



Judicial Discipline Process: An Overview

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Summary

The current statutory structure with respect to complaints against federal judges and judicial discipline was enacted on November 2, 2002, as the Judicial Improvements Act of 2002, P.L. 107-273, 28 U.S.C. §§ 351-364. These provisions are applicable to federal circuit judges, district judges, bankruptcy judges, and magistrate judges. They do not apply to the Justices of the U.S. Supreme Court. The U.S. Court of Federal Claims, the Court of International Trade, and the Court of Appeals for the Federal Circuit are each directed to prescribe rules consistent with these provisions to address complaints pertaining to their own judges.

The procedures under 28 U.S.C. §§ 351-364 include a complaint process, review of complaints initially by the chief judge of the circuit within which the judge in question sits, and, if appropriate, referral of the complaint to a special investigating committee, to a panel of the judicial council of the circuit involved, and, if needed, to the Judicial Conference of the United States. At any point in the process, as deemed appropriate, action may be taken on the complaint. Where a complaint alleges conduct that may rise to the level of impeachable offenses, the Judicial Conference may certify that the matter may warrant consideration of impeachment and transmit the determination and the record of proceedings to the House of Representatives for whatever action the House of Representatives considers necessary.

Two such referrals were received by the House in the 111th Congress regarding Judge Samuel B. Kent of the U.S. District Court for the Southern District of Texas and Judge G. Thomas Porteous Jr. of the U.S. District Court for the Eastern District of Louisiana. Judge Kent was impeached by the House of Representatives. His Senate impeachment trial was dismissed after he resigned from office and the House indicated that it did not wish to pursue the matter further. Judge Porteous was also impeached by the House of Representatives. On December 8, 2010, the Senate, sitting as a Court of Impeachment, voted to convict Judge Porteous on all four of the articles of impeachment brought against him. A judgment of removal from office flowed automatically from his conviction. In a rare additional judgment, the Senate disqualified him from holding federal office in the future.

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Introduction

In both the 110th and the 111th Congresses, the U.S. House of Representatives received a referral from the Judicial Conference of the United States reflecting its determination, after completion of the statutory federal judicial discipline process, that consideration of impeachment might be warranted with respect to a federal judge. On June 19, 2008, the Speaker of the House of Representatives received a referral regarding U.S. District Court Judge G. Thomas Porteous Jr. of the Eastern District of Louisiana.¹ The House began its impeachment investigation of Judge Porteous in the 110th Congress, but did not complete it before the end of that Congress.² The matter was taken up again in the 111th Congress.³ On March 11, 2010, the House impeached Judge Porteous for, among other things, accepting kickbacks, soliciting favors, falsifying bankruptcy documents, and knowingly making false statements about his past in order to obtain a federal judgeship.⁴ The Senate convicted him on all four articles of impeachment later that year.⁵

On June 10, 2009, the Speaker of the House received a referral regarding U.S. District Court Judge Samuel B. Kent of the Southern District of Texas.⁶ Judge Kent was impeached by the House of Representatives.⁷ His Senate impeachment trial was dismissed after he resigned from office and the House indicated that it did not wish to pursue the matter further.

¹ See 154 Cong. Rec. H5727-05 (June 19, 2008), 2008 WL 2467232 (Cong.Rec.) (“7225. A letter from the Secretary, Judicial Conference of the United States, transmitting Judicial Conference determination that United States Judge G. Thomas Porteous, Jr., of the Eastern District of Louisiana, has engaged in conduct for which consideration of impeachment may be warranted, pursuant to 28 U.S.C. 355(b)(1); to the Committee on the Judiciary.”) The Order and Public Reprimand issued by the Judicial Council for the Fifth Circuit concerning Judge G. Thomas Porteous on September 10, 2008, may be found at <http://www.ca5.uscourts.gov/news/news/GTP%20ORDER%20AND%20PUBLIC%20REPRIMAND.pdf>. The certificate with respect to Judge Porteous from the Judicial Conference of the United States to the Speaker of the House may be found at <http://www.ca5.uscourts.gov/news/news/PorteousOrder/CERTIFICATE%20TO%20THE%20SPEAKER.PDF>.

² See H.Res. 1448 (110th Cong.).

³ H.Res. 15 (111th Cong.).

⁴ H.Res. 1031, 111th Cong. (as passed by the House); 156 CONG. REC. H1335-37 (daily ed. Mar. 11, 2010).

