ADDENDUM III

RULES OF THE JUDICIAL COUNCIL OF THE ELEVENTH CIRCUIT GOVERNING COMPLAINTS OF JUDICIAL MISCONDUCT OR DISABILITY

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RULES OF THE JUDICIAL COUNCIL OF THE ELEVENTH CIRCUIT GOVERNING COMPLAINTS OF JUDICIAL MISCONDUCT OR DISABILITY

Preface

Section 372(c) of title 28, United States Code (hereinafter, § 372(c)), which is reproduced in Appendix A to these Rules, authorizes a person to file, or the Chief Judge of the Eleventh Circuit to identify, a complaint that a circuit judge, district judge, bankruptcy judge, or magistrate judge has "engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts" or is "unable to discharge all of the duties of office by reason of mental or physical disability." For purposes of these Rules, the term "Chief Judge" shall refer to the Chief Judge of the Eleventh Circuit and, when the Chief Judge is precluded from exercising his authority under § 372(c), to the circuit judge in regular active service next senior to the Chief Judge.

Section 372(c) does not provide an alternative means of obtaining judicial review of judicial decisions thought to be erroneous. A complaint that is either "directly related to the merits of a decision or procedural ruling" or is "frivolous" shall be dismissed.

Authority: § 372(c)(1), (2), (3)(A).

Chapter I. Complaint of Judicial Misconduct or Disability

RULE 1. FILING OF COMPLAINT

(a) Form. Complaints of judicial misconduct or disability under § 372(c) are to be filed on the official form provided by the Clerk of the United States Court of Appeals for the Eleventh Circuit (hereinafter, the Clerk), which is reproduced in Appendix B to these Rules. This form is available on the court's web site at www.ca11.uscourts.gov, or may be obtained by visiting or writing to the office of the Clerk at the address shown in paragraph (g), below, or by telephoning that office at 404-335-6577. The form may also be obtained from the clerk of any district court or bankruptcy court within the Eleventh Circuit. A separate complaint form must be filed for each complained-of judge. Complaints must be legible; if possible, they should be typewritten.

(b) Statement of facts. A statement of facts should be attached to the complaint form, setting forth with particularity the facts on which the claim of misconduct or disability is based. The statement of facts must be on 8½ x 11 inch paper. Only one side of the paper may be used. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may appear in the margins but no text may appear there. If

typed, either a proportionally spaced or monospaced typeface may be used. A proportionally spaced typeface must be 14-point or larger; a monospaced typeface may not contain more than 10½ characters per inch. The statement of facts may not exceed five (5) pages, and should include:

(1) a description of the conduct complained of;
(2) the time and place of the occurrence (or occurrences) of such conduct; and
(3) other information, such as the names and addresses of any witness to such conduct, that would assist an investigator in confirming that the conduct occurred.

(c) 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.

(d) Number of copies. Three copies each of the complaint, statement of facts, and any document(s) filed therewith are to be filed with the Clerk.

(e) Signature. The complainant shall sign the complaint (in the space provided on the form) and thereby declare under penalty of perjury that the allegations in the complaint are true.

(f) Anonymous complaints. An anonymous complaint shall not be accepted for filing by the Clerk. Nonetheless, the Clerk shall forward such a complaint to the Chief Judge.

(g) Place of filing. Complaints shall be sent in an envelope to:

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

The envelope shall be marked "Section 372(c) Complaint." The name of the complained-of judge shall not appear on the envelope.

(h) Supplementation. Once filed, a complaint may not be supplemented or modified by additional statements or documents unless authorized by order of the Chief Judge.

(i) No filing fee. There is no filing fee for complaints of misconduct or disability.

(j) Abuse of the Complaint Procedure. A complainant who files vexatious, repetitive, harassing, or frivolous complaints, or otherwise abuses the complaint procedure, may be restricted as set forth below.

(1) **Multiple complaints by a single complainant.** After affording the offending complainant an opportunity to show cause in writing why his or her ability to file further complaints should not be limited, the judicial council may restrict or impose conditions upon the complainant's use of the complaint procedure. Such restrictions or conditions will be narrowly tailored to address the specific problems encountered.

(2) **Identical or substantially identical complaints submitted en masse by multiple complainants.** The Chief Judge may direct the Clerk not to formally process any additional complaints identical or substantially identical to a complaint that has already been filed or concluded, but instead to provide those additional complainants with a copy of the public record order disposing of the first such matter filed. No further action shall be taken with respect to any such identical or substantially identical complaints.

Authority: § 372(c)(1).

RULE 2. IDENTIFICATION OF COMPLAINT

In the interests of the effective and expeditious administration of the business of the courts and on the basis of information available to the Chief Judge, the Chief Judge may, by written order stating reasons therefor, identify a complaint and thereby dispense with the filing of a written complaint. If a complaint is identified under this Rule, the Chief Judge shall not be considered a complainant and shall perform all functions assigned to the Chief Judge under these Rules.

Authority: § 372(c)(1).

RULE 3. RECEIPT OF COMPLAINT

(a) Receipt of complaint in proper form. Upon receipt of a complaint filed in the form required by Rule 1, the Clerk shall acknowledge receipt of the complaint and transmit copies thereof to the Chief Judge and to the complained-of judge.

(b) Receipt of complaint not in proper form. Upon receipt of a complaint not filed in the form required by Rule 1, the Clerk shall return the complaint to the complainant and explain why it was returned.

