

## **RULE 1 | SCOPE AND COVERED JUDGES**

(a) Scope. These Rules govern proceedings under the Judicial Conduct and Disability Act (Act), 28 U.S.C. §§351–364, to determine whether a covered judge has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts or is unable to discharge the duties of office because of mental or physical disability.

(b) Covered Judge. A covered judge is defined under the Act and is limited to judges of United States courts of appeals, judges of United States district courts, judges of United States bankruptcy courts, United States magistrate judges, and judges of the courts specified in 28 U.S.C. §363.

### **Commentary**

In September 2006, the Judicial Conduct and Disability Act Study Committee (“Breyer Committee”), appointed in 2004 by Chief Justice Rehnquist, presented a report (“Breyer Committee Report”), 239 F.R.D. 116 (Sept. 2006), to Chief Justice Roberts that evaluated implementation of the Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§351–364. The Breyer Committee had been formed in response to criticism from the public and Congress regarding the effectiveness of the Act’s implementation. The Executive Committee of the Judicial Conference directed its Committee on Judicial Conduct and Disability to consider the Breyer Committee’s recommendations and to report on their implementation to the Conference.

The Breyer Committee found that it could not evaluate implementation of the Act without establishing interpretive standards, Breyer Committee Report, 239 F.R.D. at 132, and that a major problem faced by chief judges in implementing the Act was the lack of authoritative interpretive standards. *Id.* at 212–15. The Breyer Committee then established standards to guide its evaluation, some of which were new formulations and some of which were taken from the “Illustrative Rules Governing Complaints of Judicial Misconduct and Disability,” discussed below. The principal standards used by the Breyer Committee are in Appendix E of its Report. *Id.* at 238.

Based on the Breyer Committee’s findings, the Committee on Judicial Conduct and Disability concluded that there was a need for the Judicial Conference to exercise its power under Section 358 of the Act to fashion standards guiding the various officers and bodies that must exercise responsibility under the Act. To that end, the Committee on Judicial Conduct and Disability proposed rules based largely on Appendix E of the Breyer Committee Report and the Illustrative Rules.

The Illustrative Rules were originally prepared in 1986 by the Special Committee of the Conference of Chief Judges of the United States Courts of Appeals, and were subsequently revised and amended, most recently in 2000, by the predecessor to the Committee on Judicial Conduct and Disability. The Illustrative Rules were adopted, with minor variations, by circuit judicial councils, to govern complaints under the Judicial Conduct and Disability Act.

After being submitted for public comment pursuant to 28 U.S.C. §358(c), the Judicial Conference promulgated the present Rules on March 11, 2008. They were amended on September 17, 2015, and again on March 12, 2019.

The definition of a covered judge tracks the Judicial Conduct and Disability Act. See 28 U.S.C. §351(d)(1) (defining the term “judge” as “a circuit judge, district judge, bankruptcy judge, or magistrate judge”). As long as the subject of a complaint retains the judicial office and remains a covered judge as defined in Rule 1(b), a complaint must be addressed. *Id.*; 28 U.S.C. §§371(b); 372(a).

Rules 8(c) and (d) address the procedures for processing a complaint involving allegations against a person not covered by the Act, such as other court personnel, or against both a covered judge and a noncovered person. Court employees seeking to report, or file a claim related to, misconduct or the denial of rights granted under their Employment Dispute Resolution (EDR) plan by other court personnel may wish to consult the Model EDR Plan and the EDR plan for the relevant court, among other resources. See *Guide to Judiciary Policy*, vol. 12, appx. 2B.