

Statement of Allegations and Reasons in Chief Judge Dismissal Orders Under the Judicial Conduct and Disability Act of 1980

*A Report to the Subcommittee on
Courts, the Internet, and Intellectual Property
Committee on the Judiciary
United States House of Representatives*

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This report was undertaken in furtherance of the Center's statutory mission to conduct and stimulate research and development for the improvement of judicial administration. The Administrative Office of the United States Courts contributed significantly to this report. Any views expressed are those of the authors and not necessarily those of the Federal Judicial Center or the Administrative Office.

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Introduction and Summary

The Center prepared this report pursuant to the joint request of the Honorable Howard Coble, Chairman, and the Honorable Howard L. Berman, Ranking Member, of the House Judiciary Committee’s Subcommittee on Courts, the Internet, and Intellectual Property. Citing the Center’s 1993 empirical study for the National Commission on Judicial Discipline and Removal,¹ the subcommittee asked the Center to “undertake some limited follow-up research.” Specifically, the request posed two empirical questions:

1. Did the orders of chief judges set forth factual allegations raised in the complaints and the reasons for the subsequent disposition?
2. What percentage of dismissals were based on the grounds that the complaint is directly related to the merits of a decision or procedural ruling?

In response to these questions, we found the following:

1. Chief judges restated factual allegations of the complaint in 89% of the dismissal orders examined and stated a reason for dismissal beyond a recitation of the statutory grounds in 88% of the orders.² Chief judges both restated allegations and provided reasons in 86% of their dismissal orders.
2. In 80% of the dismissal orders, chief judges ruled that the complaint was directly related to the merits of a decision or procedural ruling.

Background

The Judicial Conduct and Disability Act of 1980 authorizes a chief judge to dismiss a complaint “by written order, stating his reasons” if the chief judge finds the complaint to be “(i) not in conformity with [the statute], (ii) directly related to the merits of a decision or procedural ruling, or (iii) frivolous.”³ In the Center’s 1993 study of the administration of the Act, researchers asked whether chief judges stated nonconclusory reasons in their dismissal order. We reported mixed results. Of eight circuits studied, we found that four “have a long and solid record

1. That report was published as Jeffrey N. Barr & Thomas E. Willging, *Decentralized Self-Regulation, Accountability, and Judicial Independence Under the Federal Judicial Conduct and Disability Act of 1980*, 142 U. Pa. L. Rev. 25 (1993).

2. Throughout this report, percentages presented for all circuits combined are weighted averages based on the total number of dismissal orders in each circuit during the period studied.

3. 28 U.S.C. § 372(c)(3)(A). The statute also allows the chief judge to refer matters to a special investigating committee that will report to the judicial council of the circuit, 28 U.S.C. § 372(c)(4), and authorizes the judicial council to dismiss such complaints, 28 U.S.C. § 372(c)(6)(C). Those actions are outside the scope of this study, as are judicial council actions taken on petitions to review chief judge dismissal orders. 28 U.S.C. § 372(c)(10).

of providing full and generous reasons for dismissal, one has a spotty record, and three have long-standing practices of issuing conclusory form orders to dispose of insubstantial complaints.”⁴

Based in part on the above finding, the National Commission on Judicial Discipline and Removal recommended that “a chief judge who dismisses a complaint or concludes a proceeding should ‘prepare a supporting memorandum that sets forth the allegations of the complaint and the reasons for the disposition.’ ”⁵ The Judicial Conference of the United States, at its March 1994 session, “[e]ndorsed, in principle, the recommendations of the National Commission . . . that chief judges’ orders dismissing or concluding complaints set forth the allegations of the complaint and the reasons for the disposition as required by Illustrative Rule 4(f).”⁶ The Conference “noted that all circuits and courts covered by the Act already have in place, or are in the process of adopting, the[se] practices . . .”⁷

The subcommittee’s first question asks, in essence, whether the chief judges of the circuits have adhered to the standard that the Judicial Conference has established for responding to complaints of misconduct or disability.

As to the subcommittee’s second question, we found in 1993 that “the single most common ground for dismissal is merits-relatedness.”⁸ The National Commission apparently did not find that conclusion problematic and did not make any recommendation in that regard.

