

**UNITED STATES TAX COURT
WASHINGTON, D.C. 20217**

February 25, 2016

PRESS RELEASE

Chief Judge Michael B. Thornton announced today that the United States Tax Court has proposed rules governing judicial conduct and judicial disability complaints. The rules conform with the Rules for Judicial-Conduct and Judicial-Disability Proceedings promulgated by the Judicial Conference of the United States pursuant to 28 U.S.C. section 358. See I.R.C. section 7466 and Judicial Conduct and Disability Act, 28 U.S.C. sections 351-364.

The proposed rules, which include a complaint form and a User's Guide, are contained in the Notice attached to this press release and are available at the Tax Court's website at www.ustaxcourt.gov.

Chief Judge Thornton also announced that the Tax Court invites public comment on the proposed rules. Written comments must be received by March 28, 2016. Comments must be addressed to:

Stephanie A. Servoss
Clerk of the Court
U.S. Tax Court
400 Second Street, N.W., Room 111
Washington, D.C. 20217

Attachments:

Proposed Rules Governing Judicial Conduct and Judicial Disability Complaints

User's Guide for Submitting a Complaint of Judicial Misconduct or Disability

February 8, 2016

**PROPOSED RULES FOR JUDICIAL CONDUCT AND DISABILITY
PROCEEDINGS FOR THE UNITED STATES TAX COURT**

ARTICLE I. GENERAL PROVISIONS

1. Scope

These Rules govern proceedings under the Judicial Conduct and Disability Act (the Act), 28 U.S.C. §§ 351–364, made applicable to the United States Tax Court (Tax Court) by 26 U.S.C. § 7466, to determine whether a judge or special trial judge of the Tax Court has engaged in conduct prejudicial to the effective and expeditious administration of the business of the Tax Court or is unable to discharge the duties of office because of mental or physical disability.

2. Effect and Construction

(a) Generally. These Rules are mandatory.

(b) Exception. A Rule will not apply if, when performing duties authorized by the Act, the Chief Judge, a special committee, or the Judicial Disability and Conduct Council expressly finds that exceptional circumstances render application of that Rule in a particular proceeding manifestly unjust or contrary to the purposes of the Act or these Rules.¹

3. Definitions

(a) Chief Judge. “Chief Judge” means the Chief Judge of the Tax Court.

(b) Clerk. The “Clerk” means the Clerk of the Tax Court.

¹Rule 2(b) as adopted by the Judicial Conference of the United States (the Judicial Conference) also applies this Rule to the Committee on Judicial Conduct and Disability and the Judicial Conference.

(c) Committee on Judicial Conduct and Disability. The Committee on Judicial Conduct and Disability (sometimes herein the “Committee”) is the committee of the Judicial Conference of the United States which has responsibility for overseeing implementation of judicial conduct and disability procedures by courts subject to 28 U.S.C. §§ 351-364.

Descriptions in these Rules of functions performed under 28 U.S.C. §§ 351-364 by the Judicial Conference and the Committee on Judicial Conduct and Disability are reproduced from the Rules for Judicial Conduct and Judicial Disability Proceedings issued by the Judicial Conference on September 17, 2015.

(d) Complaint. A complaint is:

(1) a document that, in accordance with Rule 6, is filed by any person in his or her individual capacity or on behalf of a professional organization; or

(2) information from any source, other than a document described in (d)(1), that gives the Chief Judge probable cause to believe that a covered judge, as defined in Rule 4, has engaged in misconduct or may have a disability, whether or not the information is framed as or is intended to be an allegation of misconduct or disability.

(e) Disability. “Disability” is a temporary or permanent impairment, physical or mental, rendering a judge unable to discharge the duties of the particular judicial office. Examples of disability include substance abuse, the inability to stay awake during court proceedings, or impairment of cognitive abilities that renders the judge unable to function effectively.

(f) Judge. A “judge” is a Presidentially-appointed judge of the Tax Court. “Judge” includes senior judges unless the context shows otherwise.

(g) Judicial Conduct and Disability Council. The Judicial Conduct and Disability Council performs within the Tax Court the functions performed by circuit judicial councils under 28 U.S.C. §§ 354(b)-360.

(h) Judicial Conference of the United States. The Judicial Conference of the United States (Judicial Conference) is the national policy-making body for the federal courts. See 28 U.S.C. §331. Descriptions in these Rules of functions related to judicial conduct and disability performed by the Judicial Conference and the Committee on Judicial Conduct and Disability are reproduced from the Rules for Judicial Conduct and Disability issued by the Judicial Conference on September 17, 2015.

(i) Misconduct. Cognizable misconduct:

(1) is conduct prejudicial to the effective and expeditious administration of the business of the Tax Court. Misconduct includes, but is not limited to:

(A) using the judge's office to obtain special treatment for friends or relatives;

(B) accepting bribes, gifts, or other personal favors related to the judicial office;

(C) having improper discussions with parties or counsel for one side in a case;

(D) treating litigants, attorneys, or others in a demonstrably egregious and hostile manner;

(E) engaging in partisan political activity or making inappropriately partisan statements;

(F) soliciting funds for organizations;

(G) retaliating against complainants, witnesses, or others for their participation in this complaint process;

(H) refusing, without good cause shown, to cooperate in the investigation of a complaint under these Rules; or

(I) violating other specific, mandatory standards of judicial conduct, such as those pertaining to restrictions on outside income and requirements for financial disclosure.

(2) is conduct occurring outside the performance of official duties if the conduct might have a prejudicial effect on the administration of the business of the Tax Court, including a substantial and widespread lowering of public confidence in the Tax Court among reasonable people.

(3) does not include:

(A) an allegation that is directly related to the merits of a decision or procedural ruling. An allegation that calls into question the correctness of a judge's ruling, including a failure to recuse, without more, is merits-related. If the decision or ruling is alleged to be the result of an improper motive, *e.g.*, a bribe, *ex parte* contact, racial or ethnic bias, or improper conduct in rendering a decision or ruling, such as personally derogatory remarks irrelevant to the issues, the complaint is not cognizable to the extent that it attacks the merits.

(B) an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.

(j) Senior Judge. A senior judge is a judge of the Tax Court who is eligible to retire and is recalled to perform judicial duties pursuant to 26 U.S.C. § 7447(c).

(k) Special Trial Judge. Special trial judges are judicial officers of the Tax Court appointed by the Chief Judge pursuant to 26 U.S.C. § 7443A(a).

(l) Subject Judge. "Subject judge" means any judge described in Rule 4 who is the subject of a complaint.

4. Covered Judges

A complaint under these Rules may concern the actions or capacity only of judges and special trial judges of the Tax Court.

ARTICLE II. INITIATION OF COMPLAINT

5. Identification of Complaint

(a) Identification. When the Chief Judge has information constituting reasonable grounds for inquiry into whether a covered judge has engaged in misconduct or has a disability, the Chief Judge may conduct an inquiry, as he or she deems appropriate, into the accuracy of the information even if no related complaint has been filed. If the Chief Judge finds probable cause to believe that misconduct has occurred or that a disability exists, he or she may seek an informal resolution that he or she finds satisfactory. If no informal resolution is achieved or is feasible, the Chief Judge may identify a complaint and, by written order stating the reasons, begin the review provided in Rule 11. If the evidence of misconduct is clear and convincing and no informal resolution is achieved or is feasible, the Chief Judge must identify a complaint. The Chief Judge must not decline to identify a complaint merely because the person making the allegation has not filed a complaint under Rule 6. A complaint initiated by the Chief Judge must be filed with the Clerk pursuant to Rule 7.

(b) Submission Not Fully Complying with Rule 6. A legible submission in substantial but not full compliance with Rule 6 must be considered as possible grounds for the identification of a complaint under Rule 5(a).

