

DRAFT Supreme Court Accountability Act (4)

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The draft text is based on [28 U.S.C. §§351-364](#). The choice was made to be more prescriptive here and not simply to allow the SCOTUS complaint-review panel to create its own rules, as Section 367 of SCERT ([S. 359](#)) does, though that's also a valid approach. For historical reference, [this](#) is a link to a bipartisan 1977 bill that passed the Senate that would have included the justices in a judicial discipline framework.

[Justice Kagan](#), July 25, 2024: “I think the thing that can be criticized is rules usually have enforcement mechanisms attached to them, and this set of rules does not. And I think this is a super hard question, honestly. **I think the enforcers should be judges.** I can’t think of other people who should enforce a code of conduct against judges, and **I think it would be bad for us to do it to each other** — in other words, for the same judges sitting at the table trying to decide cases to be the one saying, you broke that rule or did not break that rule. **So then what does that leave? It leaves judges lower down the food chain,** and that creates perplexities. It’s usually the case that people who enforce rules are not — we review all of your decisions and then you’d review our decisions, and that is not usually the case. So it does create complications and real questions, and it is a hard thing to do to figure out who exactly should be doing this and what kind of sanctions would be appropriate for violations of the rules. **But I feel that however hard it is, that we could and should try to figure out some mechanism for doing this.** I have a lot of trust and faith in the Chief Justice. **If the Chief Justice appointed some sort of committee of highly respected judges with a great deal of experience, with a reputation for fairness, that seems like a good solution to me.** It would benefit us in various kinds of ways because it would provide a safe harbor. Sometimes people accuse us of misconduct where we haven’t engaged in misconduct. So I think both in terms of enforcing the rules against people who violated them but also protecting those who have not violated them, I think a system like that would make sense.”

Section 1.

This Act shall be referred to as the Supreme Court Accountability Act of [YEAR].

Section 2.

Title 28 of the United States Code is amended by adding after Chapter 16:

“Chapter 16a. Complaints against Justices.

§ 365. Establishment of the Judicial Council of the United States

(a) In General.—There shall be established in the Judicial Branch a Judicial Council of the United States comprising seven members, each of whom is justice or judge of the United States who has retired from regular active service under Section 371(b)(1) of this Title.

(b) Appointment.—The Chief Justice of the United States shall appoint members of the Council from among justices and judges of the United States who meet the qualification described in subsection (a).

(c) Chairperson.—The Chairperson shall be appointed by the Chief Justice among the members of the Judicial Council. An individual may be appointed as a member of the Council and as Chairperson at the same time.

(d) Term; vacancies.—

(1) Except as provided in paragraph (2):

(A) the members first appointed under this section shall be appointed for terms ending one, two, three, four, five, six, and seven years, respectively, after the enactment of this Act, the term of each to be designated by the Chief Justice at the time of nomination; and

(B) each of their successors shall be appointed for a term of seven years from the date of the expiration of the term for which his or her predecessor was appointed.

(2) Any member of the Council may be removed by the Chief Justice for neglect of duty, malfeasance, or disability.

(3) A member of the Council shall cease serving on the Judicial Council upon resigning from the Judicial Council or retiring from office under 371(a) or section 372 of this title.

(4) Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed only for the remainder of such term. A member may continue to serve after the expiration of this term until his or her successor has taken office, except that he or she may not so continue to serve more than one year after the date on which his or her term would otherwise expire under this subsection.

(e) Composition.—No more than four of the members of the Council may have been appointed to their most recent judicial office by a president affiliated with one political party.

(f) Quorum—Three members of the Council shall constitute a quorum thereof.

(g) Restriction on Individuals Who Are Subject of Investigation.—No judge whose conduct is the subject of an investigation under this chapter or chapter 16 shall serve on the Council until all proceedings under this chapter or chapter 16 relating to such investigation have been finally terminated.

(h) Staff.—The Council shall employ a Staff Director who at the time of appointment is not an employee of the Supreme Court and has not been employed by the Supreme Court for at least one year prior to appointment and who is qualified to serve in the position by virtue of their education, training, or experience in one or more of the following: constitutional law; judicial ethics; professional ethics; federal ethics statutes; and Supreme Court practice. The Staff Director shall receive an annual salary equivalent to that of the Legal Counsel of the Supreme Court of the United States and may hire additional staff as needed.

(i) Definitions.—In this chapter:

(1) the term “subject justice” means a Chief Justice of the United States or an associate justice who is the subject of a complaint under this chapter; and

(2) the term “Council” means the Judicial Council of the United States.

§ 366. Complaints against Justices

(a) Filing a Complaint.—Any person alleging that the Chief Justice of the United States or an associate justice has violated the law in connection with his or her judicial service, violated an applicable ethical canon or a provision of an applicable code of conduct, engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts, or is unable to discharge all the duties of office by reason of mental or physical disability may file with the Council a written complaint containing a brief statement of the facts constituting such conduct. Such complaint shall be signed and sworn to by the person filing such complaint and shall be made under penalty of perjury and subject to the provisions of section 1001 of title 18.