(c) Docket. The filing of a complaint received in proper form shall be entered on the Clerk's miscellaneous docket. A docket sheet shall be maintained for each complaint and any

proceedings relating thereto. The docket sheet shall not identify the complainant or the complained-of judge and shall be maintained under seal unless the Chief Judge directs that the docket sheet be a part of the miscellaneous docket available to the public.

(d) Filed materials. The Clerk shall enter on the docket all orders, notices, and other papers transmitted by the Chief Judge or the Judicial Council to the Clerk for filing, as well as all papers relating to any activities of the Clerk, such as the issuance of subpoenas, taken pursuant to orders of the Chief Judge or the Judicial Council. These materials shall be maintained under seal unless the Chief Judge directs that they be available to the public.

Authority: § 372(c)(2).

Chapter II. Review of Complaint by Chief Judge

RULE 4. REVIEW OF COMPLAINT

(a) Dismissal of complaint. Upon receipt of a complaint filed in proper form, the Chief Judge may dismiss the complaint if —

the allegations of the complaint, even if true, do not describe "conduct prejudicial to the effective and expeditious administration of the business of the courts" or do not indicate that the complained-of judge is "unable to discharge all the duties of office by reason of mental or physical disability"; the allegations of the complaint are "directly related to the merits of a decision or procedural ruling";

(3) the complaint is "frivolous"; or

(4) "appropriate corrective action has been taken" or "that action on the complaint is no longer necessary because of intervening events".

The Chief Judge shall dismiss the complaint by written order setting forth the reason(s) for the dismissal. The order shall identify the complainant and the complained-of judge and shall be maintained by the Clerk under seal. The Clerk shall provide to the complainant and the complained-of judge a copy of the order and shall notify them of the right to petition the Judicial Council for review of the order of dismissal. In addition to the order maintained under seal, the Chief Judge shall issue an order of dismissal that shall be part of the public record; such order shall not identify, directly or indirectly, the complainant or the complained-of judge.

(b) Appointment of special committee. If the complaint is not dismissed pursuant to paragraph (a), the Chief Judge shall appoint a special committee, in accordance with Rule 8, to investigate the allegations of the complaint and to report thereon to the Judicial Council. The Chief Judge shall notify the complainant and the complained-of judge of the appointment of a special committee and of the identity of its members.

(c) Report to Judicial Council. The Chief Judge may, from time to time, report to the Judicial Council on actions taken under this Rule.

Authority: § 372(c)(3), (4).

Chapter III. Review by Judicial Council of Order of Dismissal

RULE 5. PETITION FOR REVIEW

(a) Time and Place of Filing. A petition for review of an order dismissing a complaint may be filed with the Clerk within 30 days of the entry on the docket sheet of the order of dismissal.

(b) Form. A petition shall be in the form of a letter addressed to the Clerk, signed by the aggrieved complainant or complained-of judge, and enclosed in an envelope marked "Section 372(c) Petition." The name of the complained-of judge shall not appear on the envelope. The petition shall set forth a brief statement of the reason(s) why the complaint should not have been dismissed. The petition shall not restate the allegations of the complaint. The petition must be on 8½ x 11 inch paper. Only one side of the paper may be used. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may appear in the margins but no text may appear there. If typed, either a proportionally spaced or monospaced typeface may be used. A proportionally spaced typeface must be 14-point or larger; a monospaced typeface may not contain more than 10½ characters per inch. The petition may not exceed five (5) pages. Attachments to a petition are not permitted.

Authority: § 372(c)(10).

RULE 6. RECEIPT OF PETITION FOR REVIEW

(a) Receipt of timely petition in proper form. Upon receipt of a petition for review filed in the form required by Rule 5(b) within 30 days of the entry on the docket sheet of the order of dismissal, the Clerk shall acknowledge receipt of the petition and transmit a copy thereof to the complained-of judge, if the complainant is the petitioner, or to the complainant, if the complained-of judge is the petitioner, and to the Chief Judge. Thirty (30) days after the entry of the petition for review on the docket sheet, the Clerk shall send to each non-disqualified member of the Judicial Council and to the Circuit Executive copies of (1) the complaint; (2) the order dismissing the complaint, (3) the petition for review, and (4) a ballot in the form specified in Rule 7(a).

(b) Receipt of petition not in proper form or out of time. Upon receipt of a petition for review not filed in the form required by Rule 5(b) or not filed within 30 days of the entry on

the docket sheet of the order of dismissal, the Clerk shall return the petition to the petitioner and explain why the petition was returned.

Authority: § 372(c)(11).

RULE 7. REVIEW OF ORDER OF DISMISSAL

(a) Ballot. The ballot referred to in Rule 6(a) shall ask the non-disqualified members of the Judicial Council whether the petition for review should be considered at the next meeting of the Council. If, within 21 days of the date on which the Clerk sent the ballot to the members of the Council, no member of the Council votes that the petition be considered at the next meeting, the order of dismissal shall be deemed affirmed.

(b) Response by complained-of judge.

(1) If the petitioner seeking review of the order of dismissal is the complainant, the complained-of judge may, within 21 days of the filing of the petition for review, file with the Circuit Executive a response to the petition. The response shall be sent in an envelope to:

Circuit Executive
Judicial Council of the Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

(2) The Circuit Executive shall transmit a copy of the response to the non-disqualified members of the Judicial Council and the complainant. The complained-of judge shall not otherwise communicate with the Judicial Council or any of its members about the matter.