6. Filing of Complaint

(a) Form. A complainant may use the form reproduced in the appendix to these Rules. A complaint form is also available from the Clerk's Office. A form is not necessary to file a complaint, but the complaint must be written and must include the information described in (b).

(b) **Brief Statement of Facts.** A complaint must contain a concise statement that details the specific facts on which the claim of misconduct or disability is based. The statement of facts should include a description of:

- (1) what happened;
- (2) when and where the relevant events happened;
- (3) any information that would help an investigator check the facts;
and
- (4) for an allegation of disability, any additional facts that form the basis of that allegation.

(c) **Legibility.** A complaint should be typed if possible and must be legible. An illegible complaint will be returned to the complainant with a request to resubmit it in legible form. If a resubmitted complaint is still illegible, it will not be accepted for filing.

(d) **Complainant's Address and Signature; Verification.** The complainant must provide a contact address and sign the complaint. The truth of the statements made in the complaint must be verified in writing under penalty of perjury. If any of these requirements are not met, the submission will be accepted, but it will be reviewed under only Rule 5(b).

(e) **Number of Copies; Envelope Marking.** The complainant shall provide one original and two copies of the complaint. Each copy should be in an envelope marked "Complaint of Misconduct" or "Complaint of Disability." The envelope must not show the name of any subject judge.

7. Where to File Complaint

A complaint against a subject judge must be filed with the Clerk of the Court, United States Tax Court, 400 Second Street N.W., Washington, D.C. 20217.

8. Action by the Clerk

(a) Receipt of Complaint. Upon receiving a complaint against a subject judge filed under Rule 6 or identified under Rule 5, the Clerk must open a file, assign a docket number according to a uniform numbering system adopted by the Court, and acknowledge the complaint's receipt.

(b) Distribution of Copies. The Clerk must promptly send copies of a complaint filed under Rule 6 to the Chief Judge or the judge authorized to act as Chief Judge under Rule 25(f), and copies of complaints filed under Rule 6 or identified under Rule 5 to each subject judge. The Clerk must retain the original complaint.

(c) Complaint Against Noncovered Person. If the Clerk receives a complaint about a person not holding an office described in Rule 4, the Clerk must not accept the complaint under these Rules.

(d) Complaint Against Judge or Special Trial Judge and Another Noncovered Person. If the Clerk receives a complaint about a judge or special trial judge described in Rule 4 and a person not holding an office described in Rule 4, the Clerk must accept the complaint under these Rules only with regard to the judge and special trial judge and must so inform the complainant.

9. Time for Filing or Identifying Complaint

A complaint may be filed or identified at any time. If the passage of time has made an accurate and fair investigation of a complaint impracticable, the complaint must be dismissed under Rule 11(c)(1)(E).

10. Abuse of Complaint Procedure

(a) Abusive Complaints. A complainant who has filed repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may be restricted from filing further complaints. After giving the complainant an opportunity to show cause in writing why his or her right to file further complaints should not be limited, the Judicial Conduct and

Disability Council may prohibit, restrict, or impose conditions on the complainant's use of the complaint procedure. Upon written request of the complainant, the Judicial Conduct and Disability Council may revise or withdraw any prohibition, restriction, or condition previously imposed.

(b) **Orchestrated Complaints.** When many essentially identical complaints from different complainants are received and appear to be part of an orchestrated campaign, the Chief Judge may recommend that the Judicial Conduct and Disability Council issue a written order instructing the Clerk to accept only a certain number of such complaints for filing and to refuse to accept additional complaints. The Clerk must send a copy of any such order to anyone whose complaint was not accepted.

ARTICLE III. REVIEW OF COMPLAINT BY CHIEF JUDGE

11. Chief Judge's Review

(a) **Purpose of Chief Judge's Review.** When a complaint is identified by the Chief Judge or is filed, the Chief Judge must review it unless the Chief Judge is disqualified under Rule 25. If a complaint contains information constituting evidence of misconduct or disability, but the complainant does not claim it as such, the Chief Judge must treat the complaint as if it did allege misconduct or disability and give notice to the subject judge. After reviewing a complaint, the Chief Judge must determine whether it should be:

- (1) dismissed;
- (2) concluded on the ground that voluntary corrective action has been taken;
- (3) concluded because intervening events have made action on the complaint no longer necessary; or
- (4) referred to a special committee.

(b) **Chief Judge's Inquiry.** In determining what action to take under Rule 11(a), the Chief Judge may conduct a limited inquiry. The Chief Judge, or a

designee, may communicate orally or in writing with the complainant, the subject judge, and any others who may have knowledge of the matter, and may obtain and review transcripts and other relevant documents. In conducting the inquiry, the Chief Judge must not determine any reasonably disputed issue. Any such determination must be left to a special committee appointed under Rule 11(f) and to the Judicial Conduct and Disability Council that considers the special committee's report.

(c) Dismissal.

(1) Permissible grounds. A complaint must be dismissed in whole or in part to the extent that the Chief Judge concludes that the complaint:

(A) alleges conduct that, even if true, is not prejudicial to the effective and expeditious administration of the business of the courts and does not indicate a mental or physical disability resulting in the inability to discharge the duties of judicial office;

(B) is directly related to the merits of a decision or procedural ruling;

(C) is frivolous;

(D) is based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred or that a disability exists;

(E) is based on allegations that are incapable of being established through investigation;

(F) has been filed in the wrong court; or

(G) is otherwise not appropriate for consideration under the Act.

(2) Impermissible grounds. A complaint must not be dismissed solely because it repeats allegations of a previously dismissed complaint if it also contains material information not previously considered and does not constitute harassment of the subject judge.

(d) Corrective Action. The Chief Judge may conclude a complaint proceeding in whole or in part if:

(1) an informal resolution under Rule 5 satisfactory to the Chief Judge was reached before the complaint was filed under Rule 6; or

(2) the Chief Judge determines that the subject judge has taken appropriate voluntary corrective action that acknowledges and remedies the problems raised by the complaint.

(e) Intervening Events. The Chief Judge may conclude a complaint proceeding in whole or in part upon determining that intervening events render some or all of the allegations moot or make remedial action impossible.

(f) Appointment of Special Committee. If some or all of a complaint is not dismissed or concluded, the Chief Judge must promptly appoint a special committee to investigate the complaint or any relevant portion of it and to make recommendations to the Judicial Conduct and Disability Council. Before appointing a special committee, the Chief Judge must invite the subject judge to respond to the complaint either orally or in writing if the judge was not given an opportunity during the limited inquiry. In the Chief Judge's discretion, separate complaints may be joined and assigned to a single special committee. Similarly, a single complaint about more than one judge may be severed and more than one special committee appointed.

(g) Notice of Chief Judge's Action; Petition for Review.

(1) When Chief Judge appoints special committee. If the Chief Judge appoints a special committee, the Chief Judge must notify the complainant and the subject judge that the matter has been referred to a committee, notify the complainant of a complainant's rights under

Rule 16, and identify the members of the committee. A copy of the order appointing the special committee must be sent to the Committee on Judicial Conduct and Disability.

(2) When the Chief Judge disposes of a complaint without appointing special committee. If the Chief Judge disposes of a complaint under Rule 11(c), (d), or (e), the Chief Judge must prepare a supporting memorandum that sets forth the reasons for the disposition. If the complaint was initiated by identification under Rule 5, the memorandum must so indicate. Except as authorized by 28 U.S.C. § 360, the memorandum must not include the name of the complainant or of the subject judge. The order and memorandum incorporated by reference in the order must be promptly sent to the complainant, the subject judge, and the Committee on Judicial Conduct and Disability.