(b) Referral from the Chief Justice or an Associate Justice.—The Chief Justice or an associate justice may identify a complaint and may refer that complaint to the Council.

(c) Transmittal of Complaint.—Within 5 business days of receipt of a complaint filed or identified under subsections (a) or (b), the complaint shall be transmitted to each member of the Council and to the subject justice.

(d) Summary of Complaint.—

(1) The Staff Director shall prepare a summary of each complaint, which shall include an assessment as to whether the complaint should be summarily dismissed because it:

(A) is not in conformity with subsection (a);

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

(C) is unsupported, lacks sufficient evidence to raise an inference that misconduct has occurred, or contains allegations that are incapable of being established through investigation.

(2) The summary prepared by the Staff Director shall be transmitted with the complaint to the members of the Council under subsection (c).

§ 367. Review of the Complaint

(a) In General.—After receiving a complaint under Section 366 of this title, the Council, within 30 days, shall—

(1) by written order stating its reasoning—

(A) dismiss the complaint if a majority of the Council finds the complaint to be—

(i) not in conformity with section 366(a) of this title;

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

(iii) unsupported, lacking sufficient evidence to raise an inference that misconduct has occurred, or containing allegations that are incapable of being established through investigation; or

(B) conclude the review if a majority of the Council finds that appropriate corrective action has been taken or that action on the complaint is no longer necessary because of intervening events; or

(2) open an investigation.

(b) Dismissal Order.—The Council shall transmit copies of a written order dismissing or concluding the complaint to the complainant and to the subject justice.

(c) Communications.—

(1) At any point during the complaint process, the Council may request the subject justice to file a written response to the complaint.

(2) The Staff Director may communicate orally or in writing with the complainant, the subject justice, and any other person who may have knowledge of the matter and may review any relevant documents.

(3) Members of the Council may review any relevant documents and may communicate orally or in writing with the complainant, the subject justice, and any other person who may have knowledge of the matter so long as all members of the Council have a fair opportunity to participate in the oral communications or receive copies of the written communications.

(4) The confidentiality provisions of section 370(h) of this title shall apply to any communications described in this subsection.

§ 368. Investigation and Findings

(a) In General.—If the Council does not dismiss the complaint or conclude review under section 367(a)(1) of this title, the Council shall open an investigation.

(b) Testimony and Subpoenas.—The Council is authorized to hold hearings, to take sworn testimony, and to issue subpoenas and subpoenas duces tecum. Subpoenas and subpoenas duces tecum shall be issued at the direction of a majority of the Council and shall be served in the manner provided in rule 45(c) of the Federal Rules of Civil Procedure for subpoenas and subpoenas duces tecum issued on behalf of the United States or an officer or agency thereof.

(c) Closure.—

(1) If at any time during the investigation—

(a) a majority of the Council finds that appropriate corrective action has been taken or that action on the complaint is no longer necessary because of intervening events, it may conclude the investigation; or

(b) a majority of the Council determines that the investigation should not have been opened for lack of a factual basis or because the facts alleged do not support a finding that the subject justice violated the law in connection with his or her judicial service, violated an applicable ethical canon or a provision of an applicable code of conduct, or engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts, it may dismiss the complaint and close the investigation.

(2) If the Council concludes or closes the investigation under paragraph (1), it shall issue a written order stating its reasoning for concluding or closing the investigation and transmit copies such written order to the complainant and to the subject justice.

(d) Subject of Investigation.—If in the course of its investigation, the Council discovers evidence establishing that the subject justice has violated the law in connection with his or her judicial service, violated an applicable ethical canon or a provision of an applicable code of conduct, or engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts, the Council shall review that evidence and may issue findings on it even if the evidence does not relate to the subject of the complaint.

(e) Findings and Recommendations.—

(1) At the conclusion of the investigation, the Council shall issue a comprehensive written report detailing the findings of its investigation and presenting recommendations for appropriate disciplinary or remedial action if the Council believes any such action is warranted.

(2) The findings and recommendations for appropriate disciplinary or remedial action shall each issue at the direction of a majority vote of the Council. Each member of the Council may issue additional statements included in the report clarifying or explaining his or her views regarding the findings and recommendations for appropriate disciplinary or remedial action.

(3) The findings and recommendations for appropriate disciplinary or remedial action shall consider whether the subject justice cooperated with the investigation, and the Council may draw inferences from a lack of cooperation by the subject justice.

(4) Appropriate disciplinary or remedial action that the Council can recommend may include:

(A) recusal by the subject justice recuse in a case or petition, or multiple cases or petitions if the complaint concerns a frequent Supreme Court litigant;

(B) training by the subject justice, arranged by the Federal Judicial Center, on a topic or topics related to the matter of the complaint;

(C) public or private admonishment of the subject justice;

(D) a request for the subject justice to resign or retire under subsection 371(a) or subsection 372(b) of this title; or

(E) other appropriate disciplinary or remedial measures.

