

**JUDICIAL CONFERENCE OF THE UNITED STATES
COMMITTEE ON JUDICIAL CONDUCT AND DISABILITY**

**FILING A COMPLAINT OF JUDICIAL MISCONDUCT OR JUDICIAL DISABILITY
AGAINST A FEDERAL JUDGE**

This document explains the legally prescribed process for complaining that a federal judge has committed misconduct or become disabled. The process is governed by the Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§ 351-364 (“Act”), and *Rules for Judicial-Conduct and Judicial-Disability Proceedings*, 248 F.R.D. 674 (2008) (“Rules”), which you should consult before proceeding with any complaint. The Rules and a complaint form are available at federal court Web sites and clerk’s offices.

1. WHO MAY BE COMPLAINED ABOUT; WHERE TO FILE A COMPLAINT

If you believe that a federal judge committed misconduct or has a disability, you may file a complaint about it with the proper court office. If the complaint is against a United States District Judge, a United States Bankruptcy Judge, or a United States Magistrate Judge, you must file it at the clerk’s office of the United States Court of Appeals for the region (“circuit”) in which the judge serves. If the complaint is against a judge of the United States Court of Appeals for the Federal Circuit, you must file it at the circuit executive’s office for that court. If the complaint is against any other United States Circuit Judge, or against a judge of a national court (the Court of International Trade or the Court of Federal Claims), you must file it at the clerk’s office of the court on which that judge serves.

The proper court office is the only place authorized to receive your complaint. You should not give or copy your complaint to any judge or any other office or employee in the Judiciary. Also, you should not communicate about your complaint with judges or others in the Judiciary, except at their request or as otherwise allowed by the Rules.

NOTE: This process cannot be used to complain about anyone who is not a federal judge as identified in the Rules. If you have concerns about the behavior of a federal court employee other than a judge, you may report them to the clerk of the employing court. To complain about a federal prosecutor’s conduct, contact the United States Attorney’s office that employs the prosecutor. To complain about the conduct of a federal public defender, contact the appropriate Federal Public Defender’s office. To object to any other attorney’s conduct, contact the state bar of the state in which the attorney practices or in which the conduct occurred. To learn how to complain about a state judge, county judge, or city judge, consult an official of the state in which that judge serves.

2. WHAT TO INCLUDE IN A COMPLAINT

The terms “misconduct” and “disability,” as used in this complaint process, are defined by law. “Misconduct” is “conduct prejudicial to the effective and expeditious administration of the

business of the courts.” A “disability” is a “temporary or permanent condition” that renders the judge “unable to discharge the duties” of the judicial office. If neither term, so defined, describes the facts you allege, your complaint will be dismissed.

You may complain about actions taken by a judge outside of his or her official role, but only if they qualify as misconduct under the above definition. They may so qualify if they would cause, among reasonable members of the public, a substantial and widespread lowering of confidence in the courts.

Examples of judicial misconduct include

- using the judge's office to obtain special treatment for friends or relatives;
- accepting bribes, gifts, or other personal favors related to the judicial office;
- having improper discussions with parties or counsel for one side in a case;
- treating litigants or attorneys in a demonstrably egregious and hostile manner;
- discriminating against litigants or attorneys on account of race, ethnicity, sex, or other legally protected attribute;
- engaging in partisan political activity or making inappropriately partisan statements;
- soliciting funds for organizations; or
- violating other specific, mandatory standards of judicial conduct, such as those pertaining to restrictions on outside income and requirements for financial disclosure.

*NOTE: Many complaints claim only that a judicial decision was wrong. Under the law, such complaints must be dismissed. **A judicial decision that is unfavorable to you — or even wrong — does not in itself establish misconduct or disability.** If you wish to challenge the correctness of a judge's decision, you must do so in court under the proper procedural rules.*

Your complaint must be legible and should be typewritten. It must include a contact address, a description of the relevant events, a description of when and where they took place, and any other information that would help an investigator check the facts. The complaint should contain as much pertinent detail as possible, including information that identifies transcripts and witnesses supporting your account of what happened. You must sign the complaint under penalty of perjury. To find out whether you must also file copies of the complaint, check with the court office to which you are submitting it.

When your complaint is ready to be filed, place the original and any required copies in an envelope marked “Complaint of Misconduct” or “Complaint of Disability.” Do not write the name of the judge you are complaining about (“the subject judge”) on the envelope. Submit the envelope, in person or by mail, to the court clerk’s office.

Court staff will ensure that your complaint is conveyed to the judge who must consider it, and to the subject judge.

