

# United States Court of Appeals

Eleventh Circuit  
56 Forsyth Street, NW  
Atlanta, Georgia 30303

David J. Smith  
Clerk of Court

[www.ca11.uscourts.gov](http://www.ca11.uscourts.gov)

Peter F. Busscher  
Chief Deputy Clerk

April 3, 2024

## MEMORANDUM

Enclosed are proposed amendments to the Rules of the United States Court of Appeals for the Eleventh Circuit. Text to be added is in bold and double-underlined, while text to be deleted is lined-through.

Comments on the proposed amendments may be submitted in writing to me at the above address, or electronically at <http://www.ca11.uscourts.gov/rules/proposed-revisions>, no later than Friday, May 3, 2024.

David J. Smith

UNITED STATES  
COURT OF APPEALS  
for the  
ELEVENTH CIRCUIT

PROPOSED REVISIONS TO ELEVENTH CIRCUIT RULES

- FEDERAL RULES OF APPELLATE PROCEDURE
- ELEVENTH CIRCUIT RULES
- *INTERNAL OPERATING PROCEDURES*

April 2024

- (A) a motion or response to a motion produced using a computer must not exceed 5,200 words;
- (B) a handwritten or typewritten motion or response to a motion must not exceed 20 pages;
- (C) a reply produced using a computer must not exceed 2,600 words; and
- (D) a handwritten or typewritten reply to a response must not exceed 10 pages.

(3) **Number of Copies.** An original and 3 copies must be filed unless the court requires a different number by local rule or by order in a particular case.

(e) **Oral Argument.** A motion will be decided without oral argument unless the court orders otherwise.

(As amended Apr. 25, 1989, eff. Dec. 1, 1989; Apr. 29, 1994, eff. Dec. 1, 1994; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 25, 2005, eff. Dec. 1, 2005; Mar. 26, 2009, eff. Dec. 1, 2009; Apr. 28, 2016, eff. Dec. 1, 2016.)

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11th Cir. R. 27-1 Motions.

(a) No Copies Required and Form of Motion and Other Requirements.

(1) When a motion is filed in paper, only the original motion and supporting papers must be filed. No additional copies are required.

(2) A motion filed in paper must contain proof of service on all parties if required by FRAP 25(d), and should ordinarily be served on other parties by means which are as equally expeditious as those used to file the motion with the court.

(3) A motion shall be accompanied by, and the opposing party shall be served with, supporting documentation required by FRAP 27, including relevant materials from previous judicial or administrative proceedings in the case or appeal. A party moving for a stay must include a copy of the judgment or order from which relief is sought and any opinion and findings of the district court.

(4) In addition to matters required by FRAP 27, a motion shall contain a brief recitation of prior actions of this or any other court or judge to which the motion, or a substantially similar or related application for relief, has been made.

(5) A motion for extension of time made pursuant to FRAP 26(b) shall, and other motions where appropriate may, contain a statement that movant's counsel has consulted opposing counsel and that either opposing counsel has no objection to the relief sought, or will or will not promptly file an objection.

(6) In criminal appeals, counsel must state whether the party they represent is incarcerated.

(7) Unless an appellant is represented by another attorney, a motion to withdraw as counsel for the appellant in a criminal or civil appeal stays the deadline to file all required documents, including motions to proceed in forma pauperis, Transcript Order Forms, Certificates of Interested Persons and Corporate Disclosure Statements, and Civil Appeal Statements, until the court rules on the motion to withdraw. See also 11th Cir. R. 31-1(b) (stating in part that a motion for appointment or withdrawal of counsel stays briefing deadlines). This subsection does not apply to motions to withdraw under *Anders v. California*. See 11th Cir. R. 27-1(a)(9).

~~(7-8)~~ Both retained and appointed counsel who seek leave to withdraw from or to dismiss a criminal appeal must recite in the motion that the party they represent has been informed of the motion and either approves or disapproves of the relief sought and show service of the motion on the party they represent.

~~(8-9)~~ Appointed counsel who seek leave to withdraw from representation in a criminal appeal must follow procedures set forth by the Supreme Court in *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). It is counsel's responsibility to ensure that the record contains transcripts of *relevant* proceedings in the case, including pre-trial proceedings, trial proceedings (including opening and closing arguments and jury instructions), and sentencing proceedings. Counsel's brief in support of a motion to withdraw under *Anders* must contain: (1) a certificate of service indicating that the brief has been served on the party represented as well as on the other parties to the appeal; and (2) a statement certifying that counsel has informed the party represented that he or she has 30 days to file a response to the motion to withdraw with the court.

~~(9-10)~~ All motions filed with the court shall include a Certificate of Interested Persons and Corporate Disclosure Statement as described in FRAP 26.1 and the accompanying circuit rules.

~~(10-11)~~ A motion must comply with the typeface and type style requirements of FRAP 32(a)(5) and 32(a)(6).

~~(11-12)~~ A motion must comply with the requirement for references to the record found at 11th Cir. R. 28-5.

(b) Emergency Motions.

(1) Except in capital cases in which execution has been scheduled, a motion will be treated as an emergency motion only when **both** of the following conditions are present:

1. The motion will be moot unless a ruling is obtained within seven days; and
2. If the matter sought to be reviewed is a district court order or action, the motion is being filed within seven days of the filing of the district court order or action.

## **FRAP 45. Clerk's Duties**

### **(a) General Provisions.**

- (1) Qualifications.** The circuit clerk must take the oath and post any bond required by law. Neither the clerk nor any deputy clerk may practice as an attorney or counselor in any court while in office.
- (2) When Court Is Open.** The court of appeals is always open for filing any paper, issuing and returning process, making a motion, and entering an order. The clerk's office with the clerk or a deputy in attendance must be open during business hours on all days except Saturdays, Sundays, and legal holidays. A court may provide by local rule or by order that the clerk's office be open for specified hours on Saturdays or on legal holidays other than New Year's Day, Martin Luther King, Jr.'s Birthday, Washington's Birthday, Memorial Day, Juneteenth National Independence Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day.