(3) Right to petition for review. If the Chief Judge disposes of a complaint under Rule 11(c), (d), or (e), the complainant and the subject judge must be notified of the right to petition the Judicial Conduct and Disability Council for review of the disposition, as provided in Rule 18. If the Chief Judge so disposes of a complaint that was identified under Rule 5 or filed by its subject judge, the Chief Judge must transmit the order and memorandum incorporated by reference in the order to the Judicial Conduct and Disability Council for review in accordance with Rule 19. In the event of such a transmission, the subject judge may make a written submission to the Judicial Conduct and Disability Council but will have no further right of review except as allowed under Rule 21(b)(1)(B). When a disposition is to be reviewed by the Judicial Conduct and Disability Council, the Chief Judge must promptly transmit all materials obtained in connection with the inquiry under Rule 11(b) to the Clerk for transmittal to the Judicial Conduct and Disability Council.

(h) Public Availability of Chief Judge's Decision. The Chief Judge's decision must be made public to the extent, at the time, and in the manner provided in Rule 24.

ARTICLE IV. INVESTIGATION AND REPORT BY SPECIAL COMMITTEE

12. Special Committee's Composition

(a) Membership. Except as provided in (e), a special committee appointed under Rule 11(f) must consist of the Chief Judge and one or more additional judges of the Tax Court in active or senior status.

(b) Presiding Officer. When appointing the special committee, the Chief Judge may serve as the presiding officer or may designate a committee member as the presiding officer.

(c) Special Trial Judge as Adviser. If the subject judge is a special trial judge, he or she may, within 14 days after being notified of the special committee's appointment, ask the Chief Judge to designate as a committee adviser another special trial judge. The Chief Judge must grant such a request but may otherwise use discretion in naming the adviser. The adviser cannot vote but has the other privileges of a special committee member.

(d) Provision of Documents. The Chief Judge must certify to each other member of the special committee and to any adviser copies of the complaint and statement of facts, in whole or relevant part, and any other relevant documents on file.

(e) Continuing Qualification of Special Committee Member. A member of a special committee may continue to serve on the committee even though the member relinquishes the position of Chief Judge, but only if the member continues to be an active or senior judge of the Tax Court.

(f) Inability of Special Committee Member to Complete Service. If a member of a special committee can no longer serve because of death, disability, disqualification, resignation, retirement from office, or other reason, the Chief Judge must decide whether to appoint a replacement member. No special committee appointed under these Rules may function with only a single member, and the votes of a two member committee must be unanimous.

(g) Voting. All actions by a special committee must be by vote of a majority of all members of the committee.

13. Conduct of Special Committee Investigation

(a) Extent and Methods of Special Committee Investigation. A special committee should determine the appropriate extent and methods of its investigation in light of the allegations of the complaint and its preliminary inquiry. The investigation may include use of appropriate experts or other professionals. If, in the course of the investigation, the special committee has cause to believe that the subject judge may have engaged in misconduct or has a disability that is beyond the scope of the complaint, the committee must refer the new matter to the Chief Judge for a determination of whether action under Rule 5 or Rule 11 is necessary before the committee's investigation is expanded to include the new matter.

(b) Criminal Conduct. If the special committee's investigation concerns conduct that may be a crime, the committee must consult with the appropriate prosecutorial authorities to the extent permitted by the Act to avoid compromising any criminal investigation. The special committee has final authority over the timing and extent of its investigation and the formulation of its recommendations.

(c) Staff. The special committee may arrange for staff assistance to conduct the investigation. It may use available Tax Court staff or may, with the approval of the Chief Judge, hire special staff.

(d) Delegation of Subpoena Power; Contempt. The Chief Judge may delegate the authority to exercise the subpoena powers of the special committee. The Judicial Conduct and Disability Council or special committee may institute a contempt proceeding under 28 U.S.C. § 332(d) against anyone who fails to comply with a subpoena.

14. Conduct of Special Committee Hearings

(a) Purpose of Hearings. The special committee may hold hearings to take testimony and receive other evidence, to hear argument, or both. If the

special committee is investigating allegations against more than one judge, it may hold joint or separate hearings.

(b) **Special Committee Evidence.** Subject to Rule 15, the special committee must obtain material, nonredundant evidence in the form it considers appropriate. In the special committee's discretion, evidence may be obtained by committee members, staff, or both. Witnesses offering testimonial evidence may include the complainant and the subject judge.

(c) **Counsel for Witnesses.** The subject judge has the right to counsel. The special committee has discretion to decide whether other witnesses may have counsel present when they testify.

(d) **Witness Fees.** Witness fees must be paid as provided in 28 U.S.C. § 1821.

(e) **Oath.** All testimony taken at a hearing must be given under oath or affirmation.

(f) **Rules of Evidence.** The Federal Rules of Evidence do not apply to special committee hearings.

(g) **Record and Transcript.** A record and transcript must be made of all hearings.

15. Subject Judge's Rights

(a) **Notice.**

(1) **Generally.** The subject judge must receive written notice of:

(A) the appointment of a special committee under Rule 11(f);

(B) the expansion of the scope of an investigation under Rule 13(a);

(C) any hearing under Rule 14, including its purposes, the names of any witnesses the special committee intends to call, and the text of any statements that have been taken from those witnesses.

(2) Suggestion of additional witnesses. The subject judge may suggest additional witnesses to the special committee.

(b) Special Committee Report. The subject judge must be sent a copy of the special committee's report when it is filed with the Judicial Conduct and Disability Council.

(c) Presentation of Evidence. At any hearing held under Rule 14, the subject judge has the right to present evidence, to compel the attendance of witnesses, and to compel the production of documents. At the request of the subject judge, the Chief Judge or the judge's designee must direct the Clerk to issue a subpoena to a witness under 28 U.S.C. § 332(d)(1). The subject judge must be given the opportunity to cross-examine special committee witnesses, in person or by counsel.

(d) Presentation of Argument. The subject judge may submit written argument to the special committee and must be given a reasonable opportunity to present oral argument at an appropriate stage of the investigation.

(e) Attendance at Hearings. The subject judge has the right to attend any hearing held under Rule 14 and to receive copies of the transcript, of any documents introduced, and of any written arguments submitted by the complainant to the special committee.

(f) Representation by Counsel. The subject judge may choose to be represented by counsel in the exercise of any right enumerated in this Rule. As provided in Rule 20(e), the United States may bear the costs of the representation.

16. Complainant's Rights in Investigation

(a) Notice. The complainant must receive written notice of the investigation as provided in Rule 11(g)(1). When the special committee's report to the Judicial Conduct and Disability Council is filed, the complainant must be notified of the filing. The Judicial Conduct and Disability Council may, in its discretion, provide a copy of the report of a special committee to the complainant.

(b) Opportunity to Provide Evidence. If the complainant knows of relevant evidence not already before the special committee, the complainant may briefly explain in writing the basis of that knowledge and the nature of that evidence. If the special committee determines that the complainant has information not already known to the committee that would assist in the committee's investigation, a representative of the committee must interview the complainant.

(c) Presentation of Argument. The complainant may submit written argument to the special committee. In its discretion, the special committee may permit the complainant to offer oral argument.

(d) Representation by Counsel. A complainant may submit written argument through counsel and, if permitted to offer oral argument, may do so through counsel.

(e) Cooperation. In exercising its discretion under this Rule, the special committee may take into account the degree of the complainant's cooperation in preserving the confidentiality of the proceedings, including the identity of the subject judge.

17. Special Committee Report

The special committee must file with the Judicial Conduct and Disability Council a comprehensive report of its investigation, including findings and recommendations for council action. The report must be accompanied by a statement of the vote by which it was adopted, any separate or dissenting statements of special committee members, and the record of any hearings held under Rule 14. In addition to being

sent to the subject judge under Rule 15(b), a copy of the report and any accompanying statements and documents must be sent to the Committee on Judicial Conduct and Disability.