(3) The Circuit Executive shall provide to the complained-of judge copies of any correspondence from the complainant to the Judicial Council.

(c) Decision by Judicial Council.

(1) A petition for review placed on the agenda of a meeting of the Judicial Council shall be decided by a majority of the non-disqualified members present at the meeting.

(2) The Judicial Council's decision shall be by written order setting forth the reason(s) therefor. The order shall identify the complainant and the complained-of judge and shall be maintained by the Clerk under seal. The Circuit Executive shall provide to the complainant and the complained-of judge a copy of the order and any separate or

dissenting statements issued by members of the Council, and shall inform them that the Council's decision is unreviewable. The Circuit Executive shall also transmit a copy of the order to the Chief Judge. In addition to the order maintained under seal, the Judicial Council shall issue an order that shall be part of the public record; such order shall not identify, directly or indirectly, the complainant or the complained-of judge.

Authority: § 372(c)(6)(D), (10).

Chapter IV. Investigation by Special Committee

RULE 8. APPOINTMENT OF SPECIAL COMMITTEE

(a) Membership. A special committee appointed pursuant to Rule 4(b) shall consist of the Chief Judge and equal numbers of circuit and district judges. The district judge members of a special committee appointed to investigate a complained-of district, bankruptcy, or magistrate judge shall be from districts other than the district of such complained-of judge.

(b) Presiding officer. At the time of the appointment of the special committee, the Chief Judge shall designate one member (who may be the Chief Judge) as the presiding officer.

(c) Adviser. If the complained-of judge is a bankruptcy judge or magistrate judge, the Chief Judge may appoint a bankruptcy judge or magistrate judge, as the case may be, to serve as an adviser to the special committee. The Chief Judge shall appoint such an adviser if, within ten days of notification of the appointment of the committee, the complained-of bankruptcy judge or magistrate judge requests that such an adviser be appointed. The adviser shall be from a district other than the district of the complained-of judge.

(d) Provision of documents. The Chief Judge shall transmit to the other members of the special committee (and to the adviser, if any) copies of the complaint and any documents pertaining to the committee's investigation.

(e) Continuing qualification of committee member. A judge appointed to a special committee may continue to serve on the committee after becoming a senior judge or, in the case of the Chief Judge, after his or her term as Chief Judge terminates.

(f) Death or resignation of committee member. If a judge appointed to a special committee dies or retires from office under 28 U.S.C. § 371(a), the Chief Judge may appoint another circuit or district judge, as the case may be, to the committee. In any event, the committee must have at least three members.

Authority: § 372(c)(4).

RULE 9. INVESTIGATION AND REPORT

(a) Scope of investigation. The special committee shall conduct an investigation as extensive as it considers necessary. If, in the course of the investigation, the committee has reason to believe that the complained-of judge may have engaged in misconduct that is beyond the scope of the complaint or the complained-of judge may be unable to discharge the duties of office because of mental or physical disability, the committee may expand the scope of its investigation.

(b) Criminal matters. If the complaint alleges or the special committee has reason to believe that the complained-of judge has engaged in criminal conduct, the committee may consult with appropriate law enforcement authorities. Unless disclosure of the matter has been authorized under § 372(c)(14), however, the committee shall not disclose to such authorities the identity of the complained-of judge or information which would, in effect, disclose the judge's identity.

(c) Subpoena powers. The Chief Judge may delegate to the presiding officer the authority to exercise the special committee's subpoena powers as provided in 28 U.S.C. § 332(d). Witness fees shall be paid as provided in 28 U.S.C. § 1821.

(d) Staff. To assist it in its work, the special committee may use staff of the judicial branch or may arrange, through the Administrative Office of the United States Courts, for the hiring of additional staff.

(e) Voting. All actions of the special committee shall be taken by a vote of a majority of the members.

(f) Report. The special committee shall submit to the Judicial Council a comprehensive written report of its investigation and the record of any hearings the committee may have conducted. The committee's report shall present both the findings of the investigation and the committee's recommendations for action by the Judicial Council. The report shall also include any separate or dissenting statements by members of the committee.

Authority: § 372(c)(5), (9)(A).

RULE 10. HEARINGS

(a) Purpose of hearings. The special committee may hold hearings to take testimony, receive other evidence, or hear argument. If the committee is investigating allegations against more than one judge, it may hold joint hearings.

(b) Notice to complained-of judge. The special committee shall give the complained-of judge written notice of (1) any hearing it intends to hold; (2) his or her right to attend the hearing; (3) the purpose(s) of the hearing; and (4) the name(s) of any witness(es) that the

committee intends to call. The complained-of judge may suggest additional witnesses to the committee.

(c) Witnesses called by special committee. The special committee shall call as a witness any person who may have information pertaining to the allegations in the complaint. Both the members of the committee and the committee's counsel or investigator(s) may examine the witnesses. The complained-of judge, personally or through counsel, shall have the right to cross-examine the witnesses.

(d) Witnesses called by complained-of judge. The complained-of judge, personally or through counsel, may call witnesses and examine them. The complained-of judge may also request the Chief Judge to direct the Clerk to issue subpoenas in accordance with 28 U.S.C. § 332(d). The special committee or its counsel or investigator(s) may examine any witness called by the complained-of judge.

(e) Testimony under oath. Testimony before the special committee shall be given under oath or affirmation.