⁵ 156 CONG. REC. S8609-611 (daily ed. Dec. 8, 2010).

⁶ Judge Kent pleaded guilty to obstruction of justice on February 23, 2009. Transcript of Plea Hearing, United States v. Kent, No. H-08-CR-596 (U.S. District Court, S.D. Tex., Houston Div. Feb 23, 2009), at 17-18, *cited at* H.Rept. 111-159 at 10 (June 17, 2009). He was sentenced to 33 months in prison followed by three years of supervised release, a \$1,000 fine, and \$6,550 in restitution. United States v. Kent, No. 4:08cr596-001/RV, at 2, 6 (S.D. Tex. May 11, 2009) (Judgment in a Criminal Case). See H.Rept. 111-159, at 13. Following his conviction, the Judicial Council of the U.S. Court of Appeals for the Fifth Circuit, on May 27, 2009, recommended impeachment pursuant to 28 U.S.C. 354(b)(2)(A). The Judicial Council’s recommendation may be accessed at <http://www.ca5.uscourts.gov/news/news/SBK%20Certification.pdf>. See also, H.Rept. 111-159, at 32-33. The matter was referred to the Judicial Conference of the United States. In a letter to the Speaker of the House of Representatives dated June 9, 2009, the Judicial Conference transmitted the certification of its determination that impeachment might be warranted. See 154 Cong. Rec. H6536-04 (June 10, 2009), 2009 WL 1617545 (Cong.Rec.) (“2103. A letter from the Secretary, Judicial Conference of the United States, transmitting a Judicial Conference determination that United States Judge Samuel B. Kent of the Southern District of Texas, has engaged in conduct for which consideration of impeachment may be warranted, pursuant to 28 U.S.C. 355(b)(1)-(2); to the Committee on the Judiciary.”) See also, H.Rept. 111-159, at 29-31.

⁷ H.Res. 424 (111th Cong.), authorizing and directing the House Committee on the Judiciary to inquire whether the House should impeach Judge Kent, was introduced on May 12, 2009, and agreed to without objection the same day. H.Res. 520 (111th Cong.), a resolution impeaching Judge Kent and setting forth four articles of impeachment, was introduced June 9, 2009. H.Rept. 111-159, accompanying H.Res. 520, noted the referral to the House from the Judicial Conference, quoted the basis of the Judicial Conference’s determination that consideration of impeachment may be warranted, *id.* at 21-22, and included a copy of the transmittal letter from the Judicial Conference to the Speaker of the (continued...)

Overview of Statutory Provisions

This report will discuss the present statutory structure governing complaints against federal judges, and judicial discipline where appropriate. The statutory framework stems from the Judicial Improvements Act of 2002, P.L. 107-273, Div. C, Title I, Subtitle C, 116 Stat 1856 (Nov. 2, 2002), 28 U.S.C. §§351-364. It replaced judicial discipline procedures in the Judicial Conduct and Disability Act of 1980, as amended, codified at the former 28 U.S.C. § 372(c). The current statutory procedures are applicable to complaints against federal circuit judges, district judges, bankruptcy judges, and magistrate judges. They are not applicable to Justices of the U.S. Supreme Court. In addition, the U.S. Court of Federal Claims, the Court of International Trade, and the Court of Appeals for the Federal Circuit are each required to prescribe rules, consistent with the provisions in 28 U.S.C. §§ 351-364, establishing procedures for the filing of complaints with respect to the conduct of judges of those courts, for investigation of such complaints, and for taking appropriate action with respect to them. In investigating and taking action regarding complaints brought against their respective judges, each of these three courts has the powers granted to a judicial council⁸ in dealing with federal circuit judges, district judges, bankruptcy judges, or magistrate judges.⁹

The judicial discipline process under 28 U.S.C. §§ 351-364 is initiated by the filing of a complaint by any person, alleging that a judge has engaged in conduct “prejudicial to the effective and expeditious administration of the business of the courts, or alleging that such judge is unable to discharge all the duties of the office by reason of mental or physical disability.”¹⁰ A written complaint containing a brief statement of the pertinent facts is filed with the clerk of the court for the circuit within which the judge sits. Alternatively, the chief judge of the circuit, in the interests of effective and expeditious administration of the business of the courts and based on information available to him or her, may identify a complaint by written order stating the reasons for the complaint.¹¹ The clerk of the court receiving a written complaint promptly transmits that complaint to the chief judge of the circuit unless the complaint concerns the chief judge. In the latter circumstance, the clerk shall transmit the complaint to the circuit judge in regular service on the court who is next most senior in date of commission. That circuit judge would then carry out