Method

The basic method for this study was to have two researchers each examine, or “rate,” a sample of orders in respect to the questions posed by the subcommittee. We assembled a complete set of chief judge dismissal orders for the period spanning 1992 to the present, a total of 5,975 orders. We began the research by conducting a pilot study to estimate the range of responses to the above questions, to identify and address any differences between the ratings of the two researchers, and to estimate the sample size needed to obtain a statistically valid portrayal of the activity in the entire population of cases. We determined that a sample size of

4. Barr & Willging, *supra* note 1, at 80.

5. Report of the National Commission on Judicial Discipline and Removal 109 (1993), quoting Illustrative Rule 4(f) of the Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders, Illustrative Rules Governing Complaints of Judicial Misconduct and Disability (Rev. 2000).

6. Report of the Proceedings of the Judicial Conference of the United States, March 15, 1994, at 30.

7. *Id.* at 31.

8. Barr & Willging, *supra* note 1, at 55.

50 dismissal orders per circuit would yield a representative sample of the dismissal orders for the period.⁹

Two researchers reviewed the orders: Jeffrey Barr, of the General Counsel's Office of the Administrative Office of the United States Courts, and Thomas Willging, of the Research Division of the Federal Judicial Center—the same researchers who conducted the Center's 1993 study for the National Commission.¹⁰ First, we established a high level of interrater reliability by reading the same 78 orders (6 per circuit), comparing responses to the research questions, and reaching a consensus on the proper responses. We then independently reviewed an additional 78 orders and compared the results. That second review of 78 orders produced perfect agreement for the question concerning the statement of a reason for dismissal and the question calling for identification of the grounds for dismissal. The second review also produced a high level of agreement for the question concerning the restatement of allegations of the complaint.¹¹ Then we each independently reviewed 19 orders per circuit and combined the results. In total, we reviewed 636 chief judge orders from all thirteen judicial circuits.¹²

Results

Question 1

The first question, broken into subparts, asked whether the orders of chief judges (a) set forth factual allegations raised in the complaint, (b) stated the reasons for the subsequent disposition, or (c) both restated the allegations and stated the reasons. Overall, 89% of the orders restated at least one allegation of the complaint; 88% stated a reason for the dismissal, beyond the recitation of a statutory conclusion; and 86% met both of those standards.

Figure 1 presents the distribution of responses to Question 1(a) for each of the thirteen circuits. The figure shows that seven of the thirteen circuits met the standard for 100% of the complaints, and eleven of the thirteen met the standard for more than 90% of the complaints. Underlying data reveal that 65% (36 of 55) of the instances in which chief judge orders failed to restate an allegation of the com-

9. One circuit did not have 50 orders from 1992 to 2001. In that circuit, we reviewed all 36 orders issued during that period.

10. In addition, George Cort, Vashty Gobinpersad, Maria Estelita Huidobro, Angelia Levy, and Tim Reagan, all of the Research Division of the Federal Judicial Center, contributed substantially to this report.

11. Interrater reliability for that question was calculated at 0.79, using Cohen's κ statistic, which measures agreement above the amount that would be expected to occur by chance. The result (0.79) represents agreement in classifying the response in 76 of the 78 orders.

12. We excluded cases in which the chief judge had concluded the proceedings on the grounds that corrective action had been taken or that the complaint had become moot.

plaint occurred in a single circuit (g). That circuit has come to use form dismissal orders that do not restate allegations and that use the language of the statute to state the basis for dismissal.

The orders of one other circuit (i) restated allegations less than 90% of the time. That circuit did not use form orders. Occasionally the chief judge failed to recite the specific allegations that prompted a dismissal. For example, the chief judge referred to one complaint as “incomprehensible” without restating any of the complainant’s language.