(f) Record. Any hearing before the special committee shall be recorded by a court reporter or a recording device.

Authority: § 372(c)(11).

RULE 11. RIGHTS OF COMPLAINED-OF JUDGE

(a) Notice. The complained-of judge shall receive notice of the appointment of a special committee, see Rule 4(b); notice of any expansion of the scope of the committee's investigation, see Rule 9(a); and notice of any hearing to be held by the committee and of his or her rights to examine witnesses, see Rule 10.

(b) Hearings. The complained-of judge may request the special committee to hold a hearing for the purpose of presenting evidence, see Rule 10.

(c) Attendance at hearings. The complained-of judge shall have the right to attend, and to receive a transcript of, any hearing held by the special committee. The complained-of judge shall also have the right to receive copies of any documents presented to the committee at such hearing.

(d) Presentation of argument. The special committee may, upon request, give the complained-of judge leave, personally or through counsel, to present oral or written argument at any hearing held by the committee. The committee shall grant the complained-of judge such leave at the conclusion of its investigation and prior to the submission of its report to the Judicial Council.

(e) Access to report of special committee. The complained-of judge shall have reasonable access to the report submitted by the special committee to the Judicial Council.

(f) Representation by counsel. The complained-of judge shall have the right to be represented by counsel. The costs of such representation may be paid by the United States as provided in Rule 14(d).

Authority: § 372(c)(11), (16)

RULE 12. RIGHTS OF COMPLAINANT

(a) Notice. The complainant shall receive notice of the appointment of a special committee, see Rule 4(b)

(b) Opportunity to appear. The complainant shall be afforded the opportunity voluntarily to appear at hearings before the special committee, if the committee concludes that the complainant could offer substantial information pertaining to the allegations of the complaint. At no time, however, shall the complainant have the right to present argument to the committee either personally or through counsel.

Authority: § 372(c)(4)(C), (11)(C), (13).

Chapter V. Action by Judicial Council on Report of Special Committee

RULE 13. JUDICIAL COUNCIL ACTION

(a) Summary of actions. After receipt of the report of the special committee and the record of any hearings the committee may have conducted, the Judicial Council may dismiss the complaint pursuant to paragraph (b); may direct the special committee or a committee of the Council to conduct additional investigation pursuant to paragraph (c); may take corrective action pursuant to paragraph (d); or may refer the complaint to the Judicial Conference of the United States pursuant to paragraph (e).

(b) Dismissal. The Judicial Council may dismiss the complaint on any of the grounds provided in Rule 4(a). The dismissal of the complaint shall be by written order setting forth the ground(s) for the dismissal. The order shall identify the complainant and the complained-of judge and shall be maintained by the Clerk under seal. The Circuit Executive shall provide to the complainant and the complained-of judge a copy of the order and any separate or dissenting statements issued by members of the Council, and shall inform them of the right to petition the Judicial Conference of the United States for review. In addition to the order maintained under seal, the Judicial Council shall issue an order that shall be part of the public record; such order shall not identify, directly or indirectly, the complainant or the complained-of judge.

(c) Additional investigation. The Judicial Council may direct the special committee or a committee of the Council to conduct additional investigation. The Council shall notify the complained-of judge of the scope and purpose of such additional investigation. Investigation by a committee of the Council shall be conducted in accordance with procedures prescribed by Rules 9 through 12.

(d) Corrective action. If the complaint is not dismissed, the Judicial Council may take such action as is appropriate to assure the effective and expeditious administration of the business of the courts within the Eleventh Circuit, including, but not limited to, the following—

(1) directing the chief judge of the district of a complained-of magistrate judge to take such action as the Council considers appropriate, including the initiation of removal proceedings under 28 U.S.C. § 631;
certifying the disability of a complained-of Article III judge, pursuant to the procedures and standards provided under 28 U.S.C. § 372(b);
requesting that a complained-of Article III judge voluntarily retire, with the provision that the length of service requirements under 28 U.S.C. § 371 shall not apply;
ordering that, on a temporary basis for a time certain, no further cases be assigned to a complained-of judge;
censuring or reprimanding a complained-of judge by means of public announcement;
censuring or reprimanding a complained-of judge by means of private communication;
ordering such other action as it considers appropriate under the circumstances, except that the Council may not order the removal from office of an Article III judge; the removal of a bankruptcy judge shall be in accordance with 28 U.S.C. § 152; and the removal of a magistrate judge shall be in accordance with 28 U.S.C. § 631.

Judicial Council action under this paragraph shall be taken by written order. The order shall be accompanied by a memorandum setting forth the facts and the reasons for the action, unless the disclosure of such facts and reasons would be contrary to the effective and expeditious administration of the business of the courts. The order shall also be accompanied by any separate or dissenting statements by members of the Council. Neither the accompanying memorandum nor any separate or dissenting statement shall identify, directly or indirectly, the complainant or the complained-of judge. The Circuit Executive shall provide a copy of the order, any accompanying memorandum, and any separate or dissenting statements to the complainant and the complained-of judge and shall notify them of the right to petition the Judicial Conference of the United States for review.

(e) Referral to Judicial Conference.

(1) The Judicial Council may refer the complaint, together with the record of any associated proceedings and the Council's recommendation for appropriate action, to the Judicial Conference of the United States.