### **(b) Records.**

- (1) The Docket.** The circuit clerk must maintain a docket and an index of all docketed cases in the manner prescribed by the Director of the Administrative Office of the United States Courts. The clerk must record all papers filed with the clerk and all process, orders, and judgments.
- (2) Calendar.** Under the court's direction, the clerk must prepare a calendar of cases awaiting argument. In placing cases on the calendar for argument, the clerk must give preference to appeals in criminal cases and to other proceedings and appeals entitled to preference by law.
- (3) Other Records.** The clerk must keep other books and records required by the Director of the Administrative Office of the United States Courts, with the approval of the Judicial Conference of the United States, or by the court.

**(c) Notice of an Order or Judgment.** Upon the entry of an order or judgment, the circuit clerk must immediately serve a notice of entry on each party, with a copy of any opinion, and must note the date of service on the docket. Service on a party represented by counsel must be made on counsel.

**(d) Custody of Records and Papers.** The circuit clerk has custody of the court's records and papers. Unless the court orders or instructs otherwise, the clerk must not permit an original record or paper to be taken from the clerk's office. Upon disposition of the case, original papers constituting the record on appeal or review must be returned to the court or agency from which they were received. The clerk must preserve a copy of any brief, appendix, or other paper that has been filed.

(As amended Mar. 1, 1971, eff. July 1, 1971; Mar. 10, 1986, eff. July 1, 1986; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 25, 2005, eff. Dec. 1, 2005; Apr. 24, 2023, eff. Dec. 1, 2023.)

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11th Cir. R. 45-1 Clerk.

(a) Location. The clerk's principal office shall be in the city of Atlanta, Georgia.

(b) Office to Be Open. The office of the clerk, with the clerk or a deputy in attendance, shall be open for business from 8:30 a.m. to 5:00 p.m., Eastern time, on all days except Saturdays, Sundays, ~~New Year's Day, Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day~~ and the legal holidays listed in FRAP 45(a)(2).

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*I.O.P. -*

1. Telephone Inquiries. *The clerk's office welcomes telephone inquiries from counsel concerning rules and procedures. Counsel may contact the appropriate deputy clerk by calling the clerk's office. The clerk is also available to confer with counsel on special problems.*

2. Emergency Telephone Inquiries After Hours. *In emergency situations arising outside normal office hours, or on weekends, the deputy clerk on duty may be reached by dialing the clerk's office and following recorded instructions.*

3. Miami Satellite Office. *The clerk maintains a satellite office in Miami, Florida. See I.O.P. 5, Miami Satellite Office, following FRAP 25.*

Cross-Reference: FRAP 25, 26, 34; 28 U.S.C. §§ 452, 711, 956

# **RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS**

Adopted March 11, 2008, by the Judicial Conference of the United States

Effective April 10, 2008

As amended September 17, 2015 and March 12, 2019

**PROPOSED REVISIONS TO ADDENDUM THREE**

WITH

## **Eleventh Circuit Judicial Conduct and Disability Rules**

(Cited as 11th Cir. JCDR)

Effective April 1, 2009

As amended June 23, 2021

## 6. Filing of Complaint

- (a) **Form.** A complainant may use the [form reproduced in the Appendix to these Rules](#) or a form designated by the rules of the judicial council in the circuit in which the complaint is filed. A complaint form is also available on each court of appeals' website or may be obtained from the circuit clerk or any district court or bankruptcy court within the circuit. A form is not necessary to file a complaint, but the complaint must be written and must include the information described in (b).
- (b) **Brief Statement of Facts.** A complaint must contain a concise statement that details the specific facts on which the claim of misconduct or disability is based. The statement of facts should include a description of:
  - (1) what happened;
  - (2) when and where the relevant events happened;
  - (3) any information that would help an investigator check the facts; and
  - (4) for an allegation of disability, any additional facts that form the basis of that allegation.
- (c) **Legibility.** A complaint should be typewritten if possible. If not typewritten, it must be legible. An illegible complaint will be returned to the complainant with a request to resubmit it in legible form. If a resubmitted complaint is still illegible, it will not be accepted for filing.
- (d) **Complainant's Address and Signature; Verification.** The complainant must provide a contact address and sign the complaint. The truth of the statements made in the complaint must be verified in writing under penalty of perjury. If any of these requirements are not met, the submission will be accepted, but it will be reviewed under only Rule 5(b).
- (e) **Number of Copies; Envelope Marking.** The complainant shall provide the number of copies of the complaint required by local rule. Each copy should be in an envelope marked "Complaint of Misconduct" or "Complaint of Disability." The envelope must not show the name of any subject judge.

### COMMENTARY ON RULE 6

The Rule is adapted from the Illustrative Rules and is largely self-explanatory. As discussed in the Commentary on Rule 4 and in Rule 23(c), confidentiality as referenced elsewhere in these Rules does not prevent judicial employees from reporting or disclosing misconduct or disability.

\* \* \* \*

11th Cir. JCDR 6.1 Form. Complaints may be filed on the form contained in the Appendix to these Rules, and available from these other sources:

- on the court's web site at [www.ca11.uscourts.gov](http://www.ca11.uscourts.gov);
- by telephoning the court's Clerk's Office at 404-335-6577;
- by visiting or writing to the court's Clerk's Office at the address shown in 11th Cir. JCDR 6.6; or
- from the clerk of any district court or bankruptcy court within the Eleventh Circuit.

\* \* \* \*

11th Cir. JCDR 6.2 Statement of Facts: Length; Format. The required statement of facts should be attached to the complaint form, and should not exceed five (5) pages. To assure legibility, the statement of facts should conform to the following technical requirements:

- 8½ x 11 inch paper;
- Only one side of the paper should be used;
- The text should be double-spaced, but quotations more than two lines long may be indented and single-spaced; headings and footnotes may be single-spaced;
- Margins should be at least one inch on all four sides; page numbers may appear in the margins but no text should appear there;
- If typed, either a proportionally spaced or monospaced typeface may be used; a proportionally spaced typeface should be 14-point or larger; a monospaced typeface should not contain more than 10½ characters per inch.

\* \* \* \*

11th Cir. JCDR 6.3 Submission of Documents. Documents referred to in the statement of facts may be filed with the complaint. The statement should cite the page(s) of such document(s) that the complainant deems pertinent to the allegations of the complaint.

\* \* \* \*

11th Cir. JCDR 6.4 No Copies Required. Only the complaint, statement of facts, and any document(s) filed therewith must be filed with the Clerk. No additional copies are required.