Figure 1. Percentage of chief judge orders that restated an allegation of the complaint, by circuit¹³

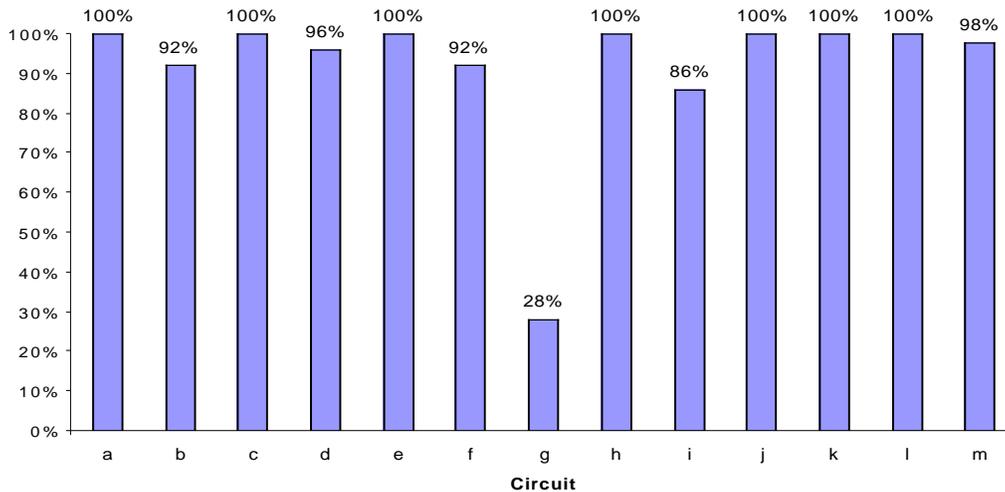
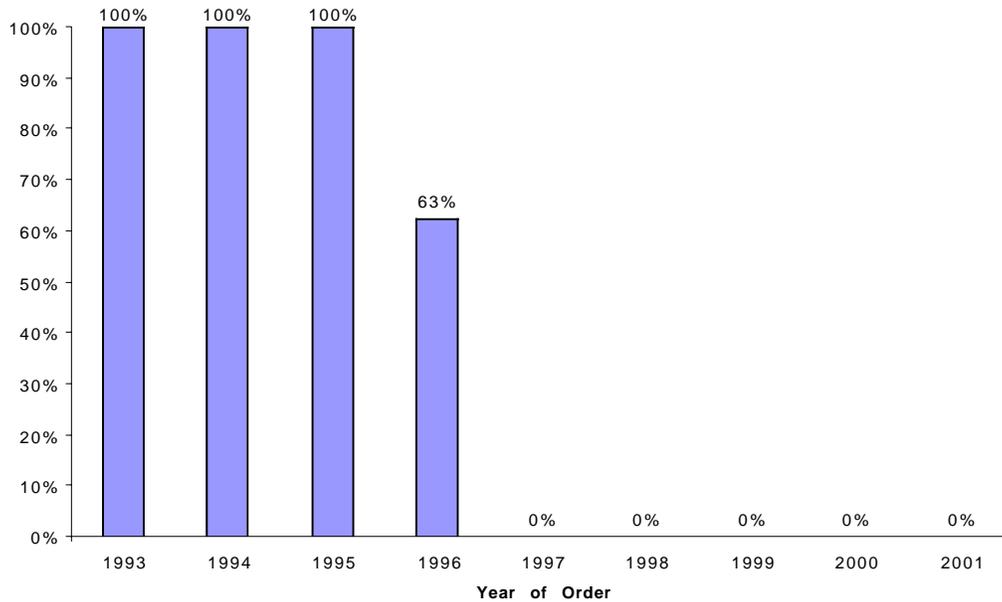


Figure 2 shows the percentage of chief judge dismissal orders in Circuit g that restated an allegation of the complaint, by year. From 1993 to 1995 all of the orders in that circuit restated an allegation; from 1997 to 2001 none of the orders did so. Apparently, in 1996 a chief judge instituted a new practice of using conclusory form orders, and the circuit followed that practice throughout the rest of the study period.

13. For Figures 1, 3, and 5, we randomly assigned letters to designate the thirteen circuits.

Figure 2. Percentage of chief judge orders in Circuit g that restated an allegation of the complaint, by year



Our data also showed that the other twelve circuits exhibited a consistent pattern of restating allegations of the complaint throughout the study period. Every year these twelve circuits' chief judge orders restated allegations of the complaint at least 90% of the time. The average rate across these twelve circuits for the entire study period was 95%.