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House and the certificate of the Judicial Conference setting forth its determination. *Id.* at 29-31. The recommendation of the Judicial Council for the Fifth Circuit is included as an attachment to the certification. *Id.* at 32-33. The House agreed to H.Res. 520 (111th Cong.) on June 19, 2009, voting separately on each of the four articles of impeachment (Roll No. 415, Roll No. 416, Roll No. 417, and Roll No. 418).

⁸ Each circuit has a judicial council, which consists of the chief judge of the circuit and an equal number of circuit judges and district judges of the circuit. 28 U.S.C. § 332(1)(a). Judicial councils are charged with making “necessary and appropriate orders for the effective and expeditious administration of justice” within their circuits. *Id.* at § 332(d)(1). Among their responsibilities is the formulation of circuit policy, the implementation of policy directives received from the United States Judicial Conference, and the annual submission of a report to the Administrative Office of the United States Courts on the number and nature of orders entered during the year that relate to judicial misconduct. *See id.* at § 332(g).

⁹ Action by the judicial council of a circuit is addressed in particular in 28 U.S.C. § 354.

¹⁰ 28 U.S.C. § 351(a). The websites of each of the judicial circuits provide access to the complaint form that must be used in filing a complaint and copies of the RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS adopted by the Judicial Council of the United States on March 11, 2008. Links to these websites may be found at <http://www.uscourts.gov/library/judicialmisconduct/index.html>. Links to Opinions of the Committee on Judicial Conduct and Disability of the Judicial Conference of the United States may also be found on this website.

¹¹ 28 U.S.C. § 351(b).

the responsibilities of the chief judge with respect to that complaint in all matters under this judicial discipline process.¹²

Once a complaint is filed or identified, the chief judge must review it expeditiously to determine whether appropriate corrective action has been or can be taken without the need for a formal investigation, and whether the facts stated in the complaint are either plainly untrue or incapable of establishment through investigation. The chief judge may ask the judge who is the focus of the complaint to file a written response, which is not shared with the complainant unless the judge responding authorizes its disclosure. The chief judge or his or her designee may also communicate orally or in writing with the complainant, the judge who is the focus of the complaint, or anyone else who may have pertinent information; he or she may also review any transcripts or documentary evidence. The chief judge may not make any findings of fact regarding matters reasonably in dispute. After this review, the chief judge, by written order, may dismiss the complaint if it is not in conformity with the requirements of 28 U.S.C. § 351(a), or if he or she finds that the complaint directly relates to the merits of a decision or procedural ruling or that it is frivolous—that is, lacking sufficient evidence to raise an inference that misconduct has occurred—or that it contains allegations that are incapable of being established through investigation. The chief judge may also conclude the proceeding if he or she finds that appropriate corrective action has been taken or that action on the complaint is no longer needed because of intervening events. Copies of the written order are to be transmitted by the chief judge to the complainant and to the judge involved.¹³ The complainant or the judge involved in the complaint may petition the judicial council¹⁴ of the circuit seeking review of the order of the chief judge. If the petition for review is denied, that decision is final and not subject to review.¹⁵ The judicial council may refer a petition for review to a panel of at least five members of the judicial council, two of whom must be U.S. district judges.¹⁶

If the chief judge does not dismiss the complaint or conclude the proceedings under 28 U.S.C. § 352(b), then he or she must promptly appoint himself or herself, along with equal numbers of circuit judges and district judges, to a special committee to investigate the facts and allegations in the complaint. The chief judge must also promptly certify the complaint and any other pertinent documents to each member of the special committee, and provide written notice of this action to the complainant and the judge involved. The committee must conduct such investigation as it finds necessary and then expeditiously file a comprehensive written report of its investigation with the judicial council of the circuit involved. In conducting its investigation, the special committee has full subpoena powers.¹⁷ The report of the committee must present both findings of the investigation and recommendations for necessary and appropriate action by the judicial council.¹⁸

¹² *Id.* at § 351(c). For purposes of this discussion, the term “chief judge” will apply to the chief judge, or in the case of a complaint against the chief judge, to the circuit judge handling the complaint against the chief judge.

