

Judicial Conduct and Disability Act Overview

Statute and rules. In 1980, Congress created a process for the judicial branch to receive or initiate complaints relating to judicial conduct and disability. Current statutory provisions are at 28 U.S.C. §§ 351-364. All circuits and special courts assigned responsibility for administering the Act have adopted rules, generally modeled on the Judicial Conference's *Illustrative Rules Governing Complaints of Judicial Conduct and Disability* (AO 2000).

Beginning the process. Any person can start the statutory process by filing a complaint with the clerk of the court of appeals alleging that a judge has engaged in conduct that is prejudicial to the administration of the business of the courts or that a judge is mentally or physically unable to serve as a judge. In addition, the chief judge of the court of appeals has the authority to initiate a complaint based on information available to him or her.

Chief judge decisions. The clerk transmits any complaint to chief judge of the court of appeals, and a copy to the subject judge. The Chief Circuit Judge must review the complaint expeditiously and decide whether it has merit and whether the subject judge has corrected the alleged misconduct or disability. The chief judge may decide to conduct a limited factual inquiry, but the chief judge does not have authority to resolve disputed issues of fact.

The chief judge may dismiss the complaint because it: does not allege misconduct covered by the statute; is directly related to the merits of a judicial ruling; or is frivolous, in the sense of being unsubstantiated and perhaps incapable of being substantiated. The chief judge may also conclude the proceedings because the subject judge has taken appropriate action to correct the alleged deficiency or because the matter is moot. A complainant may seek judicial council review of the above chief judge actions. Ordinarily, judicial council action on such a petition for review is final.

If the chief judge follows neither of the above courses, he or she must appoint a special investigative committee of district and appellate judges to conduct as extensive an investigation as may be necessary and to present a comprehensive written report to the judicial council of the circuit.

Judicial Council actions. Upon receipt of such a report, the judicial council may investigate further if necessary and may dismiss the complaint or: temporarily change the judge's case assignments; issue a public or private censure; certify a disability; request voluntary retirement without regard to length of service requirements; or order the removal from office of judges not appointed for life. The complainant or subject judge may petition the Judicial Conference to review the judicial council's decision.

A judicial council may also refer a complaint directly to the Judicial Conference. The council must do so if it determines that a life-tenured judge may have engaged in conduct that might constitute grounds for impeachment. If the Judicial Conference makes an independent determination that impeachment may be warranted, it must certify that determination and transmit the record to the House of Representatives.

Figure 1, extracted from the Breyer Committee Report (*Implementation of the Judicial Conduct and Disability Act of 1980* (September 2006), p. 15), presents an overview of the Act's process for presenting and dealing with complaints of judicial misconduct and disability.

Figure 1. Flowchart of Major Steps in Complaint Processing