Question 1(b) asked how often chief judge orders stated a nonconclusory reason for dismissing a complaint. Figure 3 shows the distribution of responses to Question 1(b) for each of the thirteen circuits. Overall, 88% of the orders stated a reason. In five of the circuits, all of the orders included a reason for dismissal. In six other circuits, 92% or more of the orders stated a reason. One circuit (g) accounted for 57% (34 of 60) of the orders that did not state a reason. As discussed above, in 1996 that circuit began to use a form order of dismissal that recited one or more statutory grounds in conclusory terms.

The other circuit with less than 90% adherence to the standard (Circuit i) did not use a form dismissal order. Occasionally, however, the chief judge failed to state a specific reason for dismissal, stating, for example, that a complaint "clearly" was directly related to the merits of a judicial decision.

Figure 3. Percentage of chief judge orders that stated a reason for dismissal beyond recitation of a statutory ground, by circuit

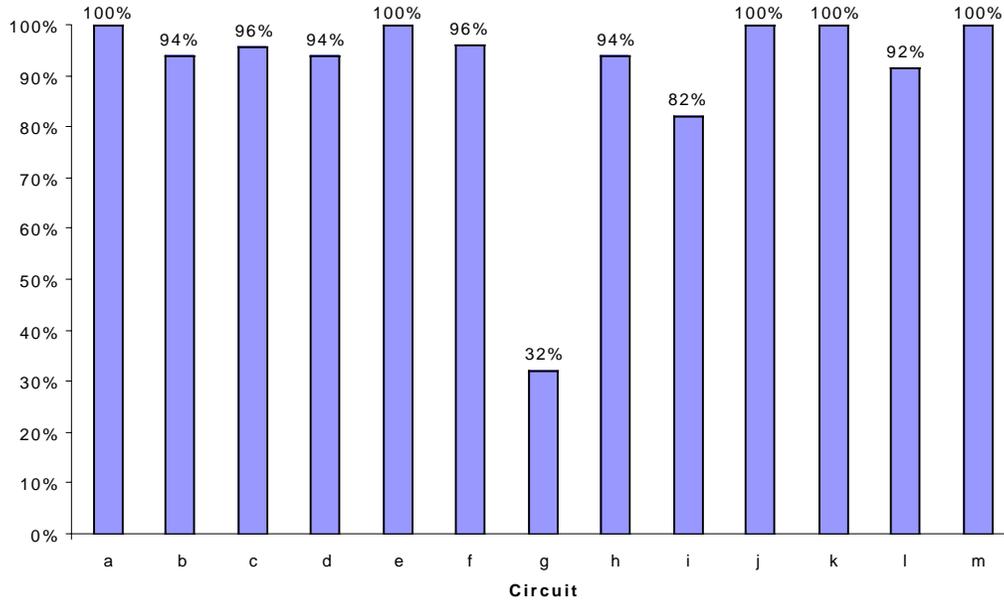
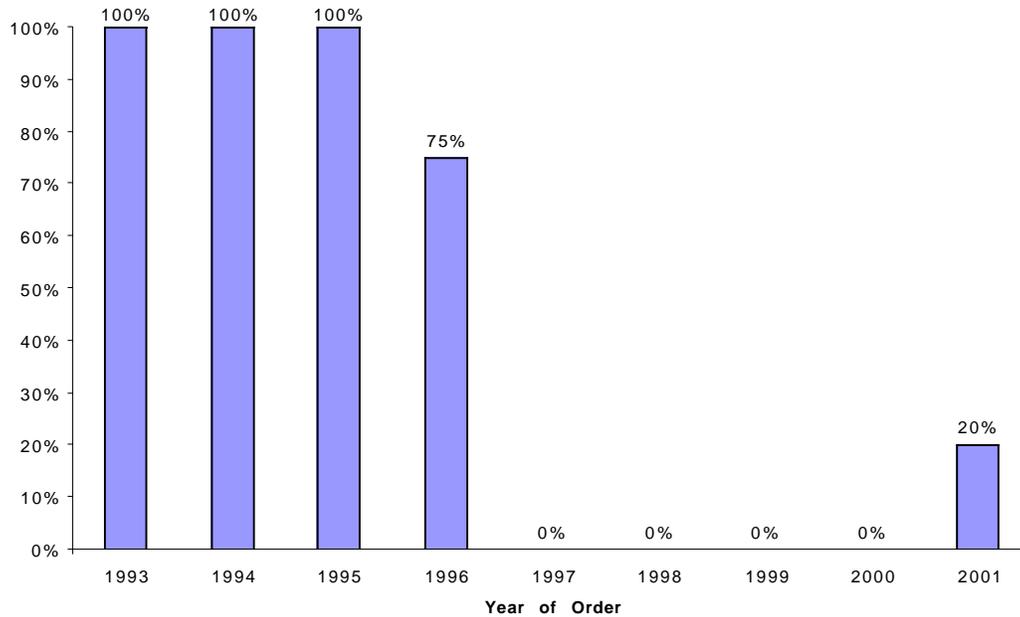