(2) If the Judicial Council determines, on the basis of a complaint and an investigation under § 372(c) and these Rules, or on the basis of information otherwise available to the Council, that an Article III judge may have engaged in conduct that might constitute one or more grounds for impeachment or that, in the interest of justice, is not amenable to resolution by the Judicial Council, the Judicial Council shall certify such determination, together with any complaint and a record of any associated proceedings, to the Judicial Conference of the United States.

(3) The Judicial Council shall, unless contrary to the interests of justice, immediately notify the complainant and the complained-of judge of any action taken under this paragraph.

(f) Availability of other actions. The referral of a complaint to the Judicial Conference of the United States or to a district court under paragraph (d) shall not preclude the Judicial Council from taking any other action within its power under 28 U.S.C. §§ 332 and 372.

Authority: § 372(c)(6), (7), (10); 28 U.S.C. § 332.

RULE 14. PROCEDURES FOR JUDICIAL COUNCIL ACTION

(a) Release of report. The Judicial Council may transmit a copy of the report of the special committee to the complainant and the complained-of judge.

(b) Rights of complained-of judge. Within 30 days after the submission of the report of the special committee to the Judicial Council, the complained-of judge may submit to the Council a written response to the committee's report. The complained-of judge shall have the right to present, personally or through counsel, oral or written argument to the Judicial Council concerning the appropriate disposition of the complaint. The complained-of judge shall not otherwise communicate with the Council, or any of its members, about the matter.

(c) Voting. Judicial Council action under Rule 13 shall be taken by a majority of its non-disqualified members. A decision to remove a bankruptcy judge from office shall be made pursuant to 28 U.S.C. § 152 and shall be by a majority of all of the members of the Council.

(d) Expenses. If the complaint has been dismissed under Rule 13(b), the Judicial Council may, upon the request of the complained-of judge, recommend that the Director of the Administrative Office of the United States Courts reimburse such judge for the reasonable

expenses, including attorney's fees, incurred by him or her during the investigation of the complaint.

Authority: § 372(c)(11), (14)(A), (16); 28 U.S.C. § 152.

Chapter VI. Confidentiality and Public Availability of Materials

RULE 15. CONFIDENTIALITY

(a) Confidential matters. The Chief Judge, the members of a special committee, the members of the Judicial Council, and staff shall treat complaints, investigations, and proceedings relating thereto as confidential matters. Any person who processes or serves subpoenas issued by the Clerk, or who records or transcribes hearings or other proceedings before the special committee, the Judicial Council, or a committee thereof, shall not disclose information relating to such activity unless authorized to do so by the Chief Judge.

(b) Files. The files constitute all papers, documents, records of proceedings, reports, and orders and accompanying memoranda relating to investigations of complaints, whether maintained by the Chief Judge, the Clerk, members of a special committee, members of the Judicial Council, or staff. The files shall be maintained separate and apart from all other files and records with appropriate security precautions to ensure their confidentiality.

(c) Availability to Judicial Conference. If a complaint is referred to the Judicial Conference of the United States under Rule 13(e), the Clerk shall provide the Judicial Conference with copies of the report of the special committee and any other documents and records relating thereto that were before the Judicial Council at the time of its referral. Upon request, the Clerk shall furnish any other materials relating to the investigation to the Judicial Conference or its Committee to Review Circuit Council Conduct and Disability Orders.

(d) Availability to district court. If the Judicial Council directs the initiation of proceedings for removal of a magistrate judge under Rule 13(d)(1), the Clerk shall transmit to the chief judge of the district court copies of the Council's order, any accompanying memorandum, any separate or dissenting statements by members of the Council, the report of the special committee, and any other materials that were before the Council at the time of its action.

(e) Availability to legislative branch. The Judicial Council shall release to the United States House of Representatives, the United States Senate, or any committee of either body any materials relating to the complaint and the investigation thereof that such body or committee deems necessary to an impeachment investigation or trial of the complained-of Article III judge.

(f) Disclosure with consent of complained-of judge. Materials from the files may be disclosed to any person upon the written consent of both the complained-of judge and the Chief Judge. The Chief Judge may require that the identity of the complainant, or of witnesses in an

investigation conducted by a special committee or the Judicial Council, be deleted from any materials disclosed.

(g) **Assistance and consultation.** Nothing in this rule precludes the Chief Judge or Judicial Council, for purposes of acting on a complaint filed under § 372(c), from seeking the assistance of qualified staff, or from consulting other judges who may be helpful in the process of complaint disposition.

Authority: § 372(c)(14).

RULE 16. PUBLIC DISCLOSURE

Except as provided by Rules 3(d), 4(a), 7(c)(2), 13(b), and 15(f), complaints, records of investigations and proceedings relating to allegations of judicial misconduct or disability shall be maintained as confidential matters, and shall not be disclosed to the public.

Authority: § 372(c)(14).

Chapter VII. Miscellaneous Rules

RULE 17. DISQUALIFICATION OF JUDGES

(a) Judge as complainant. If a complaint is filed by a judge, that judge is disqualified from considering the complaint as a member of a special committee or the Judicial Council. This paragraph does not apply to the identification of a complaint by the Chief Judge.

(b) Complained-of judge. A complained-of judge is disqualified from considering the complaint (against such judge) as a member of a special committee or the Judicial Council, except when required by the rule of necessity.

(c) Chief Judge. If a petition for review of a Chief Judge's order dismissing a complaint is filed with the Judicial Council, the Chief Judge shall not participate in the Judicial Council's consideration of the petition.