ARTICLE V. REVIEW BY JUDICIAL CONDUCT AND DISABILITY COUNCIL

17.1. Composition of the Judicial Conduct and Disability Council

(a) The Judicial Conduct and Disability Council has seven (7) members determined as follows:

- (1) The two longest-serving active judges;
- (2) The two judges who have most recently attained two years of judicial service; and
- (3) The three judges who have most recently become senior judges.

(b) Term of Service and Vacancies. Members of the Judicial Conduct and Disability Council serve for three years. Council members continue to serve a complete term if their status changes (e.g., if an active judge becomes a senior judge or a judge is no longer one of the two who most recently attained two years of service). However, a judge may no longer serve on the Council if he or she ceases to be an active or senior judge. If a vacancy occurs or an otherwise eligible member declines to serve, the next judge in line for service on the Council in the category ((1), (2) or (3) above) from which the judge whose service on the Council has concluded shall be a member of the Council for the completion of the term of the departing Council member.

18. Petition for Review of Chief Judge Disposition Under Rule 11(c), (d), or (e)

(a) Petition for Review. After the Chief Judge issues an order under Rule 11(c), (d), or (e), the complainant or the subject judge may petition the Judicial Conduct and Disability Council to review the order.

(b) When to File; Form; Where to File. The timely mailing/timely filing provision of 26 U.S.C. § 7502 shall not apply to these Rules. A petition for review must be received in the office of the Clerk within 42 days after the date of the Chief Judge's order. The petition for review should be in letter form, addressed to the Clerk, and in an envelope marked "Misconduct Petition" or "Disability Petition." The name of the subject judge must not be shown on the envelope. The petition for review should be typewritten or otherwise legible. It should begin with "I hereby petition the Judicial Conduct and Disability Council for review of . . ." and state the reasons why the petition should be granted. It must be signed.

(c) Receipt and Distribution of Petition. If the Clerk receives a petition for review, the Clerk must:

- (1) acknowledge its receipt and send a copy to the complainant or subject judge, as the case may be;
- (2) promptly distribute to each member of the Judicial Conduct and Disability Council, except for any member disqualified under Rule 25, the following materials:
 - (A) copies of the complaint;
 - (B) all materials obtained by the Chief Judge in connection with the inquiry;
 - (C) the Chief Judge's order disposing of the complaint;
 - (D) any memorandum in support of the Chief Judge's order;
 - (E) the petition for review; and
 - (F) an appropriate ballot; and
- (3) send the petition for review to the Committee on Judicial Conduct and Disability. Unless the Committee on Judicial Conduct and

Disability requests them, the Clerk will not send copies of the materials obtained by the Chief Judge.

(d) Untimely Petition. The Clerk must refuse to accept a petition that is received after the time allowed in (b).

(e) Timely Petition Not in Proper Form. When the Clerk receives a petition for review filed within the time allowed but in a form that is improper to a degree that would substantially impair its consideration by the Judicial Conduct and Disability Council—such as a document that is ambiguous about whether it is intended to be a petition for review—the Clerk must acknowledge its receipt, call the filer’s attention to the deficiencies, and give the filer the opportunity to correct the deficiencies within the original time allowed for filing the petition or within 21 days after the date on which the notification of the deficiencies was sent to the complainant, whichever is later. If the Clerk receives the complainant’s correction of the deficiencies within the time allowed, the Clerk will proceed according to paragraphs (a) and (c) of this Rule. If the correction of the deficiencies is not received within the time allowed, the Clerk must reject the petition.

19. Judicial Conduct and Disability Council Disposition of Petition for Review

(a) Rights of Subject Judge. At any time after a complainant files a petition for review, the subject judge may file a written response with the Clerk. The Clerk must promptly distribute copies of the response to each member of the Judicial Conduct and Disability Council unless that member is disqualified under Rule 25. Copies must also be distributed to the Chief Judge, to the complainant, and to the Committee on Judicial Conduct and Disability. The subject judge must not otherwise communicate with other individual Judicial Conduct and Disability Council members about the matter. The subject judge must be given copies of any communications to the Judicial Conduct and Disability Council from the complainant.

(b) Action by the Judicial Conduct and Disability Council. After considering a petition for review and the materials before it, the Judicial Conduct and Disability Council may:

- (1) affirm the Chief Judge's disposition by denying the petition;
- (2) return the matter to the Chief Judge with directions to conduct a further inquiry under Rule 11(b) or to identify a complaint under Rule 5;
- (3) return the matter to the Chief Judge with directions to appoint a special committee under Rule 11(f); or
- (4) in exceptional circumstances, take other appropriate action.

(c) Notice of the Decision of the Judicial Conduct and Disability Council. Copies of the Judicial Conduct and Disability Council's order, together with memoranda incorporated by reference in the order and separate concurring or dissenting statements, must be given to the complainant, the subject judge, and the Committee on Judicial Conduct and Disability.

(d) Memorandum of Judicial Conduct and Disability Council Decision. If the Judicial Conduct and Disability Council's order affirms the Chief Judge's disposition, a supporting memorandum must be prepared only if the Judicial Conduct and Disability Council concludes that there is a need to supplement the Chief Judge's explanation. A memorandum supporting an order of the Judicial Conduct and Disability Council must not include the name of the complainant or the subject judge.

(e) Review of the Decision of the Judicial Conduct and Disability Council. If the Judicial Conduct and Disability Council's decision is adverse to the petitioner, and if no member of the Judicial Conduct and Disability Council dissented, the complainant must be notified that he or she has no right to seek review of the decision. If there was a dissent, the petitioner must be informed that he or she can file a petition for review under Rule 21(b).

(f) Public Availability of Judicial Conduct and Disability Council Decision. Materials related to the Judicial Conduct and Disability Council's decision must be made public to the extent, at the time, and in the manner set forth in Rule 24.

20. Judicial Conduct and Disability Council Action Following Appointment of Special Committee

(a) **Subject Judge’s Rights.** Within 21 days after the filing of the report of a special committee, the subject judge may send a written response to the members of the Judicial Conduct and Disability Council. The subject judge must also be given an opportunity to present argument, personally or through counsel, written or oral, as determined by the Judicial Conduct and Disability Council. The subject judge must not otherwise communicate with Judicial Conduct and Disability Council members about the matter.

(b) **Judicial Conduct and Disability Council Action.**

(1) **Discretionary Actions.** Subject to the subject judge’s rights set forth in subsection (a), the Judicial Conduct and Disability Council may:

(A) dismiss the complaint because:

(i) even if the claim is true, the claimed conduct is not conduct prejudicial to the effective and expeditious administration of the business of the courts and does not indicate a mental or physical disability resulting in inability to discharge the duties of office;

(ii) the complaint is directly related to the merits of a decision or procedural ruling;

(iii) the facts on which the complaint is based have not been established; or

(iv) the complaint is otherwise not appropriate for consideration under 28 U.S.C. §§ 351–364.

(B) conclude the proceeding because appropriate corrective action has been taken or intervening events have made the proceeding unnecessary.

(C) refer the complaint to the Judicial Conference with the recommendation of the Judicial Conduct and Disability Council;

(D) take remedial action to ensure the effective and expeditious administration of the business of the Tax Court, including:

(i) censuring (privately) or reprimanding (publicly) the subject judge, either by private communication or by public announcement;

(ii) ordering that no new cases be assigned to the subject judge for a limited, fixed period;

(iii) requesting a judge to retire voluntarily with the provision (if necessary) that ordinary length of service requirements be waived;

(iv) recommend to the Chief Judge that a senior judge no longer be recalled under 26 U.S.C. § 7447(c) to perform judicial duties;

(v) in the case of a Tax Court judge who is eligible to retire but has not done so, certifying the disability of the judge under 26 U.S.C. § 7447(h).