Figure 4 shows an abrupt decline in stating a reason for dismissal in Circuit g. The decline began in 1996 and continued from 1997 to 2001, when a single order included the statement of a nonconclusory reason for dismissal. The practice under the chief judge presiding until 1996 was consistently to state nonconclusory reasons for dismissal of a complaint. The succeeding chief judge appears to have adopted a practice of using conclusory form orders of dismissal, a practice which continued, with a single exception, during the rest of the period under study.

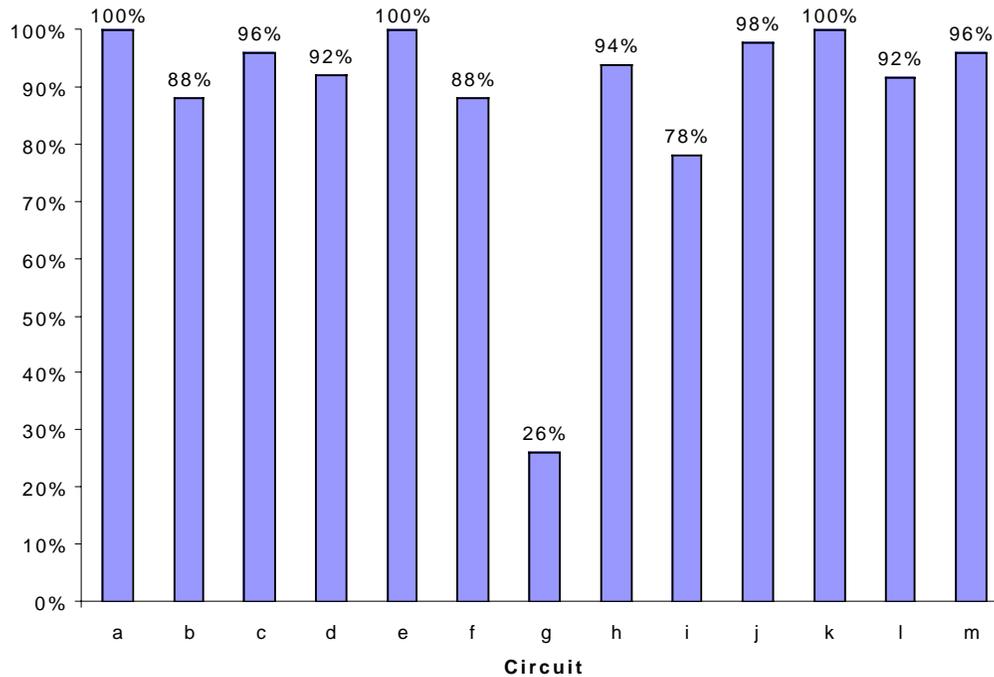
Our data also showed that, throughout the study period, the other twelve circuits' chief judge orders exhibited a consistent pattern of stating a nonconclusory reason for dismissing the complaint. Every year these twelve circuits' chief judge orders stated such a reason at least 93% of the time. The average rate across these twelve circuits for the entire study period was 94%.

