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Notice Of Proposed Adoption of the First Circuit Local Rules to the Rules  
for Judicial-Conduct and Judicial-Disability Proceedings

Pursuant to 28 U.S.C. § 358(c), the Judicial Council of the First Circuit hereby provides notice that it proposes Draft Local Rules to the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial Misconduct). The Rules of Judicial Misconduct were adopted by the Judicial Conference on March 11, 2008 and took effect on April 11, 2008. These nationally mandated Rules of Judicial Misconduct superseded the Rules of the Judicial Council of the First Circuit Governing Complaints of Judicial Misconduct or Disability (First Circuit Rules).

The draft local rules are derived from the First Circuit Rules and are intended to preserve certain desirable aspects of local practice that are consistent with the national Rules. In general, they provide that the Office of the Circuit Executive will retain responsibility for processing judicial misconduct complaints, ensure that complainants whose complaints are rejected are informed of the proper procedure for refileing, and continue the practice, authorized by 28 U.S.C. § 352(d) and Rule 18(a) of the Rules of Judicial Misconduct, of referring petitions for review to a panel of the Judicial Council.

Attached please find a copy of Rules 8, 18, and 19, respectively, of the Judicial Misconduct Rules-- each followed by the corresponding draft local rule: **Draft Local Rule 8, Action by Circuit Executive Upon Receipt of a Complaint**; **Draft Local Rule 18, Petitions for Review of Chief Judge Dispositions Under Rule 11(c), (d), or (e)**; and **Draft Local Rule 19, Judicial Council Disposition of Petitions for Review**.

The First Circuit Judicial Council invites public comment to the proposed amendments. The deadline for submitting comments is **Friday, October 3, 2008** Please address comments to:

Office of the Circuit Executive  
U.S. Court of Appeals for the First Circuit  
John Joseph Moakley United States Courthouse  
1 Courthouse Way, Suite 3700  
Boston, MA 02210

September 4, 2008

Susan Goldberg, Deputy Circuit Executive

**Rules for Judicial-Conduct and Judicial-Disability Proceedings,  
Rule 8. Action by Clerk**

- (a) **Receipt of Complaint.** Upon receiving a complaint against a judge filed under Rule 5 or 6, the circuit clerk must open a file, assign a docket number according to a uniform numbering scheme promulgated by the Judicial Conference Committee on Judicial Conduct and Disability, and acknowledge the complaint's receipt.
- (b) **Distribution of Copies.** The clerk must promptly send copies of a complaint filed under Rule 6 to the chief judge or the judge authorized to act as chief judge under Rule 25(f), and copies of complaints filed under Rule 5 or 6 to each subject judge. The clerk must retain the original complaint. Any further distribution should be as provided by local rule.
- (c) **Complaints Against Noncovered Persons.** If the clerk receives a complaint about a person not holding an office described in Rule 4, the clerk must not accept the complaint for filing under these Rules.
- (d) **Receipt of Complaint about a Judge and Another Noncovered Person.** If a complaint is received about a judge described in Rule 4 and a person not holding an office described in Rule 4, the clerk must accept the complaint for filing under these Rules only with regard to the judge and must inform the complainant of the limitation.

Commentary on Rule 8

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

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

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

***Draft Local Rule 8. ACTION BY CIRCUIT EXECUTIVE UPON RECEIPT OF A COMPLAINT***

- (a) ***Receipt of complaint in proper form.*** Upon receipt of a complaint against a judge filed in proper form under these rules, the clerk of court of appeals will promptly transmit it to the circuit executive. The circuit executive will have custody of the complaint and all related papers and see that the complaint is expeditiously processed. The circuit executive will docket the complaint according to a uniform numbering scheme promulgated by the Judicial Conference Committee on Judicial Conduct and Disability, and acknowledge the complaint's receipt. The circuit executive will promptly distribute copies of the complaint in accordance with Rule 8(b).

*When the chief judge issues an order identifying a complaint under rule 5(a), the circuit executive will process such complaint as otherwise provided by these rules.*

*(b) **Distribution of Copies.** If a district judge or magistrate judge is complained about, the circuit executive will also send a copy of the complaint to the chief judge of the district court in which the judge or magistrate judge holds his or her appointment. If a bankruptcy judge is complained about, the circuit executive will send copies to the chief judges of the district court and the bankruptcy court. However, if the chief judge of the district court or bankruptcy court is a subject of a complaint, the chief judge's copy will be sent to the judge of such court in regular active service who is most senior in date of commission among those who are not subjects of the complaint.*