(vi) find that the Chief Judge is temporarily or permanently unable to perform the duties of that office due to disability. See 26 U.S.C. § 7444(b).

(vii) recommend to the Chief Judge the removal of a special trial judge. See 26 U.S.C. § 7443A(a). A decision to recommend the removal of a special trial judge requires a majority vote of all the members of the Judicial Conduct and Disability Council.

(E) take any combination of actions described in (b)(1)(D)(i)--(viii) of this Rule that is within its power.

(2) Mandatory actions. The Judicial Conduct and Disability Council shall refer a complaint to the Judicial Conference if

(A) a judge has engaged in conduct that should result in removal under 26 U.S.C. § 7443(f), or

(B) in the interest of justice, the complaint is not amenable to resolution by the Judicial Conduct and Disability Council.

A decision to recommend commencement of a removal action under 26 U.S.C. § 7443(f) requires a majority vote of all the members of the Judicial Conduct and Disability Council.

(c) Inadequate Basis for Decision. If the Judicial Conduct and Disability Council finds that a special committee's report, recommendations, and record provide an inadequate basis for decision, it may return the matter to the special committee for further investigation and a new report, or it may conduct further investigation. If the Judicial Conduct and Disability Council decides to conduct further investigation, the subject judge must be given adequate prior notice in writing of that decision and of the general scope and purpose of the additional investigation. The Judicial Conduct and Disability Council's conduct of the additional investigation must generally accord with the procedures and powers set forth in Rules 13 through 16 for the conduct of an investigation by a special committee.

(d) Vote of the Judicial Conduct and Disability Council. Except where otherwise provided, action by the Judicial Conduct and Disability Council must be taken by a majority of those members of the Council who are not disqualified.

(e) Recommendation for Fee Reimbursement. If the complaint has been finally dismissed or concluded under (b)(1)(A) or (B) of this Rule, and if the subject judge so requests, the Judicial Conduct and Disability Council may recommend to the Chief Judge that funds appropriated for the Tax Court be used to reimburse the judge for reasonable expenses incurred during the investigation when those expenses would not have been incurred but for the

requirements of the Act and these Rules. Reasonable expenses include attorneys' fees and expenses related to a successful defense or prosecution of a proceeding under Rule 21(a) or (b).

(f) **Judicial Conduct and Disability Order.** Actions taken by the Judicial Conduct and Disability Council must be by written order. Unless the Judicial Conduct and Disability Council finds that extraordinary reasons would make it contrary to the interests of justice, the order must be accompanied by a memorandum setting forth the factual determinations on which it is based and the reasons for Judicial Conduct and Disability Council action. Such a memorandum may incorporate all or part of any underlying special committee report. If the complaint was initiated by identification under Rule 5, the memorandum must so indicate. The order and memoranda incorporated by reference in the order must be provided to the complainant, the subject judge, and the Committee on Judicial Conduct and Disability. The complainant and the subject judge must be notified of any right to review of the Judicial Conduct and Disability Council's decision as provided in Rule 21(b). If the complaint was identified under Rule 5 or filed by its subject judge, the Judicial Conduct and Disability Council must transmit the order and memoranda incorporated by reference in the order to the Committee on Judicial Conduct and Disability of the Judicial Conference of the United States for review in accordance with Rule 21. In the event of such a transmission, the subject judge may make a written submission to the Committee on Judicial Conduct and Disability but has no further right of review.

Note: Rules 21 and 22 are reproduced from the Judicial Conduct and Disability Regulations issued by the Judicial Conference of the United States on September 17, 2015.

ARTICLE VI. REVIEW BY COMMITTEE ON JUDICIAL CONDUCT AND DISABILITY

21. Committee on Judicial Conduct and Disability

(a) **Committee Review.** The Committee on Judicial Conduct and Disability, consisting of seven members, considers and disposes of all petitions for

review under (b) of this Rule, in conformity with the Committee's jurisdictional statement. Its review of judicial council² orders is for errors of law, clear errors of fact, or abuse of discretion. Its disposition of petitions for review is ordinarily final. The Judicial Conference may, in its sole discretion, review any such Committee decision, but a complainant or subject judge does not have a right to this review.

(b) Reviewable Matters.

(1) Upon petition. A complainant or subject judge may petition the Committee for review of an order of the Judicial Conduct and Disability Council entered in accordance with:

(A) Rule 20(b)(1)(A), (B), (D), or (E),

(B) Rule 19(b)(1) or (4) if one or more members of the Judicial Council dissented from the order.

(2) Upon Committee's initiative. At its initiative and in its sole discretion, the Committee may review any judicial council order entered under Rule 19(b)(1) or (4), but only to determine whether a special committee should be appointed. Before undertaking the review, the Committee must invite the judicial council to explain why it believes the appointment of a special committee is unnecessary, unless the reasons are clearly stated in the council's order denying the petition for review. If the Committee believes that it would benefit from a submission by the subject judge, it may issue an appropriate request. If the Committee determines that a special committee should be appointed, the Committee must issue a written decision giving its reasons.

(c) Committee Vote. Any member of the Committee from the same circuit as the subject judge is disqualified from considering or voting on a petition for review related to that subject judge. Committee decisions under (b) of

²“As used in Rules 21 and 22, judicial council” includes the Judicial Conduct and Disability Council of the Tax Court.

this Rule must be by majority vote of the qualified Committee members. Those members hearing the petition for review should serve in that capacity until final disposition of the petition, whether or not their term of Committee membership has ended. If only six members are qualified to consider a petition for review, the Chief Justice shall select an additional judge to join the qualified members to consider the petition. If four or fewer members are qualified to consider a petition for review, the Chief Justice shall select a panel of five judges, including the qualified Committee members, to consider it.

(d) **Additional Investigation.** Except in extraordinary circumstances, the Committee will not conduct an additional investigation. The Committee may return the matter to the judicial council with directions to undertake an additional investigation. If the Committee conducts an additional investigation, it will exercise the powers of the Judicial Conference under 28 U.S.C. § 331.

(e) **Oral Argument; Personal Appearance.** There is ordinarily no oral argument or personal appearance before the Committee. In its discretion, the Committee may permit written submissions.

(f) **Committee Decision.** A Committee decision under this Rule must be transmitted promptly to the Judicial Conference. Other distribution will be by the Administrative Office at the direction of the Committee chair.

(g) **Finality.** All orders of the Judicial Conference or of the Committee (when the Conference does not exercise its power of review) are final.

22. Procedures for Review

(a) **Filing Petition for Review.** A petition for review of an order of the judicial council relating to a complaint referred to a special committee may be filed by sending a brief written statement to the Committee on Judicial Conduct and Disability at JCD_PetitionforReview@ao.uscourts.gov or to: Judicial Conference Committee on Judicial Conduct and Disability, Attn: Office of General Counsel, Administrative Office of the United States Courts, One Columbus Circle, NE, Washington, D.C. 20544. The

Administrative Office will send a copy of the petition for review to the complainant or subject judge, as the case may be.

(b) Form and Contents of Petition. No particular form is required. The petition for review must contain a short statement of the basic facts underlying the complaint, the history of its consideration before the appropriate judicial council, a copy of the council's decision, and the grounds on which the petitioner seeks review. The petition for review must specify the date and docket number of the judicial council order for which review is sought. The petitioner may attach any documents or correspondence arising in the course of the proceeding before the judicial council or its special committee. A petition for review should not normally exceed 20 pages plus necessary attachments. A petition for review must be signed by the petitioner or his or her attorney.