(d) Member of special committee. A member of the Judicial Council who is appointed to a special committee is not disqualified from participating in the consideration by the Judicial Council of the report of the special committee.

(e) Judge under investigation. A complained-of judge who is under investigation by a special committee is disqualified from serving on (1) any special committee appointed under Rule 4(b), (2) the Judicial Council, (3) the Judicial Conference of the United States, or (4) the Committee to Review Circuit Council Conduct and Disability Orders of the Judicial Conference of the United States. Such disqualification continues until the complaint is finally disposed of by

the Judicial Council and is no longer subject to review by the Judicial Conference of the United States.

(f) Substitute for disqualified Chief Judge. If the Chief Judge is disqualified under § 372(c) and these Rules from considering the complaint, the duties and responsibilities of the Chief Judge with respect to that complaint shall be assigned to the circuit judge in regular active service next senior to the Chief Judge.

Authority: § 372(c)(12).

RULE 18. SUCCESSIVE COMPLAINTS

(a) Against Chief Judge. The Clerk shall not file a complaint alleging that the Chief Judge, by dismissing a prior complaint, engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts.

(b) Against members of Judicial Council. The Clerk shall not file a complaint alleging that a member of the Judicial Council, by affirming the dismissal of a prior complaint, engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts.

(c) Against previously complained-of judge. The Chief Judge shall dismiss as successive any complaint of judicial misconduct that was the subject of a complaint that the Chief Judge previously disposed of under these rules.

Authority: § 372(c)(1) (2) (3).

RULE 19. WITHDRAWAL OF COMPLAINTS AND PETITIONS FOR REVIEW

(a) Complaint pending before Chief Judge. A complainant may withdraw a complaint pending before the Chief Judge if the Chief Judge consents to the withdrawal.

(b) Complaint pending before special committee. A complainant may withdraw a complaint pending before a special committee if the special committee consents to the withdrawal.

(c) Complaint pending before Judicial Council. A complainant may withdraw a complaint pending before the Judicial Council if the Judicial Council consents to the withdrawal.

(d) Petition for review. A complainant may withdraw a petition for review of a Chief Judge's order dismissing a complaint at any time before the Judicial Council acts on the petition.

Authority: § 372(c)(11).

RULE 20. COPIES OF STATUTE, RULES, AND FORM

Copies of § 372(c), these Rules, and the complaint form described in Rule 1(a) are available on the court's web site at www.ca11.uscourts.gov, and without charge at the office of the Clerk, United States Court of Appeals, 56 Forsyth Street, N.W., Atlanta, Georgia 30303, and at the office of the clerk of any district court or bankruptcy court within the Eleventh Circuit.

RULE 21. EFFECTIVE DATE

These Rules apply to complaints filed on or after January 1, 2002. Complaints filed before that date shall also be governed by these Rules in effect at the time the complaint was filed.

APPENDIX A

Judicial Conduct and Disability, 28 U.S.C. § 372(c)

(c)(1) Any person alleging that a circuit, district, or bankruptcy judge, or a magistrate, has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts, or alleging that such a judge or magistrate is unable to discharge all the duties of office by reason of mental or physical disability, may file with the clerk of the court of appeals for the circuit a written complaint containing a brief statement of the facts constituting such conduct. In the interests of the effective and expeditious administration of the business of the courts and on the basis of information available to the chief judge of the circuit, the chief judge may, by written order stating reasons therefor, identify a complaint for purposes of this subsection and thereby dispense with filing of a written complaint.

(2) Upon receipt of a complaint filed under paragraph (1) of this subsection, the clerk shall promptly transmit such complaint to the chief judge of the circuit, or, if the conduct complained of is that of the chief judge, to that circuit judge in regular active service next senior in date of commission (hereafter, for purposes of this subsection only, included in the term "chief judge"). The clerk shall simultaneously transmit a copy of the complaint to the judge or magistrate whose conduct is the subject of the complaint.

(3) After expeditiously reviewing a complaint, the chief judge, by written order stating his reasons, may--

(A) dismiss the complaint, if he finds it to be (i) not in conformity with paragraph (1) of this subsection, (ii) directly related to the merits of a decision or procedural ruling, or (iii) frivolous; or

(B) conclude the proceeding if he finds that appropriate corrective action has been taken or that action on the complaint is no longer necessary because of intervening events.

The chief judge shall transmit copies of his written order to the complainant and to the judge or magistrate whose conduct is the subject of the complaint.

(4) If the chief judge does not enter an order under paragraph (3) of this subsection, such judge shall promptly--

(A) appoint himself and equal numbers of circuit and district judges of the circuit to a special committee to investigate the facts and allegations contained in the complaint;

(B) certify the complaint and any other documents pertaining thereto to each member of such committee; and

(C) provide written notice to the complainant and the judge or magistrate whose conduct is the subject of the complaint of the action taken under this paragraph.

A judge appointed to a special committee under this paragraph may continue to serve on that committee after becoming a senior judge or, in the case of the chief judge of the circuit, after his or her term as chief judge terminates under subsection (a)(3) or (c) of section 45 of this title. If a judge appointed to a committee under this paragraph dies, or retires from office under section 371(a) of this title, while serving on the committee, the chief judge of the circuit may appoint another circuit or district judge, as the case may be, to the committee.

(5) Each committee appointed under paragraph (4) of this subsection shall conduct an investigation as extensive as it considers necessary, and shall expeditiously file a comprehensive written report thereon with the judicial council of the circuit. Such report shall present both the findings of the investigation and the committee's recommendations for necessary and appropriate action by the judicial council of the circuit.