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11th Cir. JCDR 6.5 Anonymous Complaints. An anonymous complaint will not be accepted for filing by the Clerk. Nevertheless, the Clerk will forward such a complaint to the Chief Judge.

\* \* \* \*

11th Cir. JCDR 6.6 ~~Place~~ Manner of Filing. A complaint may be filed by emailing a PDF version of the complaint to [Judicial\\_Complaints@ca11.uscourts.gov](mailto:Judicial_Complaints@ca11.uscourts.gov) with the subject line “Complaint of Misconduct” or “Complaint of Disability.” A complaint ~~must be delivered or mailed in an envelope~~ may also be filed by delivering or mailing the original to:

Clerk  
United States Court of Appeals  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303

The envelope should be marked “Complaint of Misconduct” or “Complaint of Disability.” The name of the subject judge must not appear on the envelope. Unless the complainant requests otherwise, if a complaint is filed by email the Clerk will send all materials under these rules to the complainant by email, and if a complaint is filed in paper the Clerk will send all materials to the complainant by regular mail.

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11th Cir. JCDR 6.7 Supplementation. Once filed, a complaint may not be supplemented or modified by additional statements or documents unless authorized by order of the Chief Judge.

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11th Cir. JCDR 6.8 No Filing Fee. There is no filing fee for a complaint of misconduct or disability.

\* \* \* \*

11th Cir. JCDR 6.9 Notification of Change of Address. Until a complaint matter is concluded, the complainant has a continuing obligation to notify the Clerk’s Office if his or her email or mailing address changes. A change of address notification submitted in any case or appeal the complainant may have with this Court is not sufficient. A notification of change of address must be sent to the Clerk’s Office at the email or mailing address shown in 11th Cir. JCDR 6.6, and the subject line or envelope must be marked “Complaint of Misconduct” or “Complaint of Disability.”

## **ARTICLE IV. REVIEW OF COMPLAINT BY CHIEF JUDGE**

### **11. Chief Judge's Review**

- (a) Purpose of Chief Judge's Review.** When a complaint is identified by the chief judge or is filed, the chief judge must review it unless the chief judge is disqualified under Rule 25, in which case the most-senior active circuit judge not disqualified will review the complaint. If a complaint contains information constituting evidence of misconduct or disability, but the complainant does not claim it as such, the chief judge must treat the complaint as if it did allege misconduct or disability and give notice to the subject judge. After reviewing a complaint, the chief judge must determine whether it should be:

  - (1) dismissed;**
  - (2) concluded on the ground that voluntary corrective action has been taken;**
  - (3) concluded because intervening events have made action on the complaint no longer necessary; or**
  - (4) referred to a special committee.**
- (b) Chief Judge's Inquiry.** In determining what action to take under Rule 11(a), the chief judge may conduct a limited inquiry. The chief judge, or a designee, may communicate orally or in writing with the complainant, the subject judge, and any others who may have knowledge of the matter, and may obtain and review transcripts and other relevant documents. In conducting the inquiry, the chief judge must not determine any reasonably disputed issue. Any such determination must be left to a special committee appointed under Rule 11(f) and to the judicial council that considers the committee's report.
- (c) Dismissal.**

  - (1) Permissible grounds.** A complaint may be dismissed in whole or in part to the extent that the chief judge concludes that the complaint:

    - (A) alleges conduct that, even if true, is not prejudicial to the effective and expeditious administration of the business of the courts and does not indicate a mental or physical disability resulting in the inability to discharge the duties of judicial office;**
    - (B) is directly related to the merits of a decision or procedural ruling;**

- (C) is frivolous;
  - (D) is based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred or that a disability exists;
  - (E) is based on allegations that are incapable of being established through investigation;
  - (F) has been filed in the wrong circuit under Rule 7; or
  - (G) is otherwise not appropriate for consideration under the Act.
- (2) **Impermissible grounds.** A complaint must not be dismissed solely because it repeats allegations of a previously dismissed complaint if it also contains material information not previously considered and does not constitute harassment of the subject judge.
- (d) **Corrective Action.** The chief judge may conclude a complaint proceeding in whole or in part if:
- (1) an informal resolution under Rule 5 satisfactory to the chief judge was reached before the complaint was filed under Rule 6; or
  - (2) the chief judge determines that the subject judge has taken appropriate voluntary corrective action that acknowledges and remedies the problems raised by the complaint.
- (e) **Intervening Events.** The chief judge may conclude a complaint proceeding in whole or in part upon determining that intervening events render some or all of the allegations moot or make remedial action impossible as to the subject judge.
- (f) **Appointment of Special Committee.** If some or all of a complaint is not dismissed or concluded, the chief judge must promptly appoint a special committee to investigate the complaint or any relevant portion of it and to make recommendations to the judicial council. Before appointing a special committee, the chief judge must invite the subject judge to respond to the complaint either orally or in writing if the judge was not given an opportunity during the limited inquiry. In the chief judge's discretion, separate complaints may be joined and assigned to a single special committee. Similarly, a single complaint about more than one judge may be severed and more than one special committee appointed.
- (g) **Notice of Chief Judge's Action; Petition for Review.**
- (1) When chief judge appoints special committee. If the chief judge appoints a special committee, the chief judge must notify the

complainant and the subject judge that the matter has been referred to a committee, notify the complainant of a complainant's rights under Rule 16, and identify the members of the committee. A copy of the order appointing the special committee must be sent to the Committee on Judicial Conduct and Disability.

- (2) When chief judge disposes of complaint without appointing special committee. If the chief judge disposes of a complaint under Rule 11(c), (d), or (e), the chief judge must prepare a supporting memorandum that sets forth the reasons for the disposition. If the complaint was initiated by identification under Rule 5, the memorandum must so indicate. Except as authorized by [28 U.S.C. § 360](#), the memorandum must not include the name of the complainant or of the subject judge. The order and memoranda incorporated by reference in the order must be promptly sent to the complainant, the subject judge, and the Committee on Judicial Conduct and Disability.
  - (3) Right to petition for review. If the chief judge disposes of a complaint under Rule 11(c), (d), or (e), the complainant and the subject judge must be notified of the right to petition the judicial council for review of the disposition, as provided in Rule 18. If the chief judge so disposes of a complaint that was identified under Rule 5 or filed by its subject judge, the chief judge must transmit the order and memoranda incorporated by reference in the order to the judicial council for review in accordance with Rule 19. In the event of such a transmission, the subject judge may make a written submission to the judicial council but will have no further right of review except as allowed under Rule 21(b)(1)(B). When a disposition is to be reviewed by the judicial council, the chief judge must promptly transmit all materials obtained in connection with the inquiry under Rule 11(b) to the circuit clerk for transmittal to the council.
- (h) **Public Availability of Chief Judge's Decision.** The chief judge's decision must be made public to the extent, at the time, and in the manner provided in Rule 24.

