

[ORAL ARGUMENT NOT SCHEDULED]

No. 20-5288

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

THE HON. JOHN R. ADAMS,

Plaintiff-Appellant,

v.

JUDICIAL COUNCIL OF THE SIXTH CIRCUIT and COMMITTEE ON
JUDICIAL CONDUCT AND DISABILITY OF THE JUDICIAL
CONFERENCE OF THE UNITED STATES,

Defendants-Appellees.

On Appeal from the United States District Court
for the District of Columbia

BRIEF FOR APPELLEES

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rule 28(a)(1), the undersigned counsel certifies as follows:

A. Parties and Amici

Except for the following, all parties, intervenors, and amici appearing before the district court and in this Court are listed in the plaintiff-appellant's Certificate as to Parties, Rulings, and Related Cases:

The complaint named the Honorable R. Guy Cole, Jr. and the Honorable Anthony J. Scirica as additional defendants. Both were voluntarily dismissed through a stipulation of the parties. ECF No. 9. They were no longer parties before the district court at the time of the ruling under review and are not defendants-appellees before this Court.

B. Ruling Under Review

A reference to the ruling at issue appears in the plaintiff-appellant's Certificate as to Parties, Rulings, and Related Cases. The memorandum opinion (JA129-47) is unpublished but is available on Westlaw at 2020 WL 5409142.

C. Related Cases

This case has not previously been before this Court or any other court. Counsel is aware of no related cases within the meaning of D.C. Circuit Rule 28(a)(1)(C).

/s/ Kevin B. Soter

Kevin B. Soter

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GLOSSARY

Act	Judicial Councils Reform and Judicial Conduct and Disability Act of 1980
JA	Joint Appendix
Judicial Council	Judicial Council of the Sixth Circuit
Review Committee	Committee on Judicial Conduct and Disability of the Judicial Conference of the United States

INTRODUCTION

This case challenges the validity of an order that has since been withdrawn and is no longer in effect. The issue it originally presented is no longer a live dispute between the parties and the courts accordingly lack jurisdiction to entertain the claims here.

When United States District Judge John R. Adams filed this suit, he was the subject of an ongoing investigation, overseen by the Judicial Council of the Sixth Circuit, into whether he suffered from a disability that rendered him unable to discharge the duties of his office. Judge Adams had been reprimanded for past misconduct related to his mistreatment of magistrate judges and ordered to undergo an independent mental health evaluation to help determine whether he suffered from a disability. Judge Adams failed in his attempts to overturn the evaluation requirement. Rather than comply, Judge Adams brought this action as a collateral attack on the then-ongoing investigation, seeking injunctive and declaratory relief based on the alleged unlawfulness of compelling him to undergo the evaluation.

While this case was pending, however, the Judicial Council determined that, due to improvements in Judge Adams's behavior, neither the mental health evaluation nor any further investigation or discipline was necessary. The Judicial Council accordingly issued an order stating that the evaluation was no longer

necessary in light of these changed circumstances and ended the administrative proceedings.

The district court was correct to conclude that these developments mooted this case. Judge Adams's improved behavior has removed the basis for requiring a mental health evaluation, and there is no reasonable expectation that the evaluation directive will be reimposed. Judge Adams nevertheless argues that a court should opine on the lawfulness of the earlier, withdrawn order compelling him to obtain a mental health evaluation, contending that he suffers an ongoing reputational harm from having previously been ordered to undergo such an evaluation. But the relief Judge Adams seeks amounts to exactly the type of advisory opinion Article III prohibits, so this case is moot.

STATEMENT OF JURISDICTION

Plaintiff invoked the district court's jurisdiction under 28 U.S.C. § 1331. JA8 (¶ 1). On September 9, 2020, the district court granted defendants' motion to dismiss, concluding that it lacked jurisdiction because the case was moot. JA128-47. Plaintiff filed a notice of appeal on September 11, 2020. JA148. This Court has jurisdiction over this appeal from the district court's final judgment. 28 U.S.C. § 1291.

STATEMENT OF THE ISSUE

Whether the district court correctly concluded that this case is moot because the Judicial Council ended the administrative proceedings involving Judge Adams and withdrew the directive that he undergo a mental health evaluation.