*(c) **Complaints Against Noncovered Persons.** If the circuit executive receives a complaint about a person not holding an office described in Rule 4, the circuit executive will not accept the complaint for filing and will advise the complainant in writing of the procedure for processing such complaints.*

*(d) **Receipt of Complaint about a Judge and Another Noncovered Person.** If a complaint is received about a judge described in Rule 4 and a person not holding an office described in Rule 4, the circuit executive will accept the complaint for filing only with regard to the judge, and will advise the complainant accordingly.*

*(e) **Receipt of a complaint not in proper form.** If the circuit executive receives a complaint against a judge described in Rule 4 that does not comply with the requirements of Rule 6, the circuit executive will ensure that the complaint is reviewed under Rule 5(b), will advise the complainant of the appropriate procedures for refileing the complaint under Rule 6, and will enclose a copy of these rules and the accompanying forms.*

#### **Rules for Judicial-Conduct and Judicial-Disability Proceedings,**

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

- (a) Petitions for Review.** After the chief judge issues an order under Rule 11(c), (d), or (e), a complainant or subject judge may petition the judicial council of the circuit to review the order. By rules promulgated under 28 U.S.C. § 358, the judicial council may refer a petition for review filed under this Rule to a panel of no fewer than five members of the council, at least two of whom must be district judges.
- (b) When to File; Form; Where to File.** A petition for review must be filed in the office of the circuit clerk within 35 days of the date on the clerk's letter informing the parties of the chief judge's order. The petition should be in letter form, addressed to the circuit clerk, and in an envelope marked "Misconduct Petition" or "Disability Petition." The name of the subject judge must not be shown on the envelope. The letter should be typewritten or otherwise legible. It should begin with "I hereby petition the judicial council for review of . . ." and state the reasons why the

- petition should be granted. It must be signed.
- (c) **Receipt and Distribution of Petition.** A circuit clerk who receives a petition for review filed within the time allowed and in proper form must:
- (1) acknowledge its receipt and send a copy to the complainant or subject judge, as the case may be;
  - (2) promptly distribute to each member of the judicial council, or its relevant panel, except for any member disqualified under Rule 25, or make available in the manner provided by local rule, the following materials:
    - (A) copies of the complaint;
    - (B) all materials obtained by the chief judge in connection with the inquiry;
    - (C) the chief judge's order disposing of the complaint;
    - (D) any memorandum in support of the chief judge's order;
    - (E) the petition for review; and
    - (F) an appropriate ballot;
  - (3) send the petition for review to the Judicial Conference Committee on Judicial Conduct and Disability. Unless the Judicial Conference Committee requests them, the clerk will not send copies of the materials obtained by the chief judge.
- (d) **Untimely Petition.** The clerk must refuse to accept a petition that is received after the deadline in (b).
- (e) **Timely Petition Not in Proper Form.** When the clerk receives a petition filed within the time allowed but in a form that is improper to a degree that would substantially impair its consideration by the judicial council — such as a document that is ambiguous about whether it is intended to be a petition for review — the clerk must acknowledge its receipt, call the filer's attention to the deficiencies, and give the filer the opportunity to correct the deficiencies within 21 days of the date of the clerk's letter about the deficiencies or within the original deadline for filing the petition, whichever is later. If the deficiencies are corrected within the time allowed, the clerk will proceed according to paragraphs (a) and (c) of this Rule. If the deficiencies are not corrected, the clerk must reject the petition.

#### Commentary on Rule 18

Rule 18 is adapted largely from the Illustrative Rules.

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

wish to object to the content of the order and is given the opportunity to petition the judicial council of the circuit for review.

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

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

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

***Draft Local Rule 18. PETITIONS FOR REVIEW OF CHIEF JUDGE DISPOSITIONS  
UNDER RULE 11(c), (d), OR (e)***

- (a) ***Receipt and Distribution of Petitions for Review*** . Upon receipt of a petition for review filed within the time allowed and in proper form under these rules, the clerk of the court of appeals will promptly transmit such petition to the circuit executive, who will acknowledge receipt of the petition. The circuit executive will promptly make available to each member of the Judicial Council review panel, as set forth in Local Rule 19(a), except for any member disqualified under Rule 25, copies of the materials identified in Rule 18(c)(2). The circuit executive will also send the same materials, except for the ballot, to the chief judge of the circuit and each judge whose conduct is at issue, except the materials previously sent to a person may be omitted.
- (b) ***Receipt of untimely petition***. The circuit executive will not accept a petition that is received after the deadline set forth in Rule 18(b).
- (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 circuit executive will acknowledge receipt of the petition, call the petitioner's attention to the deficiencies, and give the petitioner the opportunity to correct the deficiencies within 21 days of the date of the circuit executive's letter or within the original deadline for filing the petition, whichever is later. If the deficiencies are corrected within the time allowed, the circuit executive will proceed in accordance with paragraph (a) of this rule. If the deficiencies are not corrected, the circuit executive will reject the petition.