Figure 4. Percentage of chief judge orders in Circuit g that stated a reason for dismissal beyond recitation of a statutory ground, by year



Question 1(c) asked whether chief judge orders both restated allegations and stated reasons for dismissal. Figure 5 shows the percentage of chief judge orders that both restated an allegation of the complaint and stated a nonconclusory reason for the dismissal of that complaint. The data follow a now familiar pattern. Some circuits adhered perfectly to both standards; all but one of the circuits substantially adhered to the standards; and one circuit consistently complied with the standard until 1996 and since then consistently did not comply. In all thirteen circuits, the underlying data show that 86% of all orders satisfied both standards. In the twelve circuits other than g, 92% of all orders did so.

Figure 5. Percentage of chief judge orders that restated an allegation of the complaint and stated a reason for dismissal of that complaint beyond recitation of a statutory ground, by circuit



In summary, all but one of the circuits appear to comply substantially with the Judicial Conference policy that dismissal orders should restate allegations of the complaint and state a nonconclusory reason for dismissal. Those twelve circuits have complied with that policy since its inception in 1994.

Question 2

The second question asked by the subcommittee was what percentage of dismissals were based on the grounds that the complaint was directly related to the merits of a decision or procedural ruling. We present our findings in response to that question in two figures.

Figure 6 presents the percentage of chief judge orders that cited the three statutory grounds for dismissal. An order can state more than one statutory ground for dismissal, so the percentages in Figure 6 add up to more than 100%.

As Figure 6 shows, the vast majority of orders (80%) included a reference to the statutory ground that the complaint was directly related to the merits of a decision or procedural ruling. Approximately half of the orders (52%) included a reference to the statutory ground that the complaint was frivolous.

Figure 6. Percentage of citations of three statutory grounds for dismissal in a sample of chief judge orders, 1992 to 2001 (N = 636)

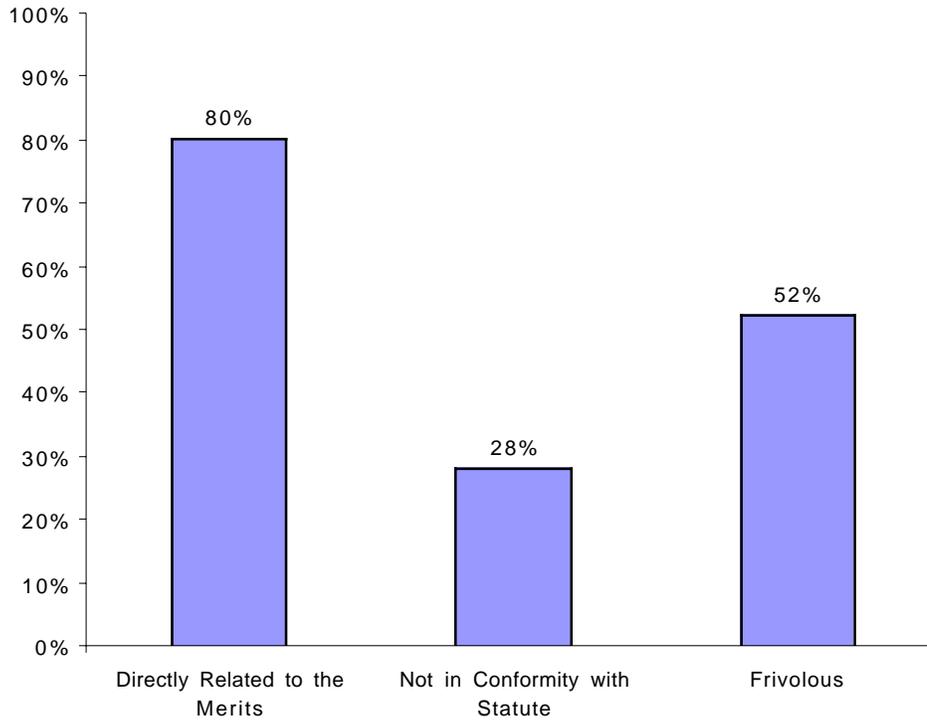
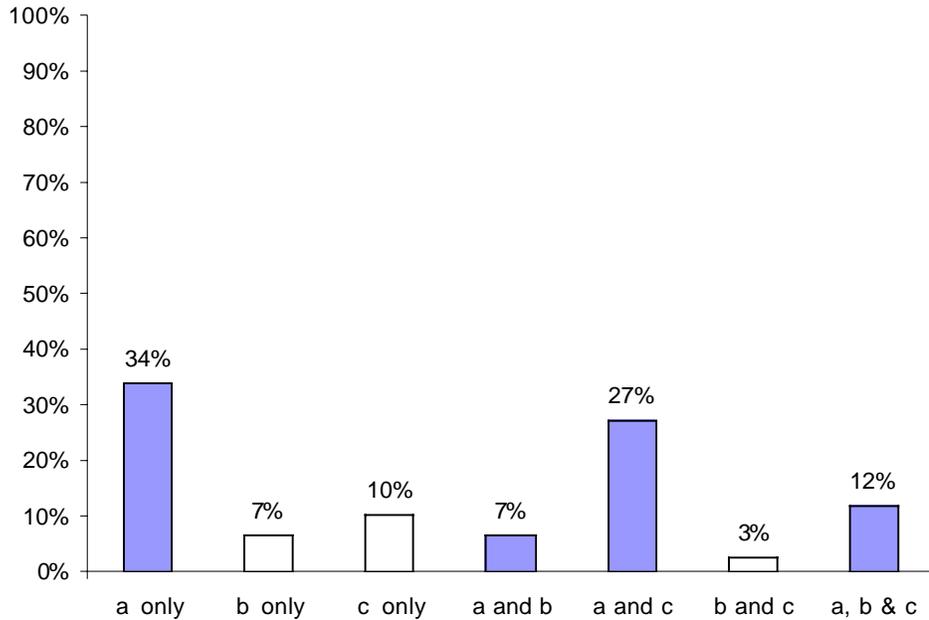