PERTINENT STATUTES

Pertinent statutes are reproduced in the addendum to this brief.

STATEMENT OF THE CASE

A. Statutory Background

For decades, federal judges have been empowered by statute to “put their own house in order.” *Chandler v. Judicial Council of the Tenth Circuit*, 398 U.S. 74, 85 (1970) (quotation marks omitted). In 1939, Congress created judicial councils of the United States circuit courts, which are tasked with ensuring “that the work of the district courts” is “effectively and expeditiously transacted.” Pub. L. No. 76-299, § 306, 53 Stat. 1223, 1224 (1939). To that end, Congress has directed that each judicial council “shall make all necessary and appropriate orders for the effective and expeditious administration of justice within its circuit.” 28 U.S.C. § 332(d)(1).

In 1980, Congress vested authority in the judicial councils to identify and correct instances of judicial misconduct and disability. *See* Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 (the “Act”), Pub. L. No.

96-458, 94 Stat. 2035. The relevant provisions of the Act are currently codified at 28 U.S.C. §§ 351-364.¹

Under the Act, the Judiciary has the authority to investigate and resolve allegations that a judge has “engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts” or that the “judge is unable to discharge all the duties of office by reason of mental or physical disability.” 28 U.S.C. § 351(a). If warranted by the circumstances, the chief judge of the relevant circuit may appoint a “special committee,” comprising the chief judge and an equal number of circuit and district judges, to “conduct an investigation as extensive as it considers necessary.” *Id.* § 353(a), (c). Upon the conclusion of its investigation, the special committee must report its findings and recommendations to the circuit’s judicial council. *Id.* § 353(c). The judicial council, in turn, “may conduct any additional investigation which it considers to be necessary,” *id.* § 354(a)(1)(A), and either dismiss the complaint, *id.* § 354(a)(1)(B), or “take such action as is appropriate to assure the effective and expeditious administration of the business of the courts within the circuit,” *id.* § 354(a)(1)(C).

¹ These provisions are set out in the Addendum. Between 1980 and 2002, most of these provisions were found at 28 U.S.C. § 372(c). In 2002, Congress enacted the Judicial Improvements Act of 2002, which amended these provisions and directed recodification. *See* Pub. L. No. 107-273, §§ 11041-11043, 116 Stat. 1758, 1848. Prior amendments were made in 1990 through the Judicial Improvements Act of 1990, Pub. L. No. 101-650, 104 Stat. 5098.

Once the judicial council has acted in consideration of a special committee's report, a complainant or subject judge may file a petition for review with the Committee on Judicial Conduct and Disability of the Judicial Conference of the United States (the "Review Committee"). *See* 28 U.S.C. §§ 331, 357(a). The Act expressly precludes judicial review of the Review Committee's decisions, stating: "Except as expressly provided in [the provisions allowing for review by the Judicial Conference or a judicial council], all orders and determinations, including denials of petitions for review, shall be final and conclusive and shall not be judicially reviewable on appeal or otherwise." *Id.* § 357(c).

B. Factual and Procedural Background

1. On February 15, 2013, four district judges of the United States District Court for the Northern District of Ohio filed a complaint under the Act, *see* 28 U.S.C. § 351(a), alleging judicial misconduct by their colleague, United States District Judge John R. Adams. JA32. The complaint alleged that Judge Adams engaged in "conduct prejudicial to the effective and expeditious administration of the business of the courts," 28 U.S.C. § 351(a), through "ongoing disruptive behavior directed at the judges of the district." JA32-33.

The complaint focused on an incident earlier that month involving Judge Adams's treatment of a magistrate judge, which the Judicial Council of the Sixth Circuit (the "Judicial Council") would ultimately describe as "only the most

glaring example of Judge Adams’s hostility toward all magistrate judges.” JA38. On Friday, February 1, Judge Adams had filed an order (the “Show Cause Order”) directing a magistrate judge to show cause, by 4:00 p.m. the following Monday, why the magistrate judge should not be held in contempt or otherwise sanctioned for failing to comply with Judge Adams’s standard scheduling order for social security cases (requiring magistrate judges to file a report and recommendation within 270 days of the complaint’s filing). JA65-66. Judge Adams had not given the magistrate judge advance notice of the Show Cause Order or the imminent response deadline it imposed. JA66.