(6) Upon receipt of a report filed under paragraph (5) of this subsection, the judicial council--

(A) may conduct any additional investigation which it considers to be necessary;

(B) shall take such action as is appropriate to assure the effective and expeditious administration of the business of the courts within the circuit, including, but not limited to, any of the following actions: (i) directing the chief judge of the district of the magistrate whose conduct is the subject of the complaint to take such action as the judicial council considers appropriate; (ii) certifying disability of a judge appointed to hold office during good behavior whose conduct is the subject of the complaint, pursuant to the procedures and standards provided under subsection (b) of this section; (iii) requesting that any such judge appointed to hold office during good behavior voluntarily retire, with the provision that the length of service requirements under section 371 of this title shall not apply; (iv) ordering that, on a temporary basis for a time certain, no further cases be assigned to any judge or magistrate whose conduct is the subject of a complaint; (v) censuring or reprimanding such judge or magistrate by means of private communication; (vi) censuring or reprimanding such judge or magistrate by means of public announcement; or (vii) ordering such other action as it considers appropriate under the circumstances, except that (I) in no circumstances may the council order removal from office of any judge appointed to hold office during good behavior, and (II) any removal of a magistrate shall be in accordance with section 631 of this title and any removal of a bankruptcy judge shall be in accordance with section 152 of this title;

(C) may dismiss the complaint; and

(D) shall immediately provide written notice to the complainant and to such judge or magistrate of the action taken under this paragraph.

(7)(A) In addition to the authority granted under paragraph (6) of this subsection, the judicial council may, in its discretion, refer any complaint under this subsection, together with the record of any associated proceedings and its recommendations for appropriate action, to the Judicial Conference of the United States.

(B) In any case in which the judicial council determines, on the basis of a complaint and an investigation under this subsection, or on the basis of information otherwise available to the council, that a judge appointed to hold office during good behavior may have engaged in conduct -- (i) which might constitute one or more grounds for impeachment under article II of the Constitution; or (ii) which, in the interest of justice, is not amenable to resolution by the judicial council, the judicial council shall promptly certify such determination, together with any complaint and a record of any associated proceedings, to the Judicial Conference of the United States.

(C) A judicial council acting under authority of this paragraph shall, unless contrary to the interests of justice, immediately submit written notice to the complainant and to the judge or magistrate whose conduct is the subject of the action taken under this paragraph.

(8)(A) Upon referral or certification of any matter under paragraph (7) of this subsection, the Judicial Conference, after consideration of the prior proceedings and such additional investigation as it considers appropriate, shall by majority vote take such action, as described in paragraph (6)(B) of this subsection, as it considers appropriate. If the Judicial Conference concurs in the determination of the council, or makes its own determination, that consideration of impeachment may be warranted, it shall so certify and transmit the determination and the record of proceedings to the House of Representatives for whatever action the House of Representatives considers to be necessary. Upon receipt of the determination and record of proceedings in the House of Representatives, the Clerk of the House of Representatives shall make available to the public the determination and any reasons for the determination.

(B) If a judge or magistrate has been convicted of a felony and has exhausted all means of obtaining direct review of the conviction, or the time for seeking further direct review of the conviction has passed and no such review has been sought, the Judicial Conference may, by majority vote and without referral or certification under paragraph (7), transmit to the House of Representatives a determination that consideration of impeachment may be warranted, together with appropriate court records, for whatever action the House of Representatives considers to be necessary.

(9)(A) In conducting any investigation under this subsection, the judicial council, or a special committee appointed under paragraph (4) of this subsection, shall have full subpoena powers as provided in section 332(d) of this title.

(B) In conducting any investigation under this subsection, the Judicial Conference, or a standing committee appointed by the Chief Justice under section 331 of this title, shall have full subpoena powers as provided in that section.

(10) A complainant, judge, or magistrate aggrieved by a final order of the chief judge under paragraph (3) of this subsection may petition the judicial council for review thereof. A complainant, judge, or magistrate aggrieved by an action of the judicial council under paragraph (6) of this subsection may petition the Judicial Conference of the United States for review thereof. The Judicial Conference, or the standing committee established under section 331 of this title, may grant a petition filed by a complainant, judge, or magistrate under this paragraph. Except as expressly provided in this paragraph, all orders and determinations, including denials of petitions for review, shall be final and conclusive and shall not be judicially reviewable on appeal or otherwise.

(11) Each judicial council and the Judicial Conference may prescribe such rules for the conduct of proceedings under this subsection, including the processing of petitions for review, as each considers to be appropriate. Such rules shall contain provisions requiring that–

(A) adequate prior notice of any investigation be given in writing to the judge or magistrate whose conduct is the subject of the complaint;

(B) the judge or magistrate whose conduct is the subject of the complaint be afforded an opportunity to appear (in person or by counsel) at proceedings conducted by the investigating panel, to present oral and documentary evidence, to compel the attendance of witnesses or the production of documents, to cross-examine witnesses, and to present argument orally or in writing; and

(C) the complainant be afforded an opportunity to appear at proceedings conducted by the investigating panel, if the panel concludes that the complainant could offer substantial information.