#### COMMENTARY ON RULE 11

This Rule describes complaint-review actions available either to the chief judge or, where that judge is the subject judge or is otherwise disqualified under Rule 25, such as where the complaint is filed against the chief judge, to the judge designated under Rule 25(f) to perform the chief judge's duties under these Rules. Subsection (a) of this Rule provides that where a complaint has been filed under Rule 6, the ordinary doctrines of waiver do not apply. The chief judge must identify as a complaint any misconduct or disability issues raised by the factual allegations of the complaint even if the complainant makes no such claim with regard to those issues. For example, an allegation limited to misconduct in fact-finding that mentions periods

during a trial when the judge was asleep must be treated as a complaint regarding disability. A formal order giving notice of the expanded scope of the proceeding must be given to the subject judge.

Subsection (b) describes the nature of the chief judge's inquiry. It is based largely on the Breyer Committee Report, 239 F.R.D. at 243–45. The Act states that dismissal is appropriate “when a limited inquiry . . . demonstrates that the allegations in the complaint lack any factual foundation or are conclusively refuted by objective evidence.” 28 U.S.C. § 352(b)(1)(B). At the same time, however, Section 352(a) states that “[t]he chief judge shall not undertake to make findings of fact about any matter that is reasonably in dispute.” These two statutory standards should be read together so that a matter is not “reasonably” in dispute if a limited inquiry shows that the allegations do not constitute misconduct or disability, that they lack any reliable factual foundation, or that they are conclusively refuted by objective evidence.

In conducting a limited inquiry under subsection (b), the chief judge must avoid determinations of reasonably disputed issues, including reasonably disputed issues as to whether the facts alleged constitute misconduct or disability, which are ordinarily left to the judicial council and its special committee. An allegation of fact is ordinarily not “refuted” simply because the subject judge denies it. The limited inquiry must reveal something more in the way of refutation before it is appropriate to dismiss a complaint that is otherwise cognizable. If it is the complainant's word against the subject judge's—in other words, there is simply no other significant evidence of what happened or of the complainant's unreliability — then there must be a special-committee investigation. Such a credibility issue is a matter “reasonably in dispute” within the meaning of the Act.

However, dismissal following a limited inquiry may occur when a complaint refers to transcripts or to witnesses and the chief judge determines that the transcripts and witnesses all support the subject judge. Breyer Committee Report, 239 F.R.D. at 243. For example, consider a complaint alleging that the subject judge said X, and the complaint mentions, or it is independently clear, that five people may have heard what the judge said. *Id.* The chief judge is told by the subject judge and one witness that the judge did not say X, and the chief judge dismisses the complaint without questioning the other four possible witnesses. *Id.* In this example, the matter remains reasonably in dispute. If all five witnesses say the subject judge did not say X, dismissal is appropriate, but if potential witnesses who are reasonably accessible have not been questioned, then the matter remains reasonably in dispute. *Id.*

Similarly, under subsection (c)(1)(A), if it is clear that the conduct or disability alleged, even if true, is not cognizable under these Rules, the complaint should be dismissed. If that issue is reasonably in dispute, however, dismissal under subsection (c)(1)(A) is inappropriate.

Essentially, the standard articulated in subsection (b) is that used to decide motions for summary judgment pursuant to Fed. R. Civ. P. 56. Genuine issues of material fact are not resolved at the summary judgment stage. A material fact is one that “might affect the outcome of the suit under the governing law,” and a dispute is “genuine” if “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby*, 477 U.S. 242, 248 (1986). Similarly, the chief judge may not resolve a genuine issue concerning a

material fact or the existence of misconduct or a disability when conducting a limited inquiry pursuant to subsection (b).

Subsection (c) describes the grounds on which a complaint may be dismissed. These are adapted from the Act, 28 U.S.C. § 352(b), and the Breyer Committee Report, 239 F.R.D. at 239–45. Subsection (c)(1)(A) permits dismissal of an allegation that, even if true, does not constitute misconduct or disability under the statutory standard. The proper standards are set out in Rule 4 and discussed in the Commentary on that Rule. Subsection (c)(1)(B) permits dismissal of complaints related to the merits of a decision by a subject judge; this standard is also governed by Rule 4 and its accompanying Commentary.

Subsections (c)(1)(C)–(E) implement the statute by allowing dismissal of complaints that are “frivolous, lacking sufficient evidence to raise an inference that misconduct has occurred, or containing allegations which are incapable of being established through investigation.” 28 U.S.C. § 352(b)(1)(A)(iii).

Dismissal of a complaint as “frivolous” under Rule 11(c)(1)(C) will generally occur without any inquiry beyond the face of the complaint. For instance, when the allegations are facially incredible or so lacking in indicia of reliability that no further inquiry is warranted, dismissal under this subsection is appropriate.

A complaint warranting dismissal under Rule 11(c)(1)(D) is illustrated by the following example. Consider a complainant who alleges an impropriety and asserts that he knows of it because it was observed and reported to him by a person who is identified. The subject judge denies that the event occurred. When contacted, the source also denies it. In such a case, the chief judge’s proper course of action may turn on whether the source had any role in the allegedly improper conduct. If the complaint was based on a lawyer’s statement that he or she had an improper ex parte contact with a judge, the lawyer’s denial of the impropriety might not be taken as wholly persuasive, and it would be appropriate to conclude that a real factual issue is raised. On the other hand, if the complaint quoted a disinterested third party and that disinterested party denied that the statement had been made, there would be no value in opening a formal investigation. In such a case, it would be appropriate to dismiss the complaint under Rule 11(c)(1)(D).