Figure 7 presents data about all combinations of references to the three statutory grounds. Categories that include “directly related to the merits” are highlighted.

Figure 7 breaks down the 80% of the cases in which chief judges invoked the merits-related ground for dismissal and shows the various combinations in which the three statutory grounds for dismissal were used. In 34% of their dismissal orders, chief judges cited the direct relation between the complaint and the merits as the sole reason for dismissal. In 27% of their dismissal orders, chief judges found the complaints to be both directly related to the merits and frivolous. In 7%, chief judges found the complaints to be both directly related to the merits and not in conformity with the statutory standard of misconduct. In 12%, chief judges cited all three statutory grounds: lack of conformity with the statutory misconduct standard, direct relation to the merits, and frivolousness.

Figure 7. Percentage of statutory grounds for dismissal cited in a sample of chief judge orders, 1992 to 2001 (N = 636)



a = Directly related to the merits
b = Not in conformity with statute
c = Frivolous

Conclusions

In general, the chief judges of the circuits have observed the Judicial Conference standards for chief judge orders responding to complaints of judicial misconduct or disability, that is, their orders set forth the allegations of the complaint and the reasons for the disposition. Chief judges restated the allegations of the complaint in 89% of their dismissal orders and stated a reason for dismissal other than a recitation of the statutory grounds in 88% of their orders. In 86% of the orders studied, chief judges complied with both standards.

Chief judges in a single circuit accounted for more than half of the orders that did not meet these standards. Indeed, apart from that circuit, chief judges restated the allegations of the complaint in 95% of their dismissal orders, stated a reason for dismissal other than a recitation of the statutory grounds in 94% of their orders, and did both in 92% of their orders.

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We found no judiciary-wide problem in observing these standards. The only shortfall has been a localized one, occurring in a single circuit.

The data are consistent with the common assumption that the vast majority of complaints of judicial misconduct and disability arise out of litigants' dissatisfaction with federal judges' rulings in their cases. For 80% of dismissed complaints, a chief judge cited the allegations' direct relationship to the merits of a decision or procedural ruling as a basis for dismissal.