3. HOW A CHIEF JUDGE CONSIDERS A COMPLAINT

In most instances, the judge who considers your complaint will be the chief judge of the court in which it is pending. That judge may conduct a limited inquiry, interviewing witnesses and examining other available information. You may or may not be contacted as part of this process.

The consideration of a complaint is confidential, although, in extraordinary circumstances, the chief judge may publicly disclose the complaint's existence. Orders regarding a complaint will become public, but only after the complaint has received final action with no further right of review.

NOTE: Although the chief judge is required to review your complaint expeditiously, you should not expect an immediate decision. If you must inquire about a complaint's status, you should do so only by contacting the office where the complaint was filed. Repeated inquiries will not speed the process.

4. WHAT HAPPENS AFTER A COMPLAINT IS CONSIDERED

After considering your complaint, the chief judge may, by order, terminate it (by "dismissing" or "concluding" it) if there is reason to do so. Otherwise, the chief judge must appoint a special committee of judges to investigate the complaint, as explained in ¶ 6, below. If such an appointment is made, you will receive a copy of the order naming the committee's members.

The chief judge must dismiss your complaint if it does not identify evidence tending to show misconduct or disability, or if it is conclusively refuted by objective evidence from transcripts, witnesses, or other sources.

The chief judge must also dismiss your complaint if the facts it describes do not amount to misconduct or disability as defined by law. (See ¶ 2, above, for the legal definitions of "misconduct" and "disability.") A complaint will be dismissed for this reason if it challenges the merits of a judge's decision — in other words, if it claims that the decision is wrong — without establishing that the judge acted with an improper motive. Because a decision's validity can only be challenged in court, this complaint procedure will not allow you to claim solely that a case or issue was wrongly decided. For example, you cannot use this process to complain only that the judge erred in stating or applying the law, stating the facts, sentencing a defendant, or deciding a civil case. The same is true of the more preliminary or administrative decisions a judge may make. For example, you cannot invoke this process to claim merely that a judge was mistaken in failing to recuse, in determining that you must pay fees, in setting hearings and deadlines, or in dismissing parties from a case. Claims such as these would be "merits-related" and therefore improper under the complaint procedure. Also improper would be a complaint asserting, without more, that a judge took too long to act in a particular matter.

If, however, a complaint of delay or an otherwise merits-related complaint includes supported allegations that the judge had an improper motive in acting or delaying, or that the judge habitually delayed in many unrelated cases, those allegations will be considered. An improper motive could involve racial, ethnic, or personal bias, or a bribe; or could stem from improper

contacts with parties or counsel for one side in a case. Likewise, if a complaint includes supported allegations that a failure to recuse was not only wrong but ill-motivated — in particular, that the judge knew of a recusal requirement but, for illicit reasons, deliberately failed to heed it — they will be considered. And, if a complaint includes supported allegations that a judge made personally derogatory remarks irrelevant to the issues, or treated litigants and attorneys with extreme hostility while on the bench, those allegations will be considered.

The chief judge may conclude your complaint if the subject judge voluntarily takes corrective action that acknowledges and remedies the problem you complained about. The chief judge will conclude your complaint if intervening events — such as the subject judge’s retirement, resignation, or death — have eliminated the need for further action.

If the chief judge dismisses or concludes your complaint, you will receive a copy of the resulting order and be notified of your right to have that order reviewed by the judicial council of the regional appellate court (or by the national court, if applicable) in which the complaint is pending. The review process is discussed in ¶ 5, below. If you do not make a timely request for such review, the chief judge’s order will be the final action on your complaint.

When a complaint has received final action and is no longer subject to any right of review, orders on that complaint are made publicly available in the court clerk’s office and may also be posted on the court’s Web site.

5. HOW TO PETITION FOR REVIEW OF A CHIEF JUDGE’S ORDER ON A COMPLAINT

If the chief judge has ordered that your complaint be dismissed or concluded, you may petition the circuit judicial council (or national court, if applicable) for review. If you wish to exercise this option, you must do so within 35 days from the date on the court’s letter that informed you of the chief judge’s order. Your petition must be in letter form, addressed to the circuit clerk, in an envelope marked “Misconduct Petition” or “Disability Petition.” The name of the subject judge must not be written on the envelope. The letter should be typewritten or otherwise legible and should begin with “I hereby petition the judicial council for review of . . .”

After considering your petition for review, the judicial council will act on it. The council might affirm the chief judge’s disposition, or it might return the matter to the chief judge for further inquiry or for appointment of a special investigating committee.