Rule 11(c)(1)(E) is intended, among other things, to cover situations when no evidence is offered or identified, or when the only identified source is unavailable. Breyer Committee Report, 239 F.R.D. at 243. For example, a complaint alleges that an unnamed attorney told the complainant that the subject judge did X. *Id.* The subject judge denies it. The chief judge requests that the complainant (who does not purport to have observed the subject judge do X) identify the unnamed witness, or that the unnamed witness come forward so that the chief judge can learn the unnamed witness’s account. *Id.* The complainant responds that he has spoken with the unnamed witness, that the unnamed witness is an attorney who practices in federal court, and that the unnamed witness is unwilling to be identified or to come forward. *Id.* at 243–44. The allegation is then properly dismissed as containing allegations that are incapable of being established through investigation. *Id.*

If, however, the situation involves a reasonable dispute over credibility, the matter should proceed. For example, the complainant alleges an impropriety and alleges that he or she observed it and that there were no other witnesses; the subject judge denies that the event occurred. Unless the complainant's allegations are facially incredible or so lacking indicia of reliability as to warrant dismissal under Rule 11(c)(1)(C), a special committee must be appointed because there is a material factual question that is reasonably in dispute.

Dismissal is also appropriate when a complaint is filed so long after an alleged event that memory loss, death, or changes to unknown residences prevent a proper investigation.

Subsection (c)(2) indicates that the investigative nature of the process prevents the application of claim preclusion principles where new and material evidence becomes available. However, it also recognizes that at some point a renewed investigation may constitute harassment of the subject judge and should not be undertaken, depending of course on the seriousness of the issues and the weight of the new evidence.

Rule 11(d) implements the Act's provision for dismissal if voluntary appropriate corrective action has been taken. It is largely adapted from the Breyer Committee Report, 239 F.R.D. at 244–45. The Act authorizes the chief judge to conclude the complaint proceedings if "appropriate corrective action has been taken." 28 U.S.C. § 352(b)(2). Under the Rule, action taken after a complaint is filed is "appropriate" when it acknowledges and remedies the problem raised by the complaint. Breyer Committee Report, 239 F.R.D. at 244. Because the Act deals with the conduct of judges, the emphasis is on correction of the judicial conduct that was the subject of the complaint. *Id.* Terminating a complaint based on corrective action is premised on the implicit understanding that voluntary self-correction or redress of misconduct or a disability may be preferable to sanctions. *Id.* The chief judge may facilitate this process by giving the subject judge an objective view of the appearance of the judicial conduct in question and by suggesting appropriate corrective measures. *Id.* Moreover, when corrective action is taken under Rule 5 satisfactory to the chief judge before a complaint is filed, that informal resolution will be sufficient to conclude a subsequent complaint based on identical conduct.

"Corrective action" must be voluntary action taken by the subject judge. Breyer Committee Report, 239 F.R.D. at 244. A remedial action directed by the chief judge or by an appellate court without the participation of the subject judge in formulating the directive or without the subject judge's subsequent agreement to such action does not constitute the requisite voluntary corrective action. *Id.* Neither the chief judge nor an appellate court has authority under the Act to impose a formal remedy or sanction; only the judicial council can impose a formal remedy or sanction under 28 U.S.C. § 354(a)(2). *Id.* Compliance with a previous judicial-council order may serve as corrective action allowing conclusion of a later complaint about the same behavior. *Id.*

Where a subject judge's conduct has resulted in identifiable, particularized harm to the complainant or another individual, appropriate corrective action should include steps taken by that judge to acknowledge and redress the harm, if possible, such as by an apology, recusal from a case, or a pledge to refrain from similar conduct in the future. *Id.* While the Act is generally forward-looking, any corrective action should, to the extent possible, serve to correct a specific harm to an individual, if such harm can reasonably be remedied. *Id.* In some cases, corrective

action may not be “appropriate” to justify conclusion of a complaint unless the complainant or other individual harmed is meaningfully apprised of the nature of the corrective action in the chief judge’s order, in a direct communication from the subject judge, or otherwise. *Id.*

Voluntary corrective action should be proportionate to any plausible allegations of misconduct in a complaint. The form of corrective action should also be proportionate to any sanctions that the judicial council might impose under Rule 20(b), such as a private or public reprimand or a change in case assignments. Breyer Committee Report, 239 F.R.D at 244–45. In other words, minor corrective action will not suffice to dispose of a serious matter. *Id.*

Rule 11(e) implements Section 352(b)(2) of the Act, which permits the chief judge to “conclude the proceeding,” if “action on the complaint is no longer necessary because of intervening events,” such as a resignation from judicial office. Ordinarily, stepping down from an administrative post such as chief judge, judicial-council member, or court-committee chair does not constitute an event rendering unnecessary any further action on a complaint alleging judicial misconduct. Breyer Committee Report, 239 F.R.D. at 245. As long as the subject of a complaint retains the judicial office and remains a covered judge as defined in Rule 1(b), a complaint must be addressed. *Id.*; 28 U.S.C. §§ 371(b); 372(a).

Concluding a complaint proceeding, by either the judicial council of the subject judge or the judicial council to which a complaint proceeding has been transferred, precludes remedial action under the Act and these Rules as to the subject judge. But the Judicial Conference and the judicial council of the subject judge have ample authority to assess potential institutional issues related to the complaint as part of their respective responsibilities to promote “the expeditious conduct of court business,” 28 U.S.C. § 331, and to “make all necessary and appropriate orders for the effective administration of justice within [each] circuit.” *Id.* at § 332(d)(1). Such an assessment might include an analysis of what conditions may have enabled misconduct or prevented its discovery, and what precautionary or curative steps could be undertaken to prevent its recurrence. The judicial council may request that the Committee on Judicial Conduct and Disability transmit its order to relevant Congressional entities.

If a complaint is not disposed of pursuant to Rule 11(c), (d), or (e), a special committee must be appointed. Rule 11(f) states that a subject judge must be invited to respond to the complaint before a special committee is appointed, if no earlier response was invited.

Subject judges receive copies of complaints at the same time that they are referred to the chief judge, and they are free to volunteer responses to them. Under Rule 11(b), the chief judge may request a response if it is thought necessary. However, many complaints are clear candidates for dismissal even if their allegations are accepted as true, and there is no need for the subject judge to devote time to a defense.