(c) Time. A petition for review must be submitted within 42 days after the date of the order for which review is sought.

(d) Action on Receipt of Petition. When a petition for review of a judicial council decision on a complaint referred to a special committee is submitted in accordance with this Rule, the Administrative Office shall acknowledge its receipt, notify the chair of the Committee on Judicial Conduct and Disability, and distribute the petition to the members of the Committee for their deliberation.

ARTICLE VII. MISCELLANEOUS RULES

23. Confidentiality

(a) General Rule. The consideration of a complaint by the Chief Judge, a special committee, the Judicial Conduct and Disability Council or the

Committee on Judicial Conduct and Disability³ is confidential. Information about this consideration must not be disclosed by any judge or employee of the Tax Court or by any person who records or transcribes testimony except as allowed by these Rules. The Chief Judge may disclose the existence of a proceeding under these Rules when necessary or appropriate to maintain public confidence in the Tax Court's ability to redress misconduct or disability.

(b) Files. All files related to a complaint must be separately maintained with appropriate security precautions to ensure confidentiality.

(c) Disclosure in Decisions. Except as otherwise provided in Rule 24, written decisions of the Chief Judge, the Judicial Conduct and Disability Council or the Committee on Judicial Conduct and Disability, and dissenting opinions or separate statements of members of the Judicial Conduct and Disability Council or the Committee may contain information and exhibits that the authors consider appropriate for inclusion, and the information and exhibits may be made public.

(d) Availability to Judicial Conference. On request of the Judicial Conference or its Committee on Judicial Conduct and Disability, the Clerk must furnish any requested records related to a complaint. For auditing purposes, the Clerk must provide access to the Committee on Judicial Conduct and Disability to records of proceedings under the Act at the site where the records are kept.

(e) Availability to Chief Judge. If the Judicial Conduct and Disability Council recommends removal of a special trial judge under Rule 20(b)(1)(D)(vii), the Clerk must provide to the Chief Judge copies of the report of the special committee and any other documents and records that were before the Judicial Conduct and Disability Council at the time of its decision. On request of the Chief Judge, the Judicial Conduct and Disability

³Descriptions in these Rules of functions performed by the Judicial Conference and the Committee on Judicial Conduct and Disability are reproduced from the Rules for Judicial Conduct and Disability issued by the Judicial Conference on September 17, 2015.

Council may authorize release to the Chief Judge of any other records relating to the investigation.

(f) Removal Proceedings. If the Judicial Conference determines that consideration of removal under 26 U.S.C. § 7443(f) is warranted, it must transmit the record of all relevant proceedings to the President. 26 U.S.C. § 7466(b).

(g) Subject Judge's Consent. If both the subject judge and the Chief Judge consent in writing, any materials from the files may be disclosed to any person. In any such disclosure, the Chief Judge may require that the identity of the complainant, or of witnesses in an investigation conducted under these Rules, not be revealed.

(h) Disclosure in Special Circumstances. The Judicial Conduct and Disability Council may authorize disclosure of information about the consideration of a complaint, including the papers, documents, and transcripts relating to the investigation, to the extent that disclosure is justified by special circumstances and is not prohibited by the Act⁴. Disclosure may be made to judicial researchers engaged in the study or evaluation of experience under the Act and related modes of judicial discipline, but only where the study or evaluation has been specifically approved by the Judicial Conference or by the Committee on Judicial Conduct and Disability. Appropriate steps must be taken to protect the identities of the subject judge, the complainant, and witnesses from public disclosure. Other appropriate safeguards to protect against the dissemination of confidential information may be imposed.

(i) Disclosure of Identity by Subject Judge. Nothing in this Rule precludes the subject judge from acknowledging that he or she is the judge referred to in documents made public under Rule 24.

⁴Rule 23(h) as adopted by the Judicial Conference also applies to the Committee on Judicial Conduct and Disability of the Judicial Conference of the United States and the Judicial Conference of the United States.

(j) Assistance and Consultation. Nothing in this Rule prohibits the Chief Judge, a special committee, the Judicial Conduct and Disability Council, or the Judicial Conference or its Committee on Judicial Conduct and Disability, in the performance of any function authorized under the Act or these Rules, from seeking the help of qualified staff or experts or from consulting other judges who may be helpful regarding the performance of that function.

24. Public Availability of Decisions

(a) General Rule; Specific Cases. When final action has been taken on a complaint and it is no longer subject to review, all orders entered by the Chief Judge and Judicial Conduct and Disability Council, including memoranda incorporated by reference in those orders and any dissenting opinions or separate statements by members of the Judicial Conduct and Disability Council, but excluding any orders under Rule 5 or 11(f), must be made public, with the following exceptions:

- (1) if the complaint is finally dismissed under Rule 11(c) without the appointment of a special committee, or if it is concluded under Rule 11(d) because of voluntary corrective action, the publicly available materials must not disclose the name of the subject judge without his or her consent.
- (2) if the complaint is concluded because of intervening events, or dismissed at any time after a special committee is appointed, the Judicial Conduct and Disability Council must determine whether the name of the subject judge should be disclosed.
- (3) if the complaint is finally disposed of by a privately communicated censure or reprimand, the publicly available materials must not disclose either the name of the subject judge or the text of the reprimand.
- (4) if the complaint is finally disposed of under an action listed in Rule 20(b)(1)(D) other than private censure or reprimand, the text of the dispositive order must be included in the materials made public, and the name of the subject judge must be disclosed.

(5) the name of the complainant must not be disclosed in materials made public under this Rule unless the Chief Judge orders disclosure.

(b) Manner of Making Public. The orders described in (a) are made public by placing them in a publicly accessible file in the office of the Clerk and by placing the orders on the Tax Court's public website. If the orders appear to have precedential value, the Chief Judge may cause them to be published.

(c) Orders of the Committee on Judicial Conduct and Disability. Orders of the Committee on Judicial Conduct and Disability constituting final action in a complaint proceeding will be made available to the public in the Office of the Clerk of the Court and by placing the orders on the Tax Court's public website. When authorized by the Committee on Judicial Conduct and Disability, other orders related to complaint proceedings will similarly be made available.

(d) Complaint Referred to Judicial Conference. If a complaint is referred to the Judicial Conference under Rule 20(b)(1)(C) or 20(b)(2), materials relating to the complaint will be made public only if ordered by the Judicial Conference.

25. Disqualification

(a) General Rule. Any judge is disqualified from participating in any proceeding under these Rules if the judge, in his or her discretion, concludes that circumstances warrant disqualification. If a complaint is filed by a Tax Court judge, that judge is disqualified from participating in any consideration of the complaint except to the extent that these Rules provide for a complainant's participation. The Chief Judge who has identified a complaint under Rule 5 is not automatically disqualified from considering the complaint.

(b) Subject Judge. A subject judge is disqualified from considering a complaint except to the extent that these Rules provide for participation by a subject judge.

(c) Chief Judge Disqualified from Considering Petition for Review of Chief Judge's Order. If a petition for review of the Chief Judge's order entered under Rule 11(c), (d), or (e) is filed with the Judicial Conduct and Disability Council in accordance with Rule 18, the Chief Judge is disqualified from participating in the Judicial Conduct and Disability Council's consideration of the petition.

(d) Member of Special Committee Not Disqualified. A member of the Judicial Conduct and Disability Council who serves on a special committee is not disqualified from participating in Judicial Conduct and Disability Council consideration of the committee's report.

(e) Subject Judge's Disqualification After Appointment of Special Committee. Upon appointment of a special committee, the subject judge is disqualified from participating in the identification or consideration of any complaint, related or unrelated to the pending matter, under the Act or these Rules. The disqualification continues until all proceedings on the complaint against the subject judge are finally terminated with no further right of review.