(5) The Council shall immediately transmit the report to the complainant, the Chief Justice, the associate justices, and the Chair and Ranking Member of the Judiciary Committees of the House and Senate.

(6) If the Council determines that consideration of impeachment may be warranted, it shall so certify and transmit the determination and the record of proceedings to the House of Representatives for whatever action the House of Representatives considers to be necessary. Upon receipt of the determination and record of proceedings in the House of Representatives, the Clerk of the House of Representatives shall make available to the public the determination and any reasons for the determination.

§ 369. Remedial or Disciplinary Action

(a) In General.—Within 30 business days of receiving the report from the Council under section 368 of this title, the Chief Justice, or, if the Chief Justice is the subject justice, the senior associate justice, shall take any disciplinary or remedial action with respect to the subject justice that the Chief Justice or senior associate justice, as applicable, believes is appropriate. The Chief Justice, or senior associate justice, as applicable, shall write a report describing the disciplinary or remedial action taken, and shall make the report public via posting on a judiciary website.

(b) Explanation.—If the Chief Justice or senior associate justice, as applicable, does not take a disciplinary or remedial action recommended by the Council in its report, he or she shall issue a written statement explaining his or her reasons for not taking such action and shall make the report public via posting on a judiciary website.

(c) Rule of Construction.—Nothing in this chapter shall be construed to limit the authority of the Supreme Court of the United States or any other individual, agency, bureau, department, or other entity or person in the Federal government to take remedial or disciplinary action with respect to a justice or judge.

§ 370. Rules

(a) The Council may prescribe such rules for the conduct of proceedings and investigations under this chapter as it considers to be appropriate.

(b) Required Provisions.—Rules prescribed under subsection (a) shall contain provisions requiring that—

(1) adequate prior notice of any investigation be given in writing to the subject justice;

(2) the subject justice be afforded the opportunity to retain counsel; and

(3) the subject justice be afforded an opportunity to appear (in person or by counsel) at any proceedings conducted by the Council, to present oral and documentary evidence, to compel the attendance of witnesses or the production of documents, to cross-examine witnesses, and to present argument orally or in writing.

(c) The Council may employ an outside entity to assist the Council in its investigation.

(d) Procedures.—Any rule prescribed under this section shall be made or amended only after giving appropriate public notice and an opportunity for comment. Any such rule shall be a matter of public record. No rule promulgated under this section may limit the period of time within which a person may file a complaint under this chapter.

(e) Majority Rule.—Any decisions by the Council must be approved by a majority of the members on the Council.

(f) Disqualification.—A member of the Council shall disqualify himself or herself from any Council proceedings or decisions in which the member's impartiality might reasonably be questioned.

(g) Amicus Curiae.—No person shall be granted the right to intervene or to appear as amicus curiae in any proceeding before the Council under this chapter.

(h) Confidentiality of Proceedings.—All papers, documents, and records of proceedings related to investigations conducted under this chapter shall be confidential and shall not be disclosed by any person in any proceeding except—

(1) as part of a written order issued by the Council to dismiss a complaint or conclude or close an investigation;

(2) as part of a written report issued by the Council;

(3) if the Council, or the Senate or the House of Representatives by resolution, releases any such material which is believed necessary to an impeachment investigation or trial of a Justice under article I of the Constitution; or

(4) if such disclosure is authorized in writing by the subject justice.

(i) Public Availability of Written Orders.—Each written order issued by the Council under this chapter shall be made available to the public on a judiciary website.

(j) Redactions.—

(1) The Council may—

(A) redact the name of the subject justice from an order to dismiss a complaint or conclude or close an investigation; and

(B) implement any redactions in an order or report that it believes are necessary to ensure the safety of, prevent undue embarrassment to, or protect the privacy of a subject justice or other individual, or if the interest of justice demands.

(2) The Council shall provide unredacted copies of orders and reports to the Chief Justice (or, if the Chief Justice is the subject justice, the most senior associate justice) and to the subject justice.

(k) Reimbursement of expenses.— Upon the request of a subject justice, the Council may, if the complaint has been dismissed under section 367(a)(1) or 368(c), recommend that the Director of the Administrative Office of the United States Courts award reimbursement, from funds appropriated to the Federal judiciary, for those reasonable expenses, including attorneys' fees, incurred by the subject justice during the investigation which would not have been incurred but for the requirements of this chapter.

(l) Other Provisions and Rules Not Affected.—Except as expressly provided in this chapter, nothing in this chapter shall be construed to affect any other provision of this title, the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, the Federal Rules of Appellate Procedure, or the Federal Rules of Evidence.”

§ 370a. Technical And Conforming Amendment

The following heading shall be added after “Complaints Against Judges and Judicial Discipline (§§ 351 – 364)”:

“16a. Complaints against Justices. (§§ 365 – 370)”