¹³ 28 U.S.C. § 352.

¹⁴ See *supra* note 8 (describing the composition and responsibilities of judicial councils).

¹⁵ 28 U.S.C. § 352(c).

¹⁶ *Id.* at § 352(d). The rules governing the conduct of judicial discipline proceedings by each judicial council or by the Judicial Conference of the United States, including a referral of a chief judge’s order for review by a panel of a judicial council, are prescribed by that judicial council or by the Judicial Conference, respectively, under 28 U.S.C. § 358.

¹⁷ 28 U.S.C. § 356(a), relying upon subpoena powers under 28 U.S.C. § 332(d).

¹⁸ *Id.* at § 353.

Upon receipt of such a report, the judicial council of the circuit involved has several options available to it. It may conduct any additional investigation it deems necessary, and it may dismiss the complaint.¹⁹ If the complaint is not dismissed, the council shall take appropriate action to assure effective and expeditious administration of the business of the courts in the circuit, including ordering that, on a temporary basis for a time certain, no further cases be assigned to the judge whose conduct is the subject of a complaint; censuring or reprimanding the judge by means of private communication; and censuring and reprimanding the judge by means of public announcement.²⁰ Like the special committee, the judicial council may exercise full subpoena powers in conducting its investigation.²¹

If the judge who is the subject of the complaint holds his or her office during good behavior, action taken by the judicial council may include certifying disability of the judge pursuant to procedures and standards under 28 U.S.C. § 372(b); and requesting that the judge voluntarily retire, with the provision that the length of service requirements under 28 U.S.C. § 371 shall not apply.²² The judicial council may not order removal from office of any judge appointed to hold office during good behavior.²³

If the focus of the complaint is a magistrate judge, the action taken by the judicial council may include directing the chief judge of the district of the magistrate judge to take such action as the judicial council considers appropriate.²⁴ Any removal of a magistrate judge by the judicial council must be in accordance with 28 U.S.C. § 631, while any removal by the judicial council of a bankruptcy judge must be in accordance with 28 U.S.C. § 152.²⁵ The judicial council must provide immediate written notice of the action taken to the complainant and to the judge whose conduct is the subject of the complaint.²⁶

The judicial council may also, in its discretion, refer any complaint under 28 U.S.C. § 351, along with the record of any associated proceedings and its recommendations for appropriate action, to the Judicial Conference of the United States. If the judicial council determines, based on a complaint and related investigation or on other information available to the judicial council, that a judge holding office during good behavior may have engaged in conduct which might constitute one or more grounds for impeachment under Article II, Sec. 4 of the U.S. Constitution, the judicial council must promptly certify its determination, together with any complaint and a record of any associated proceedings, to the Judicial Conference of the United States.²⁷ The judicial

¹⁹ *Id.* at §§ 354(a)(1)(A) and 354(a)(1)(B). If the complaint has been finally dismissed under 28 U.S.C. § 354(a)(1)(B), then, under 28 U.S.C. § 361, upon the request of the judge who is the subject of the complaint, the judicial council may recommend to the Director of the Administrative Office of the U.S. Courts that he award reimbursement for those reasonable expenses, including attorneys' fees, incurred by the judge during the investigation which would not have been incurred but for the requirements of the judicial discipline process. The reimbursement would be drawn from funds appropriated to the Federal judiciary.

²⁰ 28 U.S.C. §§ 354(a)(1)(C) and 354(a)(2).

²¹ *Id.* at § 356(a), citing subpoena powers under 28 U.S.C. § 332(d).

²² 28 U.S.C. § 354(a)(2)(B).

²³ *Id.* at § 354(a)(3). *Cf.*, U.S. Const., Art. III, Sec. 1 (life tenure during good behavior.)

²⁴ 28 U.S.C. § 354(a)(2)(C).

²⁵ *Id.* at § 354(a)(3)(B).

²⁶ *Id.* at § 354(a)(4).