The Act requires that the order dismissing a complaint or concluding a proceeding contain a statement of reasons and that a copy of the order be sent to the complainant. 28 U.S.C. § 352(b). Rule 24, dealing with availability of information to the public, contemplates that the order will be made public, usually without disclosing the names of the complainant or the subject judge. If desired for administrative purposes, more identifying information can be included in a non-public version of the order.

When a complaint is disposed of by the chief judge, the statutory purposes are best served by providing the complainant with a full, particularized, but concise explanation, giving reasons for the conclusions reached. *See also* Commentary on Rule 24 (dealing with public availability).

Rule 11(g) provides that the complainant and the subject judge must be notified, in the case of a disposition by the chief judge, of the right to petition the judicial council for review. Because an identified complaint has no “complainant” to petition for review, the chief judge’s dispositive order on such a complaint will be transmitted to the judicial council for review. The same will apply where a complaint was filed by its subject judge. A copy of the chief judge’s order, and memoranda incorporated by reference in the order, disposing of a complaint must be sent by the circuit clerk to the Committee on Judicial Conduct and Disability.

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11th Cir. JCDR 11.1 [Electronic Distribution of Materials](#). The Clerk may send all materials described in Rule 11 to the complainant and subject judge electronically.

## 16. Complainant's Rights in Investigation

- (a) **Notice.** The complainant must receive written notice of the investigation as provided in Rule 11(g)(1). When the special committee's report to the judicial council is filed, the complainant must be notified of the filing. The judicial council may, in its discretion, provide a copy of the report of a special committee to the complainant.
- (b) **Opportunity to Provide Evidence.** If the complainant knows of relevant evidence not already before the special committee, the complainant may briefly explain in writing the basis of that knowledge and the nature of that evidence. If the special committee determines that the complainant has information not already known to the committee that would assist in the committee's investigation, a representative of the committee must interview the complainant.
- (c) **Presentation of Argument.** The complainant may submit written argument to the special committee. In its discretion, the special committee may permit the complainant to offer oral argument.
- (d) **Representation by Counsel.** A complainant may submit written argument through counsel and, if permitted to offer oral argument, may do so through counsel.

### COMMENTARY ON RULE 16

This Rule is adapted from the Act and the Illustrative Rules.

In accordance with the view of the process as fundamentally administrative and inquisitorial, these Rules do not give the complainant the rights of a party to litigation and leave the complainant's role largely to the discretion of the special committee. However, Rule 16(b) gives the complainant the prerogative to make a brief written submission showing that he or she is aware of relevant evidence not already known to the special committee. (Such a submission may precede any written or oral argument the complainant provides under Rule 16(c), or it may accompany that argument.) If the special committee determines, independently or from the complainant's submission, that the complainant has information that would assist the committee in its investigation, the complainant must be interviewed by a representative of the committee. Such an interview may be in person or by telephone, and the representative of the special committee may be either a member or staff.

Rule 16 does not contemplate that the complainant will ordinarily be permitted to attend proceedings of the special committee except when testifying or presenting oral argument. A special committee may exercise its discretion to permit the complainant to be present at its proceedings, or to permit the complainant, individually or through counsel, to participate in the examination or cross-examination of witnesses.

The Act authorizes an exception to the normal confidentiality provisions where the judicial council in its discretion provides a copy of the report of the special committee to the

complainant and to the subject judge. 28 U.S.C. § 360(a)(1). However, the Rules do not entitle the complainant to a copy of the special committee's report.

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**11th Cir. JCDR 16.1 Electronic Distribution of Materials. The Clerk may send all materials described in Rule 16 to the complainant electronically.**

## ARTICLE VI. REVIEW BY JUDICIAL COUNCIL

### 18. Petition for Review of Chief-Judge Disposition Under Rule 11(c), (d), or (e)

- (a) **Petition for Review.** After the chief judge issues an order under Rule 11(c), (d), or (e), the complainant or the 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 42 days after the date of the chief judge's order. The petition for review 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 petition for review 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 in accordance with this Rule 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; and
  - (3) send the petition for review to the Committee on Judicial Conduct and Disability. Unless the Committee on Judicial Conduct and

**Disability requests them, the circuit clerk will not send copies of the materials obtained by the chief judge.**

- (d) Untimely Petition.** The circuit clerk must refuse to accept a petition that is received after the time allowed in (b).
- (e) Timely Petition Not in Proper Form.** When the circuit clerk receives a petition for review 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 circuit clerk must acknowledge its receipt, call the filer’s attention to the deficiencies, and give the filer the opportunity to correct the deficiencies within the original time allowed for filing the petition or within 21 days after the date on which a notice of the deficiencies was sent to the complainant, whichever is later. If the deficiencies are corrected within the time allowed, the circuit clerk will proceed according to paragraphs (a) and (c) of this Rule. If the deficiencies are not corrected, the circuit clerk must reject the petition.

#### COMMENTARY ON RULE 18

Rule 18 is adapted largely from the Illustrative Rules.

Subsection (a) permits the subject judge, as well as the complainant, to petition for review of the 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, the 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 42 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), (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.

\* \* \* \*

11th Cir. JCDR 18.1 Petition for Review: Length; Format. The petition should not exceed five (5) pages, and should not include attachments. To assure legibility, the petition should conform to the following technical requirements:

- 8½ x 11 inch paper;
- Only one side of the paper should be used;
- The text should be double-spaced, but quotations more than two lines long may be indented and single-spaced; headings and footnotes may be single-spaced;
- Margins should be at least one inch on all four sides; page numbers may appear in the margins but no text should appear there;
- If typed, either a proportionally spaced or monospaced typeface may be used; a proportionally spaced typeface should be 14-point or larger; a monospaced typeface should not contain more than 10½ characters per inch.

\* \* \* \*

11th Cir. JCDR 18.2 Place-Manner of Filing. **A petition for review may be filed by emailing a PDF version of the petition to [Judicial\\_Complaints@ca11.uscourts.gov](mailto:Judicial_Complaints@ca11.uscourts.gov) with the subject line “Misconduct Petition” or “Disability Petition.”** A petition for review ~~must be delivered or mailed in an envelope~~ **may also be filed by delivering or mailing the original petition to:**

Clerk  
United States Court of Appeals  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303

The envelope should be marked “Misconduct Petition” or “Disability Petition.” The name of the subject judge must not appear on the envelope.