(f) Substitute for Disqualified Chief Judge. If the Chief Judge is disqualified from performing duties that the Act and these Rules assign to the Chief Judge, those duties must be assigned to the most senior active Tax Court judge who is not disqualified. If all Tax Court judges in regular active service are disqualified, the Judicial Conduct and Disability Council may determine whether to request a transfer under Rule 26, or, in the interest of sound judicial administration, to permit the Chief Judge to dispose of the complaint on the merits. Members of the Judicial Conduct and Disability Council who are named in the complaint may participate in this determination if necessary to obtain a quorum of the Judicial Conduct and Disability Council.

(g) Judicial Conduct and Disability Council Action When Multiple Judges Disqualified. Notwithstanding any other provision in these Rules to the contrary,

(1) a member of the Judicial Conduct and Disability Council who is a subject judge may participate in its disposition if:

(A) participation by one or more subject judges is necessary to obtain a quorum of the Judicial Conduct and Disability Council;

(B) the Judicial Conduct and Disability Council finds that the lack of a quorum is due to the naming of one or more judges in the complaint for the purpose of disqualifying that judge or those judges, or to the naming of one or more judges based on their participation in a decision excluded from the definition of misconduct under Rule 3(h)(3); and

(C) the Judicial Conduct and Disability Council votes that it is necessary, appropriate, and in the interest of sound judicial administration that one or more subject judges be eligible to act.

(2) otherwise disqualified members may participate in votes taken under (g)(1)(B) and (g)(1)(C).

(h) Disqualification of Members of Committee on Judicial Conduct and Disability. No member of the Committee on Judicial Conduct and Disability is disqualified from participating in any proceeding under the Act or these Rules because of consultations with the Chief Judge, a member of a special committee, or a member of the Judicial Conduct and Disability Council about the interpretation or application of the Act or these Rules, unless the member believes that the consultation would prevent fair-minded participation.

26. Transfer to a Judicial Council or to Another Court

In exceptional circumstances, the Chief Judge or the Judicial Conduct and Disability Council may ask the Chief Justice to transfer a proceeding based on a complaint identified under Rule 5 or filed under Rule 6 to the judicial council of a circuit or to the Chief Judge of another court not included in a Circuit. The request for a transfer may be made at any stage of the proceeding before a reference to the

Judicial Conference under Rule 20(b)(1)(C) or 20(b)(2) or a petition for review is filed under Rule 22. Upon receiving such a request, the Chief Justice may refuse the request or select the transferee judicial council, which may then exercise the powers of the Judicial Conduct and Disability Council under these Rules.

27. Withdrawal of Complaint or Petition for Review

(a) **Complaint Pending Before Chief Judge.** With the Chief Judge's consent, the complainant may withdraw a complaint that is before the Chief Judge for a decision under Rule 11. The withdrawal of a complaint will not prevent the Chief Judge from identifying or having to identify a complaint under Rule 5 based on the withdrawn complaint.

(b) **Complaint Pending Before Special Committee or Judicial Conduct and Disability Council.** After a complaint has been referred to the special committee for investigation and before the committee files its report, the complainant may withdraw the complaint only with the consent of both the subject judge and either the special committee or the Judicial Conduct and Disability Council.

(c) **Petition for Review.** A petition for review addressed to the Judicial Conduct and Disability Council under Rule 18, or the Committee on Judicial Conduct and Disability under Rule 22, may be withdrawn if no action on the petition has been taken.

28. Availability of Rules and Forms

These Rules and copies of the complaint form as provided in Rule 6(a) must be available without charge in the office of the Clerk. These Rules, the complaint form, and complaint filing instructions also are available on the Tax Court's website.

APPENDIX: COMPLAINT RELATING TO JUDICIAL CONDUCT OR DISABILITY OF JUDGES AND SPECIAL TRIAL JUDGES

To begin the complaint process, complete this form and prepare a brief statement of facts described in Item 4 (below). The Rules for Judicial Conduct and Disability Proceedings for the United States Tax Court contain information on what to include in a complaint (Rule 6), where to file a complaint (Rule 7), and other important matters. The Rules are available from the Office of the Clerk of the Court, United States Tax Court, 400 Second Street N.W., Washington, D.C. 20217 and on the Court’s website at www.ustaxcourt.gov.

Your complaint (this form and statement of facts) should be typed and must be legible. File the original and two copies of the complaint with the Clerk of the Court (address above). Enclose each copy of the complaint in an envelope marked “COMPLAINT OF MISCONDUCT” or “COMPLAINT OF DISABILITY”. Do not put the name of any judge on the envelope.

1. **Name of Complainant:** _____

Contact Address: _____

Daytime telephone: (____) _____

2. **Name(s) of Judge(s):** _____

3. **Does this complaint concern the behavior of the judge(s) in a particular Tax Court case or cases?**

Yes No

If “yes”, give the following information about each case:

Tax Court Docket No.: _____

Are (were) you a party or lawyer in the case?

Party Lawyer Neither

If you are (were) a party and have (had) a lawyer, give the lawyer’s name, address, and telephone number:

Name of Lawyer: _____

Contact Address: _____

Daytime telephone: (____) _____

4. **Brief Statement of Facts.** Attach a brief statement of the specific facts on which the claim of judicial misconduct or disability is based. Include what happened, when and where it happened, and any information that would help an investigator check the facts. If the complaint alleges judicial disability, also include any additional facts that form the basis of that allegation.

5. **Have you filed any lawsuits against the Judge?**

Yes No

If "yes", give the following information about each such lawsuit:

Court: _____

Case No.: _____

Status of
lawsuit: _____

Name, address, and telephone number of your lawyer for the lawsuit against the Judge:

() _____

Court to which any appeal has been taken in the lawsuit
against the Judge: _____

Case No. of any appeal: _____

Present status of the appeal: _____

6. **Declaration and Signature:**

I declare under penalty of perjury that the statements made in this complaint, including the attached statement of facts, are true and correct to the best of my knowledge.

Signature

Date

**SUBMITTING A COMPLAINT
OF JUDICIAL MISCONDUCT OR JUDICIAL DISABILITY
AGAINST A
UNITED STATES TAX COURT JUDGE:**

A User's Guide

The process for complaining that a Tax Court Judge has committed misconduct or has become disabled is explained in detail in the *Rules for Judicial Conduct and Disability Proceedings for the United States Tax Court* ("Rules") which you should consult before making a complaint. The [Rules](#) and a [complaint form](#) <hyperlinks> are available on this website and from the Office of the Clerk of the Court, United States Tax Court, 400 Second Street, N.W., Washington, D.C. 20217. This User's Guide is a short explanation of the Rules.

1. Who may be complained about?

This process may be used only for complaints about Judges, Senior Judges, and Special Trial Judges of the United States Tax Court. If you have concerns about the behavior of a Tax Court employee other than a Judge, you may report them to the Chief Judge of the Tax Court. To complain about lawyers and other persons admitted to practice before the Tax Court, contact the Admissions Section of the Office of the Clerk of the Tax Court.

2. Where do I submit a complaint?

If you believe that a Tax Court Judge committed misconduct or has a disability, you may submit a complaint to the Tax Court's Office of the Clerk of the Court. That office is the only place authorized to receive your complaint.

3. What is "misconduct"? What is a "disability"?

"Misconduct" is "conduct prejudicial to the effective and expeditious administration of the business of the courts." A "disability" is a "temporary or permanent impairment, physical or mental" that renders the Judge "unable to discharge the duties" of the judicial office.

A few examples of misconduct are:

- Using the Judge's office to obtain special treatment for friends or relatives; accepting bribes, gifts, or other personal favors related to the judicial office; having improper discussions with parties or counsel for one side in a case; treating parties or counsel in a demonstrably egregious and hostile manner; engaging in partisan political activity or making inappropriately partisan statements; soliciting funds for organizations; or violating other specific, mandatory standards of judicial conduct, such as those pertaining to restrictions on outside income and requirements for financial disclosure.