²⁷ *See, e.g., In re: Samuel B. Kent, United States District Judge, Southern District of Texas*, Docket No. 07-05-351-0086 (Judicial Council of the Fifth Circuit May 27, 2009), the certification, under 28 U.S.C. § 354(b)(2)(A), by the Judicial Council for the Fifth Circuit to the Judicial Conference of the United States that Judge Samuel B. Kent, of the (continued...)

council must also promptly certify its determination, along with any complaint and a record of any associated proceedings, to the Judicial Conference if the council determines that a judge holding office during good behavior may have engaged in conduct which, in the interest of justice, is not amenable to resolution by the judicial council. If the judicial council makes a referral to the Judicial Conference of the United States, the judicial council must, unless contrary to the interests of justice, immediately provide written notice of its action to the complainant and to the judge involved.²⁸ If dissatisfied with an action of the judicial council, the complainant or the judge may petition the Judicial Conference for review of that action. The Judicial Conference, or, should the conference so choose, a standing committee appointed by the Chief Justice under 28 U.S.C. § 331 to exercise its authority under the judicial discipline process, may grant a petition filed by a complainant or a judge aggrieved by an action of the judicial council. If a petition for review is denied, that decision is final and conclusive and not subject to judicial review.²⁹

Upon receipt of a referral or certification, the Judicial Conference considers any prior proceedings and engages in such further investigation as it deems appropriate. The Judicial Conference may exercise its authority under the judicial discipline provisions as a conference, or through a standing committee appointed by the Chief Justice under 28 U.S.C. § 331. In conducting any investigation under the judicial discipline process, the Judicial Conference, or a standing committee appointed by the Chief Justice for the purpose, may exercise full subpoena power under 28 U.S.C. § 356(b). After having reviewed the information before it, the Judicial Conference, by majority vote, may, if the complaint is not dismissed, take such action as is appropriate to assure the effective and expeditious administration of the business of the courts. This may include ordering that, on a temporary basis for a time certain, no further cases be assigned to the judge involved; censuring or reprimanding the judge by means of private communication; and reprimanding the judge by means of public communication. If the judge involved holds his or her office during good behavior, the options available to the Judicial Conference may include certifying disability of the judge under 28 U.S.C. § 372(b); and requesting the judge voluntarily retire, with the provision that the length of service requirements under 28 U.S.C. § 371 not apply. If the judge is a magistrate judge, the Judicial Conference may direct the chief judge of the district of the magistrate judge to take such action as the Judicial Conference deems appropriate.³⁰

If the Judicial Conference concurs in the judicial council's determination that impeachable offenses may be involved, or if the Judicial Conference makes its own determination that consideration of impeachment may be warranted, the conference must certify and transmit the determination and the record of proceedings to the House of Representatives for whatever action

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U.S. District Court for the Southern District of Texas, had engaged in conduct which constituted one or more grounds for impeachment under Article II of the Constitution. This certification may be found at <http://www.ca5.uscourts.gov/news/news/SBK%20Certification.pdf>. See also, *In re: Complaint of Judicial Misconduct against United States District Judge G. Thomas Porteous, Jr. under the Judicial Conduct and Disability Act of 1980*, Docket No. 07-05-351-0085, at 4-5 (Judicial Council of the Fifth Circuit December 20, 2007) (Memorandum and Order), certifying to the Judicial Conference of the United States, pursuant to 28 U.S.C. § 354(b)(2)(A), "its determination that United States District Judge G. Thomas Porteous, Jr. has engaged in conduct ... which might constitute one or more grounds for impeachment under Article II of the Constitution." This certification may be found at <http://www.ca5.uscourts.gov/news/news/PorteousOrder/MEMORANDUM%20ORDER%20AND%20CERTIFICATION.PDF>.

²⁸ 28 U.S.C. § 354(b).

²⁹ *Id.* at § 357.

³⁰ *Id.* at § 355(a), cross-referencing 28 U.S.C. §§ 354(a)(1)(C) and 354(a)(2).

the House considers necessary. When the Judicial Conference's determination and record of proceedings are received by the House of Representatives, the Clerk of the House must make that determination and any reasons for the determination available to the public.³¹