**Rules for Judicial-Conduct and Judicial-Disability Proceedings,**

**Rule 19. Judicial-Council Disposition of Petitions for Review**

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

  - (1) affirm the chief judge's disposition by denying the petition;
  - (2) return the matter to the chief judge with directions to conduct a further inquiry under Rule 11(b) or to identify a complaint under Rule 5;
  - (3) return the matter to the chief judge with directions to appoint a special committee under Rule 11(f); or
  - (4) in exceptional circumstances, take other appropriate action.
- (c) **Notice of Council Decision.** Copies of the judicial council's order, together with any accompanying memorandum in support of the order or separate concurring or dissenting statements, must be given to the complainant, the subject judge, and the Judicial Conference Committee on Judicial Conduct and Disability.
- (d) **Memorandum of Council Decision.** If the council's order affirms the chief judge's disposition, a supporting memorandum must be prepared only if the judicial council concludes that there is a need to supplement the chief judge's explanation. A memorandum supporting a council order must not include the name of the complainant or the subject judge.
- (e) **Review of Judicial-Council Decision.** If the judicial council's decision is adverse to the petitioner, and if no member of the council dissented on the ground that a special committee should be appointed under Rule 11(f), the complainant must be notified that he or she has no right to seek review of the decision. If there was a dissent, the petitioner must be informed that he or she can file a petition for review under Rule 21(b) solely on the issue of whether a special committee should be appointed.
- (f) **Public Availability of Judicial-Council Decision.** Materials related to the council's decision must be made public to the extent, at the time, and in the manner set forth in Rule 24.

Commentary on Rule 19

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

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

***Draft Local Rule 19. JUDICIAL COUNCIL DISPOSITION OF PETITIONS FOR REVIEW***

- (a) ***Review Panel.*** Pursuant to Rule 18(a), the chief judge shall annually designate two review panels to act for the Judicial Council on all petitions for review of the chief judge's dismissal order, except for those petitions referred to the full membership of the Judicial Council pursuant to Local Rule 19(b). Each review panel will serve alternating six-month terms and shall be comprised of five members of the Judicial Council, excluding the chief judge. In order of seniority, each circuit judge council member shall be alternately assigned to each of the two review panels. The district judge council members shall also be alternately assigned in order of seniority to each of the two panels so as to ensure that at least two of the members of each review panel shall be district judges.

*In the event of the absence of a panel member, or the recusal or disqualification of a panel member under Rule 25 from ruling on a particular petition for review, the circuit executive will select a judge in order of seniority from the other review panel to replace the unavailable panel member. An unavailable circuit judge will be replaced by the next available circuit judge in rotation. An unavailable district judge will be replaced by the next available district judge in rotation. If necessary, an unavailable circuit judge may be replaced by a district judge and an unavailable district judge may be replaced by a circuit judge but in no event will the panel be composed of fewer than two district judges. In the event of a change in Judicial Council membership, the new council member shall take the place of his or her predecessor pending the review panels' annual reorganization.*

- (b) ***Mail Ballot.*** Each member of the review panel to whom a ballot was sent will return a signed ballot, or otherwise communicate the member's vote, to the circuit executive. The ballot form will provide opportunities to vote to: (1) affirm the chief judge's disposition, or (2) refer the petition to the full membership of the Judicial Council for disposition in accordance with Rule 19(b). The form will also provide an opportunity for members to indicate that they have disqualified themselves from participating in consideration of the petition.

*Upon the vote of any member of the review panel, the petition for review shall be referred to the full membership of the Judicial Council. Any member of the review panel who votes to refer the petition to the full council shall include a brief statement of the reasons for the referral with the ballot. The review panel may act only by vote of all five members. If, because of absence, recusal or disqualification, all five members of the*

*panel cannot participate, the petition shall be referred to the full membership of the Judicial Council for disposition in accordance with Rule 19(b).*

*Upon referral of a petition to the full membership of the Judicial Council, the circuit executive shall send the referring judge's ballot and brief statement to each member of the Judicial Council. The circuit executive will also make available the documents specified in Rule 18(c) to council members not then serving on the reviewing panel, unless disqualified under Rule 25. Every voting member of the Judicial Council will return a signed ballot, or otherwise communicate the member's vote, to the circuit executive.*