Actions taken by a Judge outside of his or her official role may qualify as misconduct if they would cause a substantial and widespread lowering of confidence in the Tax Court among reasonable people.

Examples of disability are:

- Substance abuse, the inability to stay awake during Court proceedings, or impairment of cognitive abilities that renders the judge unable to function effectively.

4. Can a Judge's rulings be complained about under these procedures?

Generally, no. If you think that a Judge made a wrong decision in a case, that does not in itself establish misconduct or disability. For example, you cannot invoke this process to claim merely that a Judge was mistaken in failing to recuse, in determining that you must pay fees, in setting hearings and deadlines, in dismissing parties from a case, or in the ultimate decision of the case. Claims such as these are related to the merits of the case and therefore are improper under the judicial misconduct and disability complaint rules. If you wish to challenge the correctness of a Judge's ruling or decision, you may do so only under the proper procedural rules, such as by a motion for reconsideration addressed to the Judge or by an appeal to the Court of Appeals.

If, however, a merits-related complaint includes supported allegations that the Judge had an improper motive, or that the Judge habitually delayed in many unrelated cases, those allegations may be made under these judicial conduct and disability procedures.

5. What should I include in a complaint?

Your complaint should be submitted on the prescribed complaint form. It must be legible and if possible should be typed or printed (e.g., by a printer attached to a computer). It must include a contact address, a description of the relevant events, a description of when and where they took place, and any other information that would help an investigator check the facts. The complaint should contain as much pertinent detail as possible, including information that identifies transcripts and witnesses supporting your account of what happened. You must sign the complaint under penalty of perjury.

When your complaint is ready to be submitted, make two copies of the original. Place the original and copies in an envelope marked "COMPLAINT OF CONDUCT" or "COMPLAINT OF DISABILITY." Do not write the name of the Judge you are complaining about ("the subject Judge") on the envelope. Submit them, in person or by mail, to the Office of the Clerk of the Court, United States Tax Court, 400 Second Street, N.W., Washington, D.C. 20217.

6. After a complaint is submitted, what happens first?

Your complaint will be conveyed to the Judge who will consider it (usually the Chief Judge) and to the subject Judge. The Chief Judge may conduct a limited inquiry, interviewing witnesses and examining other available information. You may or may not be contacted as part of this process.

Although the Chief Judge will review your complaint expeditiously, you should not expect an immediate decision. Inquiries about the complaint's status will not speed the process.

After considering your complaint, the Chief Judge will take one of two actions:

First, the Chief Judge may, by order, terminate your complaint (by "dismissing" or "concluding" it) if there is reason to do so. A complaint will be dismissed if it simply challenges the merits of a Judge's ruling or decision, or if the facts that the complaint describes do not amount to misconduct or disability as described in the Rules, or if the complaint does not identify evidence tending to show misconduct or disability, or if the complaint is conclusively refuted by objective evidence from transcripts, witnesses, or other sources. Or the Chief Judge may conclude your complaint if the subject Judge voluntarily takes corrective action that acknowledges and remedies the problem you

complained about. The Chief Judge will conclude your complaint if intervening events--such as the subject Judge's retirement, resignation, or death--have eliminated the need for further action.

Second, if the complaint is not terminated, then the Chief Judge will appoint a Special Committee of Judges to investigate the complaint, as explained in the answer to question 8, below.

7. If the Chief Judge terminates your complaint and you are not satisfied with the reasons given to you, do you have any further remedy under these procedures?

Yes. If the Chief Judge terminates your complaint, you will receive a copy of the resulting order, and you will be notified of your right to petition the Tax Court's Judicial Conduct and Disability Council for review. If you wish to exercise this option, you must submit a petition within 42 days from the date on the Court's order that informed you of the Chief Judge's order. If you do not make a timely request for such review, the Chief Judge's order will be the final action on your complaint.

Your petition for review by the Tax Court's Judicial Conduct and Disability Council must be in letter form, addressed to the Clerk of the Court, in an envelope marked "MISCONDUCT PETITION" or "DISABILITY PETITION." The name of the subject Judge must not be written on the envelope. The letter should be typed or otherwise legible and should begin with "I hereby petition the Judicial Conduct and Disability Council for review of ..." and state the reasons why the petition should be granted. It must be signed.

After considering your petition for review, the Judicial Conduct and Disability Council will act on it. The Council might affirm the Chief Judge's disposition (i.e., it might agree that the complaint was properly terminated), or it might return the matter to the Chief Judge for further inquiry or for appointment of a special investigating committee.

You will be given a copy of the Judicial Conduct and Disability Council's order acting on your petition. If the order is not in your favor and no member of the Judicial Conduct and Disability Council dissented, you have no further right of review. If there is a dissent, you may submit a petition for further review with the Committee on Judicial Conduct and Disability of the Judicial Conference of the United States. Your petition

must be submitted within 42 days from the date of the order issued by the Tax Court's Judicial Conduct and Disability Council. To submit such a petition, send a brief written statement to the Committee on Judicial Conduct and Disability at JCD_PetitionforReview@ao.uscourts.gov or to: Judicial Conference Committee on Judicial Conduct and Disability, Attn: Office of General Counsel, Administrative Office of the United States Courts, One Columbus Circle, N.E., Washington, D.C. 20544.

8. What happens if my complaint is not terminated but instead is referred to a Special Committee?

If the Chief Judge refers your complaint to a Special Committee, you will receive a copy of the order naming the Committee's members. That Committee will investigate the matter and report to the Judicial Conduct and Disability Council.

In its investigation, the Special Committee may conduct any interviews and hearings it considers necessary. If the Special Committee determines that you might possess evidence not already available in writing, its representative may interview you. You may, unaided or through counsel, submit written argument to the Special Committee.

Upon concluding its investigation, the Special Committee will submit a report of its findings and recommendations to the Judicial Conduct and Disability Council. The Judicial Conduct and Disability Council may, but need not, provide you with a copy of the report.

The Judicial Conduct and Disability Council will consider the Special Committee's report and, once its review of the complaint is complete, will prepare an order acting on the complaint. The order may terminate the complaint (by dismissing or concluding it). Or the order may prescribe other remedial action. The possible remedial actions are set out in Rule 20(b)(D) of the Rules, and they range from private censure of the subject Judge to a recommendation of removal of that Judge from office.

You will be given a copy of the Judicial Conduct and Disability Council's order. If you disagree with the order, and the Council has not referred your complaint to the Judicial Conference of the United States, you may submit a petition for review with the Committee on Judicial Conduct and Disability of the Judicial Conference. Your petition must be submitted within 42 days from the date of the order issued by the Tax Court's

Judicial Conduct and Disability Council. See the answer to question 7 for information on where and how to submit your petition.

9. What happens if I abuse the conduct and disability complaint process?

If you abuse the judicial conduct or disability complaint process by submitting frivolous or repetitive complaints, you may be restricted from submitting further complaints. You would first be given an opportunity to show cause in writing why your right to submit further complaints should not be restricted.

10. To what extent is the consideration of my complaint confidential?

The consideration of a complaint is confidential, although, in extraordinary circumstances, the Chief Judge may publicly disclose the complaint's existence. You should not give or copy your complaint to any Judge or any other office or Tax Court employee. Also, you should not communicate in any way about your complaint with Judges or other Tax Court employees except at their request or as otherwise allowed by the Rules.

When a complaint has received final action and is no longer subject to any right of review, orders on that complaint are made publicly available in the Office of the Clerk of the Court and will also be posted on the Tax Court's website.