If a judge has been convicted of a felony under federal or state law and has exhausted all avenues of direct review of that conviction, or if the time for direct review has passed and no review has been sought, the Judicial Conference, by majority vote and without any referral or certification from the relevant judicial council under 28 U.S.C. § 354, may transmit a determination that impeachment may be warranted, together with relevant court records, to the House of Representatives for whatever action the House deems necessary.³² If a judge has been convicted of a federal or state felony and has exhausted direct appeals of the conviction or if the time to seek further direct review has passed and no such review has been sought, then that judge shall not hear or decide cases unless the judicial council of the circuit in the case of federal circuit judges, district judges, bankruptcy judges, or magistrate judges; or the U.S. Court of Federal Claims, the Court of International Trade, or the Court of Appeals of the Federal Circuit, respectively, in the case of a judge of one of those courts, determines otherwise. No service of such a convicted judge, once the conviction is final and the time for appeals has expired, may be included for purposes of determining years of service under 28 U.S.C. §§ 371(c), 377, or 178, or creditable service under 5 U.S.C., chapter 83, subchapter III, or chapter 84.³³

No judge whose conduct is the subject of an investigation under 28 U.S.C. §§ 351-364 may serve on a special committee under 18 U.S.C. § 353, upon a judicial council, upon the Judicial Conference, or upon a standing committee established under 28 U.S.C. § 331, until all proceedings relating to that investigation have been completed. Nor may anyone intervene or appear as *amicus curiae* in any judicial discipline proceeding before a judicial council or the Judicial Conference.³⁴

Except for the public disclosure, under 28 U.S.C. § 355, by the Clerk of the House of Representatives of a determination by the Judicial Conference in a given case that impeachment may be warranted and any reasons for that determination, all papers, documents, and records of proceedings related to judicial discipline proceedings under 28 U.S.C. §§ 351-364 are to be kept confidential and not disclosed to any person in any proceeding unless certain criteria are met. Disclosure is permitted to the extent that (1) the judicial council of the circuit in its discretion releases a copy of a report of a special committee under 28 U.S.C. § 353(c) to the complainant and to the judge who is the subject of the complaint; (2) the judicial council of the circuit, the Judicial Conference of the United States, or the Senate or the House by resolution, releases any such material believed necessary to an impeachment investigation or trial of a judge under article I of the Constitution; or (3) such disclosure is authorized in writing by the judge 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 28 U.S.C. § 331. Each written order to implement any action on a complaint under 28 U.S.C. § 354(a)(1)(C), which is issued by a judicial council, the

³¹ 28 U.S.C. § 355(b)(1). *See, e.g.*, the certificate from the Judicial Conference to the Speaker of the U.S. House of Representatives regarding Judge Kent, which may be found at H.Rept. 111-159, 29-33; the certificate from the Judicial Conference to the Speaker of the U.S. House of Representatives regarding Judge Porteous, which may be found at <http://www.ca5.uscourts.gov/news/news/PorteousOrder/CERTIFICATE%20TO%20THE%20SPEAKER.PDF>.

³² 28 U.S.C. § 355(b)(2).

³³ *Id.* at § 364.

³⁴ *Id.* at § 359.

Judicial Conference, or the standing committee established under 28 U.S.C. § 331, is to be made available to the public through the clerk's office of the court of appeals for the circuit involved. Unless contrary to the interests of justice, each order must be accompanied by written reasons supporting it.³⁵

Statistical Information

The annual reports of the Director of the Administrative Office of the United States Courts provide statistical information related to the federal courts. This information, which is available online, includes the number of complaints filed against federal judges under 28 U.S.C. §§ 351-364 and the type of disciplinary action taken.³⁶ According to the 2010 *Annual Report of the Director of the Administrative Office of the United States Courts*, 1,448 complaints were filed in the 2010 fiscal year, down 7% from the previous year. In addition, 1,159 complaints were concluded between October 1, 2009, and September 30, 2010.³⁷ However, 1,143 complaints were still pending resolution at the close of the 2010 fiscal year.³⁸ As **Figure 1** illustrates, the number of complaints left unresolved at the close of the fiscal year has increased every year since 2006.

