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Filing a Judicial Complaint in State Courts: An Overview

Filing a Complaint Against a Judge in State Courts: A Guide For Women¹

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The importance of fairness in any legal proceeding is the foundation of our judicial system. While judges are held to high standards of ethics and must act impartially in any proceeding, women may encounter bias and unprofessional behavior by a judge in the courtroom. Most states have a system for filing a complaint against a judge, known as the judicial complaint process. This process allows someone who thinks the judge presiding over her/his case acted inappropriately to explain what happened to a judicial conduct commission and seek a reprimand for that judge. This process has some drawbacks to keep in mind and needs to be handled very carefully. But using it may ensure that the judges in your court system fulfill their obligations and may help others who enter the judicial system after you.

Important Note: In almost all circumstances, the judicial complaint process cannot be used to address questions of law. In other words, if your complaint focuses on legal reasons that you are not satisfied with the judge's decision in your case, the judicial conduct commission cannot address the complaint. Questions of law and/or interpretations of law should be addressed through the appeals process. If a judicial complaint is submitted that alleges misconduct based on a legal issue, it will almost always be dismissed. For example, if you believe that you lost custody to your child's father because the father knows the judge personally, this may be a good reason to make a judicial complaint. However, if the judge decides to grant custody to the father based on her/his interpretation of the child custody laws in your state, this is an issue for the court appeals process.

Most judicial conduct commissions do not provide legal advice for people filing complaints or offer an attorney's help. However, most judicial conduct commissions do answer questions about how to file a complaint and about the process.

The Judicial Code of Conduct

In every state, judges' behavior is governed by a code of conduct established by the state supreme court or the legislature. These codes include sections called "canons" which explain what a judge may and

¹ This fact sheet will provide general information and tips about filing judicial complaints. This fact sheet should not be used as a substitute for an attorney's services. This material is meant for information purposes only and does not constitute legal services or representation. This fact sheet should not be used in place of a consultation with an attorney.

may not do. A complaint against a judge will only be upheld if the state judicial conduct commission finds that the judge violated one of the canons. To find state specific information, such as the judicial code of conduct and/or specific information on judicial complaints, contact the American Judicature Society. AJS's website has links to state judicial contact information and websites at <<http://www.ajs.org/>>. AJS can also be reached at 180 N. Michigan Ave., Suite 600, Chicago, IL 60601, Phone: (312) 558-6900, Fax: (312) 558-9175.

Issues To Keep in Mind When Considering Filing a Judicial Complaint

The first and most important issue to consider before filing a judicial complaint is the effect on the case, particularly if the case is not yet finished. While confidentiality rules apply in some circumstances, to protect the identity of the person filing a complaint, at some point in the process, the judge is typically permitted to know about the complaint, and, in many circumstances, will be able to find out who submitted it. Therefore, it is important that you do the following:

- If you have an attorney, consult with her or him about filing the complaint and ask for help in considering what the consequences may be.
- Find out all of the information about filing a complaint, including whether there are confidentiality rules, and how they work. In many states, the confidentiality rule serves not only to protect you, but also to protect the judge and her/his professional reputation. Thus, you may not be permitted to talk to others about a judicial complaint that you have filed until or unless the judicial conduct commission allows it.
- Keep in mind, particularly if you do not have an attorney to help you review these issues, that the judge will most likely *not* be removed from your case if you file a complaint. Thus, you may risk further bias, and need to consider this prior to taking any action.

Another important issue to consider when filing a complaint is that the judicial complaint process generally takes a long time. For more information, see the *What Happens After I File My Complaint?* section, page 4.

What Kind of Issues Can I Raise in a Complaint?

States have specific standards explaining the issues that may be addressed by a complaint. Although standards in each state vary, following is a general list of reasons you may be able to file a complaint against the judge presiding over your case. For a copy of the state judicial code of ethics in your state, contact your local judicial review office. For information about how to contact your local office, see *The Judicial Code of Conduct* section, page 1. Keep in mind that the standards for filing a complaint are slightly different in every state:

Improper Behavior/Demeanor – Improper behavior or demeanor means that the judge has acted unfairly or inappropriately in a courtroom or some other hearing or meeting, towards attorneys, witnesses or others who are present. Examples might include making sexist or racist slurs, or having improper physical contact/sexually harassing lawyers, witnesses or court personnel.

Illegal Influence/Failure to Disqualify – Judges are held to strict standards as to what kinds of activities they can participate in. They must remain fair and impartial and not under anyone’s influence. Judges who have involvement in or specific knowledge of a case in front of them may be required to “disqualify” themselves, depending on whether they can be fair and impartial. For example, a judge should not hear a case where she or he has a personal interest in how the case turns out, and cannot take gifts, bribes, loans or favors from either party involved in a case, or their attorneys, friends or relatives.

Impropriety Off the Bench – Judges are generally required to live a respectable, moral life *outside* of the courtroom. If the judge acts improperly in her or his personal conduct, such as being involved in illegal activities, trying to interfere with a case, or being involved in groups that attempt to influence her or his work, these may be appropriate situations for a judicial complaint.

Physical or Mental Disability – If a judge has a disability and this has affected her or his work, you can complain about it. This may include substance abuse problems or a mental illness that affects the judge’s ability to perform her or his duties fairly or leads to an unacceptably low quality of work.