\* \* \* \*

11th Cir. JCDR 18.3 Judicial Council Review Panel. In accordance with 28 U.S.C. § 352(d) and Rule 18(a), petitions for review of orders of the Chief Judge, filed under § 352(c) and Rule 18(a), will be referred to a panel of no fewer than five members of the Judicial Council, at least two of whom shall be district judges (the “Review Panel”). The Review Panel shall act on behalf of the Judicial Council in all matters pertaining to the consideration and determination of petitions for review as described in Rule 19.

The Chief Judge is authorized to appoint the members of the Review Panel, and the appointment of each member shall continue until the Chief Judge appoints a replacement member. If a judge appointed to the Review Panel takes senior status, retires, or dies, the Chief Judge shall appoint another circuit or district judge, as appropriate, to the Review Panel. When a member of the Review Panel is disqualified or otherwise unable to participate in a particular matter, a replacement judge will be selected from the applicable replacement log.

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11th Cir. JCDR 18.4 Electronic Distribution of Materials. The Clerk may send copies of petitions for review to the complainant or subject judge electronically, and may send the materials described in Rule 18(c)(2) to members of the Judicial Council or the Judicial Council Review Panel electronically.

## **19. Judicial-Council Disposition of Petition 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 circuit 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 Committee on Judicial Conduct and Disability. The subject judge must not otherwise communicate with individual judicial-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, the 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 Judicial-Council Decision.** Copies of the judicial council’s order, together with memoranda incorporated by reference in the order and separate concurring or dissenting statements, must be given to the complainant, the subject judge, and the Committee on Judicial Conduct and Disability.
- (d) Memorandum of Judicial-Council Decision.** If the judicial council’s order affirms the chief judge’s disposition, a supporting memorandum must be prepared only if the council concludes that there is a need to supplement the chief judge’s explanation. A memorandum supporting a judicial-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, 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).
- (f) Public Availability of Judicial-Council Decision.** Materials related to the judicial 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 adapted largely from the Act and is self-explanatory.

The judicial 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 for review by affirming the chief judge's order, remanding the matter, or, in exceptional cases, taking other appropriate action.

Under Rule 19(b), after considering a petition for review and the materials before it, a judicial council may return a matter to the chief judge to take various actions, including conducting further inquiry under Rule 11(b), identifying a complaint under Rule 5, or appointing a special committee under Rule 11(f).

A petition for review of a judicial council's decision under this Rule may be filed in any matter in which one or more members of the council dissented from the order. *See* Rule 21(b).

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11th Cir. JCDR 19.1 Electronic Distribution of Materials. The Clerk may send all materials described in Rule 19 to the ~~chief judge~~, complainant, subject judge, chief judge, Judicial Council, or Judicial Council Review Panel electronically.

## 20. Judicial-Council Action Following Appointment of Special Committee

- (a) **Subject Judge's Rights.** Within 21 days after the filing of the report of a special committee, the subject judge may send a written response to the members of the judicial council. The subject judge must also be given an opportunity to present argument, personally or through counsel, written or oral, as determined by the judicial council. The subject judge must not otherwise communicate with judicial-council members about the matter.
- (b) **Judicial-Council Action.**
  - (1) **Discretionary actions.** Subject to the subject judge's rights set forth in subsection (a), the judicial council may:
    - (A) **dismiss the complaint because:**
      - (i) even if the claim is true, the claimed conduct is not conduct prejudicial to the effective and expeditious administration of the business of the courts and does not indicate a mental or physical disability resulting in inability to discharge the duties of office;
      - (ii) the complaint is directly related to the merits of a decision or procedural ruling;
      - (iii) the facts on which the complaint is based have not been established; or
      - (iv) the complaint is otherwise not appropriate for consideration under [28 U.S.C. §§ 351–364](#).
    - (B) **conclude the proceeding because appropriate corrective action has been taken or intervening events have made the proceeding unnecessary.**
    - (C) **refer the complaint to the Judicial Conference with the judicial council's recommendations for action.**
    - (D) **take remedial action to ensure the effective and expeditious administration of the business of the courts, including:**
      - (i) **censuring or reprimanding the subject judge, either by private communication or by public announcement;**
      - (ii) **ordering that no new cases be assigned to the subject judge for a limited, fixed period;**
      - (iii) **in the case of a magistrate judge, ordering the chief judge of the district court to take action specified by the**

council, including the initiation of removal proceedings under [28 U.S.C. § 631\(i\)](#) or [42 U.S.C. § 300aa-12\(c\)\(2\)](#);

- (iv) in the case of a bankruptcy judge, removing the judge from office under [28 U.S.C. § 152\(e\)](#);
- (v) in the case of a circuit or district judge, requesting the judge to retire voluntarily with the provision (if necessary) that ordinary length-of-service requirements be waived;
- (vi) in the case of a circuit or district judge who is eligible to retire but does not do so, certifying the disability of the judge under [28 U.S.C. § 372\(b\)](#) so that an additional judge may be appointed; and
- (vii) in the case of a circuit chief judge or district chief judge, finding that the judge is temporarily unable to perform chief-judge duties, with the result that those duties devolve to the next eligible judge in accordance with [28 U.S.C. § 45\(d\)](#) or [§ 136\(e\)](#).

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

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

- (A) might constitute ground for impeachment; or
- (B) in the interest of justice, is not amenable to resolution by the judicial council.

- (c) **Inadequate Basis for Decision.** If the judicial council finds that a special committee’s report, recommendations, and record provide an inadequate basis for decision, it may return the matter to the committee for further investigation and a new report, or it may conduct further investigation. If the judicial council decides to conduct further investigation, the subject judge must be given adequate prior notice in writing of that decision and of the general scope and purpose of the additional investigation. The judicial council’s conduct of the additional investigation must generally accord with the procedures and powers set forth in Rules 13 through 16 for the conduct of an investigation by a special committee.
- (d) **Judicial-Council Vote.** Judicial-council action must be taken by a majority of those members of the council who are not disqualified. A decision to remove a bankruptcy judge from office requires a majority vote of all the members of the judicial council.