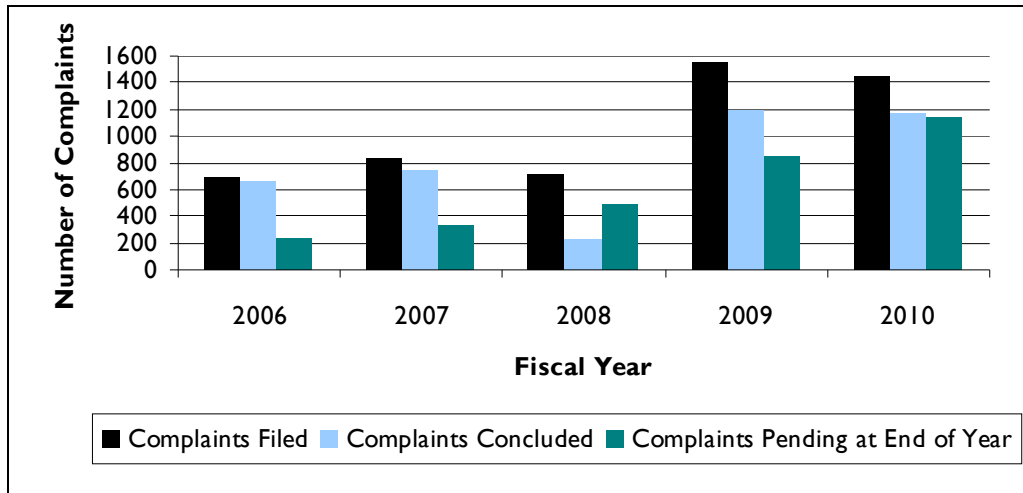
³⁵ *Id.* at § 360.

³⁶ Statistics about complaints filed against federal judges under this statutory framework and the disciplinary action taken can be found under the heading "Judicial Business of the United States Courts" in Tables 10 and S-22 of the *Annual Report of the Director of the Administrative Office of the United States Courts*. See, e.g., Administrative Office of the United States Court, 2010 *Annual Report of the Director of the Administrative Office of the United States Courts* (2010), available at http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/AdministrativeOffice/DirectorAnnualReport/AnnualReport_2010.aspx. In FY2008, there were changes in the reporting requirements with respect to complaints against judges, resulting in two separate sets of statistical tables. 2008 *Annual Report of the Director of the Administrative Office of the United States Courts* at 35; see also, *id.*, Tables 10, 11, S-22A, and S-22B. The complaints from October 1, 2007, through May 10, 2008, covered in table S-22A concerned 112 Circuit Judges, 344 District Judges, 24 Bankruptcy Judges, and 105 Magistrate Judges. The complaints from May 11, 2008, through September 30, 2008, covered in table S-22B concerned 165 Circuit Judges, 382 District Judges, 2 Court of Federal Claims Judges, 16 Bankruptcy Judges, and 107 Magistrate Judges.

³⁷ ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS, DIRECTOR'S ANNUAL REPORT 2010 38, <http://www.uscourts.gov/judbususc/judbus.html>.

³⁸ *Id.*

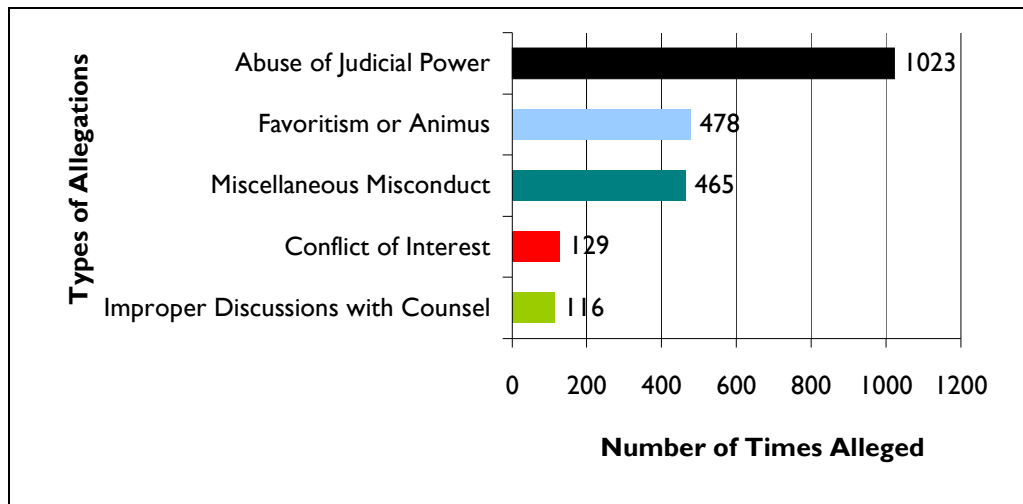
Figure 1. Complaints Filed, Concluded, and Left Pending over the Last Five Years



Source: Compiled by CRS from the Annual Reports of the Director of Administrative Office of the United States Courts.