IMPORTANT POINTS TO REMEMBER WHEN FILING A JUDICIAL COMPLAINT:

THE COMPLAINT DOES NOT CHANGE ANY FILING DEADLINES FOR YOUR CASE:

If you are filing an appeal, or if there are other steps you must take in your case, filing a complaint will not, as a general rule, change these deadlines. Check with your judicial complaint office with any specific questions regarding deadlines and timing on your case.

FILING A JUDICIAL COMPLAINT IS A LONG PROCESS:

As previously mentioned, the judicial complaint process can take an extraordinary amount of time. If you choose to file a judicial complaint, be prepared to wait for investigation and responses to inquiries.

DO NOT ASSUME THAT FILING A COMPLAINT AGAINST A JUDGE IS REASON TO HAVE THE JUDGE REMOVED FROM YOUR CASE:

Having a judge removed from your case (also called, “disqualified”), is a procedure generally handled by a different system than the judicial conduct commission. In most cases, filing a complaint against a judge is not the same as filing to have the judge removed from your case. Also, the issues you raise in your complaint may not be enough to have a judge removed from your case, even if you pursue her or his removal.

IF THE JUDGE RETALIATES AGAINST YOU BECAUSE YOU HAVE FILED A JUDICIAL COMPLAINT, TAKE ACTION:

If you or your lawyer believes the judge is retaliating against you because you filed a judicial complaint, you bring this to the attention of the judicial conduct commission immediately. Check with your judicial conduct commission for more specific information about this issue.

DO NOT FILE A JUDICIAL COMPLAINT AS RETALIATION FOR THE JUDGE'S DECIDING A CASE AGAINST YOU: THERE MUST BE SUPPORT FOR A CLAIM THAT SHE OR HE ACTED IMPROPERLY.

Consider carefully the reasons you want to pursue a complaint. You may be required to attend hearings, sign an affidavit, and testify under oath about your allegations. A frivolous or inappropriate complaint could result in sanctions and will only add to the stress and work of your on-going legal case.

If You Decide To File A Judicial Complaint:

Carefully review all the information you obtain from the judicial conduct commission. Many states have a judicial complaint form you can use to describe the events that are the basis for your complaint. In some states, you must use the judicial conduct commission's form, while other states may not have a specific form for filing a complaint. In most cases, you can also file a complaint by writing a letter to the judicial conduct commission. If you decide to write a letter instead of using a complaint form, it is best to at least review the complaint form, so you know what kind of information to include in your letter. If you need to include court documents as part of the complaint, be sure to *submit copies*, not the original court documents (unless you are requested to submit the originals by the judicial conduct commission in which case keep copies for yourself). Some judicial conduct commissions accept complaints via email. Most judicial conduct commissions do not accept complaints made by phone. You must check with your state judicial conduct commission for more specific information.

It is important that all complaints be concise and describe in detail the facts that are the basis for your complaint. It is not enough to state that "the judge was biased and unfair." Instead, you must list the specific facts about what happened and what was said or done that you believe was misconduct. ***Do not include irrelevant information:*** the judicial conduct commission cannot consider factors beyond the information that supports your complaint. **Keep your complaint as focused and concise as possible.**

What Happens After I File My Complaint?

This process differs in every state. Generally, judicial conduct commissions meet a certain number of times each year (for instance, in Nevada, the board meets four times a year). The review process usually includes an initial screening to decide if the complaints are appropriate for the commission to consider because they deal with issues that can be addressed by the commission. The commission will then investigate the complaint, and give the judge an opportunity to respond. Remember, rules about confidentiality vary, so be sure to find out whether your identity will be protected and consider whether this is important to you and could have an affect on your pending case. As the process goes forward, there may also be a formal hearing where all of the facts of the complaint are reviewed by the commission. This process can be very drawn out and usually takes a very long time.

Once a decision has been reached, you will generally be notified by mail about the decision and any action taken. If the judicial conduct commission decides that the judge has violated the code of judicial conduct it can take a variety of actions. These range from a private letter of reprimand to the judge that is never made public to a recommendation to the state supreme court that the judge be removed from the bench.

Some judicial conduct commissions are very secretive about the actions of the commission, while others are very open. Check with your judicial conduct commission and read all information on the process to better understand what will happen if you file a complaint, how much time the process will take and what the possible outcomes are in your state.

What Other Steps Can I Take To Improve The System?

Our legal system is based on judges deciding cases fairly and without improper bias, and acting professionally and with integrity. If you believe that a judge has acted inappropriately, a judicial complaint can hold her or him accountable. However, no system is perfect. If you think that sex or gender bias was an issue in the outcome of your case, you may wish to contact the gender bias task force in your area to bring the issue to its attention. These task forces exist in certain states and are composed of people who monitor the courts to address sex or gender bias issues. While these task forces are not set up to take action on your behalf, they do monitor and evaluate the judges and court system. Any complaints or outcomes from complaints concerning sex or gender bias may be useful to their continuing work to improve our system. You can receive a list of the gender bias task forces in each state and more information about judicial bias on the basis of sex or gender by contacting NOW Legal Defense and Education Fund on its website at www.nowldef.org, and following the links to the National Judicial Education Program or emailing njep@nowldef.org. If you do not have computer access, you can call (212) 925-6635, fax (212) 226-1066 or write us at 395 Hudson Street, 5th Floor, New York, NY 10014.

Conclusion:

Filing a judicial complaint is a serious matter for both the individual filing the complaint and the judge against whom the complaint has been made. It is very important to the success of your complaint that you review all of the information your state judicial conduct commission provides. It is also very important to consult with an attorney, if possible, before and during the process. The attorney may have advice about the language, style and approach to use that will make a difference in the conduct commission review process.