Any such rule shall be made or amended only after giving appropriate public notice and an opportunity for comment. Any rule promulgated under this subsection shall be a matter of public record, and any such rule promulgated by a judicial council may be modified by the Judicial Conference. No rule promulgated under this subsection may limit the period of time within which a person may file a complaint under this subsection.

(12) No judge or magistrate whose conduct is the subject of an investigation under this subsection shall serve upon a special committee appointed under paragraph (4) of this subsection, upon a judicial council, upon the Judicial Conference, or upon the standing committee established under section 331 of this title, until all related proceedings under this subsection have been finally terminated.

(13) No person shall be granted the right to intervene or to appear as amicus curiae in any proceeding before a judicial council or the Judicial Conference under this subsection.

(14) Except as provided in paragraph (8), all papers, documents, and records of proceedings related to investigations conducted under this subsection shall be confidential and shall not be disclosed by any person in any proceeding except to the extent that--

(A) the judicial council of the circuit in its discretion releases a copy of a report of a special investigative committee under paragraph (5) to the complainant whose complaint initiated the investigation by that special committee and to the judge or magistrate whose conduct is the subject of the complaint;

(B) the judicial council of the circuit, the Judicial Conference of the United States, or the Senate or the House of Representatives by resolution, releases any such material which is believed necessary to an impeachment investigation or trial of a judge under article I of the Constitution; or

(C) such disclosure is authorized in writing by the judge or magistrate who is the subject of the complaint and by the chief judge of the circuit, the Chief Justice, or the chairman of the standing committee established under section 331 of this title.

(15) Each written order to implement any action under paragraph (6) (B) of this subsection, which is issued by a judicial council, the Judicial Conference, or the standing committee established under section 331 of this title, shall be made available to the public through the appropriate clerk's office of the court of appeals for the circuit. Unless contrary to the interests of justice, each such order issued under this paragraph shall be accompanied by written reasons therefor.

(16) Upon the request of a judge or magistrate whose conduct is the subject of a complaint under this subsection, the judicial council may, if the complaint has been finally dismissed under paragraph (6)(C), recommend that the Director of the Administrative Office of the United States Courts award reimbursement, from funds appropriated to the Federal judiciary, for those reasonable expenses, including attorneys' fees, incurred by that judge or magistrate during the investigation which would not have been incurred but for the requirements of this subsection.

(17) Except as expressly provided in this subsection, nothing in this subsection shall be construed to affect any other provision of this title, the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, the Federal Rules of Appellate Procedure, or the Federal Rules of Evidence.

(18) The United States Court of Federal Claims, the Court of International Trade, and the Court of Appeals for the Federal Circuit shall each prescribe rules, consistent with the foregoing provisions of this subsection, establishing procedures for the filing of complaints with respect to the conduct of any judge of such court and for the investigation and resolution of such complaints. In investigating and taking action with respect to any such complaint, each such court shall have the powers granted to a judicial council under this subsection.

JUDICIAL COUNCIL OF THE ELEVENTH CIRCUIT

COMPLAINT OF JUDICIAL MISCONDUCT OR DISABILITY UNDER 28 U.S.C. § 372(c)

To file a complaint of judicial misconduct or disability, please answer all of the questions on this form and send three copies in an envelope to the Clerk, United States Court of Appeals, 56 Forsyth Street, N.W., Atlanta, Georgia 30303. Please write "Section 372(c) Complaint" on the envelope. **Do not write the name of the complained-of judge on the envelope.** This complaint must be legible; if possible, it should be typewritten. For other details, see the Rules of the Judicial Council of the Eleventh Circuit Governing Complaints of Judicial Misconduct or Disability.

CONFIDENTIAL

IN THE MATTER OF A COMPLAINT FILED BY:

_____
NAME OF COMPLAINANT

_____
ADDRESS

_____

(_____ _____
DAYTIME TELEPHONE NUMBER

AGAINST:

_____
NAME OF COMPLAINED-OF JUDGE

_____
COURT

1. **Does this complaint concern a particular lawsuit?** ☐ **Yes** ☐ **No**

If yes, please provide the following information about the lawsuit.
(If more than one lawsuit is involved, use additional pages, as necessary.)

_____
COURT IN WHICH LAWSUIT WAS FILED

_____ _____
DOCKET NUMBER DOCKET NUMBER OF APPEAL, IF ANY

What is (or was) your role in the lawsuit?

☐ Party (including pro se) ☐ Attorney ☐ Juror ☐ Witness ☐ None of these

Please provide the name, address, and telephone number of your attorney in this lawsuit:

2. **Have you filed a lawsuit against the judge?** ☐ **Yes** ☐ **No**

If yes, please provide the following information about the lawsuit.
(If more than one lawsuit is involved, use additional pages, as necessary.)

_____
COURT IN WHICH LAWSUIT WAS FILED

_____ _____
DOCKET NUMBER DOCKET NUMBER OF APPEAL, IF ANY

_____
PRESENT STATUS OF LAWSUIT OR APPEAL

Please provide the name, address, and telephone number of your attorney:

3. **On separate sheets of paper, no larger than the paper on which this form is printed, please describe the evidence of misconduct or disability that is the subject of this complaint. Do not use more than five single-sided pages.**

4. **Sign your name.**

I declare under penalty of perjury that I have read Rule 1 of the Rules of the Judicial Council of the Eleventh Circuit Governing Complaints of Judicial Misconduct and Disability, and that the statements made in this complaint are true and correct to the best of my knowledge.

_____ _____
SIGNATURE OF COMPLAINANT DATE