A single complaint can state several accusations. In the 2010 fiscal year, the allegation most commonly made against federal judges was that the federal judge in question had abused the judicial power by issuing an erroneous, delayed, or unsupported decision.³⁹ As illustrated by **Figure 2**, the second most common type of allegation concerned favoritism or animus toward a litigant or attorney.

Figure 2. Five Most Common Allegations Against Federal Judges in FY2010



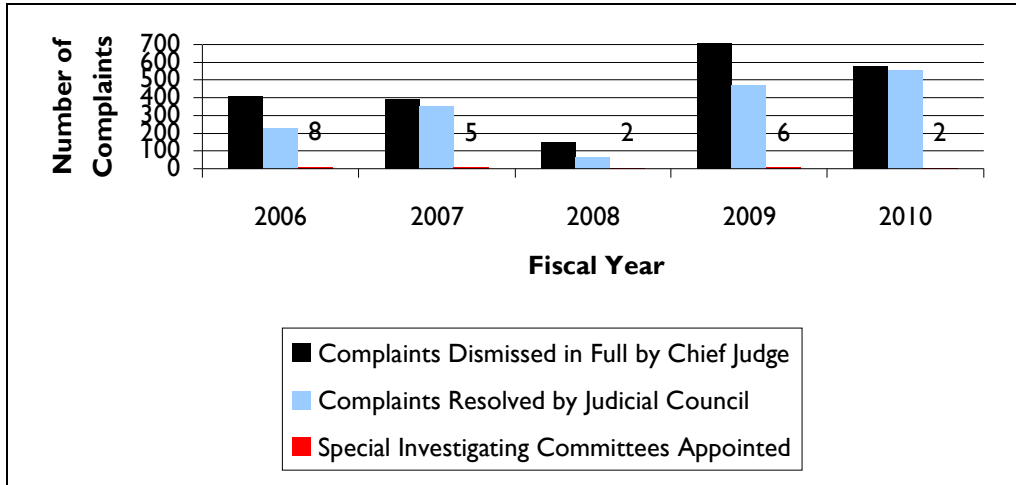
Source: Compiled by CRS from the 2010 Annual Report of the Director of the Administrative Office of the United States Courts.

Notes: “Abuse of Judicial Power” refers to erroneous, delayed, or unsupported decisions. “Favoritism of Animus” encompasses hostility, personal bias, or racial, religious, or ethnic prejudice against a litigant or attorney. “Conflict of Interest” includes a judge’s refusal to recuse. “Miscellaneous Misconduct” encompasses all “Other Misconduct” as the term is used in Table S-22 of the 2010 Annual Report.

³⁹ *Id.* at 76.

As shown by **Figure 3**, most complaints are dismissed in full by the circuit chief judge.⁴⁰ Complaints rarely result in the appointment of a special investigating committee and are even less likely to be referred to the Judicial Conference.⁴¹ No complaint was referred to the Judicial Conference in the 2010 fiscal year.⁴²

Figure 3. Resolution of Complaints Against Federal Judges over the Last Five Years



Source: Compiled by CRS from the Annual Reports of the Director of Administrative Office of the United States Courts.

Conclusion

The federal judicial discipline framework under 28 U.S.C. §§ 351-364 provides a mechanism for consideration of complaints against federal circuit judges, district judges, bankruptcy judges, and magistrate judges. It does not apply to U.S. Supreme Court Justices. Nor does it apply to the U.S. Court of Federal Claims, the Court of International Trade, or the Court of Appeals for the Federal Circuit, each of which is required to prescribe rules, consistent with the provisions in 28 U.S.C. §§ 351-364, establishing procedures for the filing of complaints with respect to the conduct of judges of that court, for investigation of such complaints, and for taking appropriate action with respect to them. The statutory structure under 28 U.S.C. §§ 351-364 provides a means for each complaint to be explored and for disciplinary action to be taken where warranted by the facts involved. As in the recent cases of Judge G. Thomas Porteous Jr. and Judge Samuel B. Kent, where an investigation under this judicial discipline process uncovers conduct which may rise to the level of an impeachable offense, the matter may be referred by the Judicial Conference of the United States to the Speaker of the U.S. House of Representatives for the House to consider whether to pursue impeachment of the judge involved.

⁴⁰ See *id.* at 10.

⁴¹ See *id.*

⁴² Administrative Office of the United States Courts, *supra* note 37, at 38.

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Portions of this report were written by Elizabeth B. Bazan.