Do not use more than 5 pages (5 sides). ~~Most complaints do not require that much.~~

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that –

(1) I have read Rules 1 and 2 of the Court's Rules Governing Complaints of Judicial Misconduct or Disability, and

(2) the statements made in this complaint are true and correct to the best of my knowledge.

(Signature)

Executed on _____
(Date)