- (e) Recommendation for Fee Reimbursement.** If the complaint has been finally dismissed or concluded under (b)(1)(A) or (B) of this Rule, and if the subject judge so requests, the judicial council may recommend that the Director of the Administrative Office use funds appropriated to the judiciary to reimburse the judge for reasonable expenses incurred during the investigation, when those expenses would not have been incurred but for the requirements of the Act and these Rules. Reasonable expenses include attorneys' fees and expenses related to a successful defense or prosecution of a proceeding under Rule 21(a) or (b).
- (f) Judicial-Council Order.** Judicial-council action must be by written order. Unless the judicial council finds that extraordinary reasons would make it contrary to the interests of justice, the order must be accompanied by a memorandum setting forth the factual determinations on which it is based and the reasons for the council action. Such a memorandum may incorporate all or part of any underlying special-committee report. If the complaint was initiated by identification under Rule 5, the memorandum must so indicate. The order and memoranda incorporated by reference in the order must be provided to the complainant, the subject judge, and the Committee on Judicial Conduct and Disability. The complainant and the subject judge must be notified of any right to review of the judicial council's decision as provided in Rule 21(b). If the complaint was identified under Rule 5 or filed by its subject judge, the judicial council must transmit the order and memoranda incorporated by reference in the order to the Committee on Judicial Conduct and Disability for review in accordance with Rule 21. In the event of such a transmission, the subject judge may make a written submission to the Committee on Judicial Conduct and Disability but will have no further right of review.

#### COMMENTARY ON RULE 20

This Rule is largely adapted from the Illustrative Rules.

Rule 20(a) provides that within 21 days after the filing of the report of a special committee, the subject judge may address a written response to all of the members of the judicial council. The subject judge must also be given an opportunity to present argument to the judicial council, personally or through counsel, or both, at the direction of the council. Whether that argument is written or oral would be for the judicial council to determine. The subject judge may not otherwise communicate with judicial-council members about the matter.

Rule 20(b)(1)(B) allows a judicial council to conclude a proceeding where appropriate corrective action has been taken or intervening events have made the proceeding unnecessary. This provision tracks Rules 11(d) and (e), which provide for similar action by the chief judge. As with Rule 11(d), appropriate corrective action must acknowledge and remedy the problem raised by the complaint. *See* Breyer Committee Report, 239 F.R.D. at 244. And similar to Rule 11(e), although "action on the complaint is no longer necessary because of intervening events," the Judicial Conference and the judicial council of the subject judge may nonetheless be able to

take action on potential institutional issues related to the complaint (such as an analysis of what conditions may have enabled misconduct or prevented its discovery, and what precautionary or curative steps could be undertaken to prevent its recurrence). 28 U.S.C. § 352(b)(2).

Rule 20(b)(1)(D) recites the remedial actions enumerated in 28 U.S.C. § 354(a)(2) while making clear that this list is not exhaustive. A judicial council may consider lesser remedies. Some remedies may be unique to senior judges, whose caseloads can be modified by agreement or through statutory designation and certification processes.

Under 28 U.S.C. §§ 45(d) and 136(e), which provide for succession where “a chief judge is temporarily unable to perform his duties as such,” the determination whether such an inability exists is not expressly reserved to the chief judge. Nor, indeed, is it assigned to any particular judge or court-governance body. Clearly, however, a chief judge’s inability to function as chief could implicate “the effective and expeditious administration of justice,” which the judicial council of the circuit must, under 28 U.S.C. § 332(d)(1), “make all necessary and appropriate orders” to secure. For this reason, such reassignment is among a judicial council’s remedial options, as subsection (b)(1)(D)(vii) makes clear. Consistent with 28 U.S.C. §§ 45(d) and 136(e), however, any reassignment of chief-judge duties must not outlast the subject judge’s inability to perform them. Nor can such reassignment result in any extension of the subject judge’s term as chief judge.

Rule 20(c) provides that a judicial council may return a matter to a special committee to augment its findings and report of its investigation to include additional areas of inquiry and investigation to allow the judicial council to reach a complete and fully informed judgment. Rule 20(c) also provides that if the judicial council decides to conduct an additional investigation, the subject judge must be given adequate prior notice in writing of that decision and of the general scope and purpose of the additional investigation. The conduct of the investigation will be generally in accordance with the procedures set forth in Rules 13 through 16 for the conduct of an investigation by a special committee. However, if hearings are held, the judicial council may limit testimony or the presentation of evidence to avoid unnecessary repetition of testimony and evidence before the special committee.

Rule 20(d) provides that judicial-council action must be taken by a majority of those members of the council who are not disqualified, except that a decision to remove a bankruptcy judge from office requires a majority of all the members of the council as required by 28 U.S.C. § 152(e). However, it is inappropriate to apply a similar rule to the less severe actions that a judicial council may take under the Act. If some members of the judicial council are disqualified in the matter, their disqualification should not be given the effect of a vote against council action.

With regard to Rule 20(e), the judicial council, on the request of the subject judge, may recommend to the Director of the Administrative Office that the subject judge be reimbursed for reasonable expenses incurred, including attorneys’ fees. The judicial council has the authority to recommend such reimbursement where, after investigation by a special committee, the complaint has been finally dismissed or concluded under subsection (b)(1)(A) or (B) of this Rule. It is contemplated that such reimbursement may be provided for the successful prosecution or defense of a proceeding under Rule 21(a) or (b), in other words, one that results in a Rule 20(b)(1)(A) or (B) dismissal or conclusion.

Rule 20(f) requires that judicial-council action be by order and, normally, that it be supported with a memorandum of factual determinations and reasons. Notice of the action must be given to the complainant and the subject judge, and must include notice of any right to petition for review of the judicial council's decision under Rule 21(b). Because an identified complaint has no "complainant" to petition for review, a judicial council's dispositive order on an identified complaint on which a special committee has been appointed must be transmitted to the Committee on Judicial Conduct and Disability for review. The same will apply where a complaint was filed by its subject judge.

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11th Cir. JCDR 20.1 [Electronic Distribution of Materials](#). The Clerk may send all materials described in Rule 20 to the [complainant](#), subject judge, Judicial Council, Judicial Council Review Panel, or Special Committee electronically.