

UNITED STATES COURT OF APPEALS

FIFTH CIRCUIT

January 5, 1995

M E M O R A N D U M

TO: All Judicial Council Members

FROM: Henry A. Politz

SUBJECT: Proposed Amendment to Rule 19; Fifth Circuit
*Rules Governing Complaints of Judicial Misconduct
or Disability - "Limitations on Filing Complaints"*

Your Honors:

During the course of handling a particularly vexatious complaint from a former lawyer who had been suing and filing § 372(c) complaints in multiple jurisdictions around the country, I became quite impressed by a rule first adopted by the Second Circuit Judicial Council for handling multiple meritless ethical complaints against judicial officers. I think we should adopt a rule which would authorize the curbing of such vexatious filings.

The practical application would require one who has abused the process by the filing of repeated meritless 28 U.S.C. § 372(c) complaints to secure the written approval of a member of the Council to file a future complaint. Absent such an authorization accompanying the complaint, the clerk would be instructed to return the complaint unfiled.

Attached is the draft of a proposed rule which I recommend to you for adoption, together with an appropriate ballot. Please return completed ballots to the circuit executive by January 20, 1995. (*For the six judges commencing Council service on January 1, enclosed is a copy of the Council's existing rules governing judicial misconduct complaints.*)

With warmest regards.

Sincerely,



Encl.

cc: Mrs. Lydia G. Comberrel
Mr. Charles R. Fulbruge III

Excerpt: *Rules Governing Complaints of Judicial Misconduct or Disability*, Judicial Council of the Fifth Judicial Circuit, April 13, 1993.

RULE 19. MISCELLANEOUS

(C) Limitations on Filing Complaints. Complainants who file repetitive, harassing, or frivolous complaints, or who otherwise abuse the complaint procedures may be restricted from filing further complaints. After affording an opportunity to show cause why his or her ability to file judicial misconduct complaints should not be limited, the presiding officer of the judicial council may restrict or impose conditions on an offending complainant's filing of further complaints. Upon written request of the invoked complainant, the judicial council may revise or withdraw any restrictions or conditions imposed.

(D) Effective Date. These rules apply to complaints filed on and after April 15, 1993.

(Note: ¶19(C) of old rule becomes ¶19(D) of amended rule.)

FIFTH CIRCUIT JUDICIAL COUNCIL

B A L L O T

Re: Proposed Amendment to Rule 19; Fifth Circuit
*Rules Governing Complaints of Judicial Misconduct
or Disability*

Concerning impositions of limitations on the filing
of abusive or vexatious complaints:

[_____] Approved

[_____] Disapproved

[_____] Other: _____

Date

Council Member

(Please return ballot to Circuit Executive by January 20, 1995.)