

**From:** [Ray Cohen](#)  
**To:** [AO Code and Conduct Rules](#)  
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Raymond Cohen as an Individual  
Commenting on [Rules for Judicial-Conduct and Judicial-Disability Proceedings](#)

Raymond Cohen  
758 Walnut Street  
Paramus, NJ 07652  
201-447-1347  
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### ETHIC COMPLAINTS THAT ARE PROCESSED FOLLOW THE RULES AND VIOLATED THE LAW

Out of 9,416 ethic complaints over 10 years including 103 by attorneys, 5 had action taken. The Federal Judiciary is incapable of policing itself. “Almost all complaints in recent years have been dismissed because they do not follow the law about such complaints. The law says that complaints about judges' decisions and complaints with no evidence to support them must be dismissed.” (See link on US Courts' website <http://www.uscourts.gov/sites/default/files/raymond-cohen-comments.pdf>)

The “Rules for Judicial Conduct and Judicial-Disability Proceedings on page 52 at “h” calls for the Disqualification of Members of Committee on Judicial Conduct and Disability where it states that “No member of the Committee on Judicial Conduct and Disability is disqualified from participating in any proceeding under the Act or these Rules...unless the member believes that the consultation would prevent fair-minded participation.”

*In re Complaint of Judicial Misconduct* states that if the judge believes that he or she can be **fair-minded** in his or her participation, recusal is not warranted. The fair-minded standard was changed in 1973 and is superseded by 28 U.S. Code 455(a).because the “Rules for Judicial Conduct and Judicial-Disability Proceedings” calls it a proceeding

28 U. S. Code 455(a) states that  
“Any justice, judge, or magistrate [judge of the United States](#) shall disqualify himself in any [proceeding](#) in which his impartiality might reasonably be questioned.”

THE HISTORY OF § 455 (a) Prior to 1974, § 455 required a federal judge to disqualify himself in any case in which he has a substantial interest, has been of counsel, is or has been a material witness, or is so related to or connected with any party or his attorney as to render it improper, in his opinion, for him to sit on the trial, appeal, or other proceedings therein. In 1974, responding to certain circuits' articulation of a "duty to sit" in close cases, and criticism of § 455's subjectiveness, Congress amended § 455. As explicitly noted in the legislative history of § 455, Congress' objectives in adopting Canon 3C were to (1) conform § 455 to the ABA Code; (2) increase public confidence in the impartiality of the judiciary by replacing the subjective standard of the former § 455 with an objective standard; and (3) eradicate the "duty

to sit. In keeping with these objectives, Congress attempted to "broaden and clarify the grounds for judicial disqualification." The current § 455 contains two subsections where recusal may be appropriate. Subsection (a) establishes the general standard for disqualification. It provides that any judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." The legislature incorporated an objective standard in § 455(a) for measuring the appearance of partiality "to promote public confidence in the impartiality of the judicial process by saying, in effect, if there is a reasonable factual basis for doubting the judge's impartiality, he should disqualify himself and let another judge preside over the case.'" Furthermore, by making disqualification mandatory whenever a judge's "impartiality might reasonably be questioned," the amendment eradicated the duty-to-sit.' In this manner, the changes to § 455 codified each of Congress' stated objectives. Apart from the objective standard of § 455(a), § 455(b) enumerates specific circumstances, which if present, require a judge to recuse himself.'(Journal of Criminal Law and Criminology Volume 85 Issue 4 Spring Article 10 Spring 1995 A Look at the Extrajudicial Source Doctrine under 28 U.S.C. 455 by Toni-Ann Citera).

Based upon the above, the Rules for Judicial Conduct and Judicial-Disability Proceedings need to be changed so that the "fair-minded" standard is abolished and the standards in § 455 used since Ethics Complaints are adjudicated in a "Proceedings."

Thank you.

Very truly yours,

Raymond Cohen