The magistrate judge learned about the Show Cause Order the next day, a Saturday. JA66. The magistrate judge, who had never before missed one of Judge Adams’s deadlines, emailed Judge Adams that evening, explaining that the deadline had been miscalculated due to a clerical error—for which the magistrate judge took responsibility. *Id.* The magistrate judge then spent the weekend completing the report and recommendation, and, concerned about the threat of being held in contempt, began arranging legal representation for a potential hearing. *Id.* The following Monday, a law clerk for Judge Adams called the magistrate judge to inform him that Judge Adams accepted the explanation for missing the deadline. *Id.* Judge Adams then issued an order deeming the Show Cause Order “satisfied.” *Id.*

The misconduct complaint followed an earlier effort to address the concern about Judge Adams's conduct. "The court's district judges expressed immediate concern with regard to the effects of the Show Cause Order on the magistrate judge and its impact on the administration of justice within the court." JA66. After a unanimous vote, the Chief Judge of the Northern District of Ohio sent Judge Adams a letter requesting that Judge Adams vacate the order and strike it from the docket. JA66-67. Judge Adams refused. JA67. He instead stated that the order had been "precisely the message that needed to be sent" and that he could "think of nothing other than the threat of contempt" to appropriately obtain compliance with his scheduling orders in light of "the history of defiance of the Magistrate Judges." JA47 (quoting Judge Adams's response letter).

In response to the judicial misconduct complaint, the acting Chief Judge of the Sixth Circuit appointed a special committee, *see* 28 U.S.C. § 353(a)(1), which began by interviewing fourteen witnesses, including Judge Adams as well as several of his colleagues, and by reviewing documents. JA70-71. In the course of its investigation, the special committee encountered evidence that led its members to become concerned that Judge Adams may have a disability. The committee was concerned that a disability may have (1) prevented him from "maintaining a professional relationship with his colleagues," (2) prevented him from "shouldering his responsibilities as a member of the District Court," and (3) caused

him “to make unfounded and destructive attacks against his colleagues.” JA49-50. Accordingly, in May 2014, the acting Chief Judge expanded the investigation, at the special committee’s request and with notice to Judge Adams, to include an inquiry into whether Judge Adams suffered from a disability. JA71.

The special committee then retained a forensic psychiatrist to perform whatever evaluations would be necessary to allow the psychiatrist to “reach an opinion as to Judge Adams’s emotional and mental state.” JA50 (brackets omitted). Correspondingly, the special committee requested that Judge Adams undergo the necessary testing and also provide records of any earlier treatment or evaluation. JA71.² Judge Adams repeatedly refused to do either, despite being advised that failure to cooperate with these investigative requests might constitute misconduct. *Id.* Judge Adams’s non-cooperation left the special committee’s retained psychiatrist unable to render an expert opinion or diagnosis. *Id.* Based on materials provided to him, however, the psychiatrist concluded that there was “a reasonable basis for concern as to Judge Adams’s mental or emotional state.” JA51 (brackets omitted).

² During earlier discussions, Judge Adams had revealed that he had undergone an evaluation by a psychiatrist he selected (who opined that Judge Adams did not suffer from a mental health disorder), but the special committee determined that the information Judge Adams provided was insufficient. *See* JA12-13 (¶¶ 19-22).

In December 2014, the acting Chief Judge again expanded the investigation, at the special committee's request and with notice to Judge Adams, to include a determination of whether Judge Adams's non-cooperation constituted misconduct. JA51-52. Judge Adams continued to refuse to undergo the requested testing or produce the requested records. JA72.