You will be given a copy of the judicial council’s order on your petition. If the order affirms the chief judge’s disposition of your complaint, with no dissent by a council member asserting that a special committee should investigate, you have no right of further review. (In the event of such a dissent, you may request that the Judicial Conference Committee on Judicial Conduct and Disability consider whether a special committee should investigate the complaint.)

NOTE: You have no right of further review if the chief judge dismissed or concluded your complaint and the judicial council unanimously affirmed that result. The same is true if you did not make a timely request for judicial council review after your complaint was dismissed or concluded. If you request further review when you have no right to it, no action will be taken on your request.

The judicial council's order on your petition, along with the chief judge's order on your complaint, will be made publicly available in the court clerk's office. In some instances, these orders will also be posted on the court's Web site.

6. WHAT HAPPENS IF YOUR COMPLAINT IS REFERRED TO A SPECIAL COMMITTEE

If the chief judge refers your complaint to a special committee of judges, that committee will investigate it and report on it to the judicial council of the circuit — or to the full bench, in certain national courts. (A circuit judicial council is a standing body of judges with administrative and management functions.)

In its investigation, the special committee may conduct any interviews and hearings it considers necessary. If the special committee determines that you might possess evidence not already available in writing, its representative will interview you. You may, unaided or through counsel, submit written argument to the special committee. The special committee may, in its discretion, permit you to present oral argument, which you may then do either on your own or through counsel. The subject judge also has the right to counsel.

Upon concluding its investigation, the special committee will submit a report of its findings and recommendations to the judicial council. You will be notified of that submission. The judicial council may, but need not, provide you with a copy of the report.

After the judicial council considers the special committee's report, it will issue an order on the complaint. The order may terminate the complaint (by dismissing or concluding it). Or, it may prescribe other action, which could involve further proceedings or the imposition of any of the following sanctions:

- censuring or reprimanding the subject judge, either privately or publicly;
- ordering that no new cases be assigned to the subject judge for a limited, fixed period;
- in the case of a magistrate judge, ordering the chief judge of the district court to take specified action that could include initiating the magistrate judge's removal from office;
- in the case of a bankruptcy judge, removing the judge from office;
- in the case of a circuit or district judge, requesting the judge to retire voluntarily; and
- in the case of a circuit or district judge who is eligible to retire but does not do so, certifying his or her disability so that an additional judge may be appointed to that court.

The process of impeachment, which can result in a circuit or district judge's removal from office, is beyond the scope of this complaint process. Impeachment can only be undertaken by Congress. If the judicial council finds that the subject judge's conduct may warrant impeachment, it must refer that finding to the Judicial Conference of the United States. The Conference would then determine whether to certify the matter to Congress, which would in turn decide whether to initiate impeachment proceedings against the judge. (The Conference may so certify the matter without any underlying judicial council referral if the subject judge has been convicted of a felony and the judgment is final.)

7. HOW TO PETITION FOR REVIEW OF A JUDICIAL COUNCIL ORDER ON A SPECIAL COMMITTEE REPORT

If a judicial council has issued an order acting on a special investigating committee's report on your complaint, you may petition the Judicial Conference Committee on Judicial Conduct and Disability for review of that order. If you wish to exercise this option, you must do so within 63 days from the date of the council's order, and you must send the Judicial Conference Committee seven copies of your petition. (If you cannot afford to produce the seven copies, you must follow the special procedure provided in Rule 22(d).)

NOTE: If your complaint did not result in the appointment of a special investigating committee, and the judicial council, without dissent, issued an order on that complaint, you have no right of further review. If you request review when you have no right of review, no action will be taken on your request.

Your petition must briefly state the facts of the complaint, the history of the complaint's consideration, and the grounds on which you seek review. It must specify the judicial council order's date and docket number, and include a copy of the order. The petition should not exceed 20 pages plus any necessary attachments.

Ordinarily, the Judicial Conference Committee's consideration of your petition will not involve any personal appearances or oral argument, although the Committee may permit a written submission from you or the subject judge. Only in extraordinary circumstances can the Committee go beyond the existing record and conduct a further investigation.

The Judicial Conference Committee's order deciding your petition will be made publicly available on www.uscourts.gov and in the clerk's office of the court whose judicial council action was reviewed. (The underlying order by the judicial council will also be publicly available.) You have no right of review of the Judicial Conference Committee's order.

8. WHAT HAPPENS IF YOU ABUSE THE COMPLAINT PROCESS

If you abuse the judicial misconduct or disability complaint process by filing frivolous or repetitive complaints, you may be restricted from filing further complaints. You would first be given an opportunity to show cause in writing why your right to file further complaints should not be restricted.