

## **RULE 7 | WHERE TO INITIATE COMPLAINT**

(a) Where to File. Except as provided in (b),

(1) a complaint against a judge of a United States court of appeals, a United States district court, a United States bankruptcy court, or a United States magistrate judge must be filed with the circuit clerk in the jurisdiction in which the subject judge holds office.

(2) a complaint against a judge of the United States Court of International Trade or the United States Court of Federal Claims must be filed with the respective clerk of that court.

(3) a complaint against a judge of the United States Court of Appeals for the Federal Circuit must be filed with the circuit executive of that court.

(b) Misconduct in Another Circuit; Transfer. If a complaint alleges misconduct in the course of official business while the subject judge was sitting on a court by designation under 28 U.S.C. §§291-293 and 294(d), the complaint may be filed or identified with the circuit clerk of that circuit or of the subject judge's home circuit. The proceeding will continue in the circuit of the first-filed or first-identified complaint. The judicial council of the circuit where the complaint was first filed or first identified may transfer the complaint to the subject judge's home circuit or to the circuit where the alleged misconduct occurred, as the case may be.

### **Commentary**

Title 28 U.S.C. §351 states that complaints are to be filed with “the clerk of the court of appeals for the circuit.” However, in many circuits, this role is filled by circuit executives. Accordingly, the term “circuit clerk,” as defined in Rule 3(b) and used throughout these Rules, applies to circuit executives.

Section 351 uses the term “the circuit” in a way that suggests that either the home circuit of the subject judge or the circuit in which misconduct is alleged to have occurred is the proper venue for complaints. With an exception for judges sitting by designation, the Rule requires the filing or identification of a misconduct or disability complaint in the circuit in which the judge holds office, largely based on the administrative perspective of the Act. Given the Act's emphasis on the future conduct of the business of the courts, the circuit in which the judge holds office is the appropriate forum because that circuit is likely best able to influence a judge's future behavior in constructive ways.

However, when judges sit by designation, the non-home circuit has a strong interest in redressing misconduct in the course of official business, and where allegations also involve a member of the bar — ex parte contact between an attorney and a judge, for example — it may often be desirable to have the judicial and bar misconduct proceedings take place in the same venue. Rule 7(b), therefore, allows transfer to, or filing or identification of a complaint in, the non-home circuit. The proceeding may be transferred by the judicial council of the filing or identified circuit to the other circuit.