After holding a three-day fact-finding hearing during which eleven witnesses testified and hundreds of documents were received into evidence, the special committee submitted a unanimous report to the Judicial Council. JA72-73. The special committee found that, starting in 2008, Judge Adams's "behavior changed sharply," apparently provoked by a vote to select someone other than his preferred candidate for a magistrate judge position. JA37. Thereafter, Judge Adams "ceased interacting collegially with other members of the court" (district judges and magistrate judges alike), "repeatedly expressed a general hostility towards and contempt for the court's magistrate judges," "refused to participate in any court administration or governance," and "routinely attempted to undermine his colleagues as they administer[ed] the court's business." JA37-43. The special committee also made detailed findings about the February 2013 Show Cause Order, which "harmed the morale of the magistrate judges" and "diminished the trust between magistrate judges and district judges," as it resulted in the magistrate

judges having “to prioritize Judge Adams’s Social Security cases above all other cases on their dockets for fear of provoking Judge Adams’s ire.” JA48.

The special committee detailed the reasons why both the committee and its retained psychiatrist were concerned about a mental or emotional disability and explained how Judge Adams’s refusal to cooperate with repeated requests for evaluation and documentation impeded its investigation. JA49-52. The committee also explained why it disagreed with Judge Adams’s claims that the request to undergo the mental health evaluation violated his Fourth Amendment rights, that the proceedings did not comport with due process, and that his treatment of magistrate judges did not constitute cognizable misconduct. JA52-56.

2. In February 2016, the Judicial Council issued a unanimous Order and Memorandum containing its findings and remedial actions. JA31-60. Based on its review of the special committee’s findings and recommendations and Judge Adams’s written and oral objections, the Judicial Council made the following findings: (1) that Judge Adams had, through the February 2013 Show Cause Order, committed “conduct prejudicial to the effective and expeditious administration of the business of the courts,” *see* 28 U.S.C. § 351(a); (2) that it was not possible to determine whether Judge Adams was “unable to discharge” the duties of his office by reason of disability, *see* 28 U.S.C. § 351(a), because of his refusal to comply with the special committee’s directive that he be evaluated by the special

committee's retained psychiatrist; and (3) that Judge Adams "committed misconduct by refusing to cooperate" with this evaluation requirement, because that non-cooperation "prejudiced the effective and expeditious investigation of this matter." JA57.

In light of these findings, the Judicial Council issued a public reprimand of Judge Adams for the February 2013 Show Cause Order, explaining that Judge Adams's behavior surrounding the incident was neither "normal" nor "acceptable" and led to harmful consequences for the business of the courts. JA58-59; *see* 28 U.S.C. § 354(a)(2)(A)(iii) (providing for public reprimands by judicial councils). The Judicial Council also directed the special committee to retain jurisdiction for two years "to ensure that Judge Adams does not engage in additional inappropriate behavior involving magistrate judges." JA59.

As to whether Judge Adams had "a mental or emotional disability," the Judicial Council concluded that further investigation was needed. JA59; *see also* 28 U.S.C. § 354(a)(2)(B)(i) (providing that one of the actions available to a judicial council is to certify that a judge is disabled). It therefore ordered Judge Adams to undergo the mental health evaluation previously requested by the special committee (the results of which would be made available for the Judicial Council's confidential review) and directed him to submit to any treatment or counseling deemed necessary by the psychiatrist. JA59-60. The Judicial Council stated that,

if Judge Adams were to continue to refuse to undergo the evaluation, it intended to request that he voluntarily retire. JA60; *see* 28 U.S.C. § 354(a)(2)(B)(ii) (judicial council action related to an Article III judge may include requesting voluntary retirement).

Additionally, given its concerns about a potential disability and the possibility for inappropriate behavior during the continued pendency of the investigation, the Judicial Council directed that Judge Adams's docket be transferred to other judges and suspended assignment of new cases to Judge Adams for two years. JA59; *see* 28 U.S.C. § 354(a)(2)(A)(i) (providing for temporary docket restrictions by judicial councils). The Judicial Council explained, however, that the restriction on new case assignments might be suspended if warranted by the results of the mental health evaluation. JA60.

Judge Adams filed a petition for review with the Review Committee, which issued an August 2017 order partially denying and partially granting his petition. JA61-100. The Review Committee upheld the Judicial Council's findings that Judge Adams had committed misconduct, both by issuing the Show Cause Order and through his unwarranted refusal to cooperate with the requirement that Judge Adams undergo a mental health evaluation. In so doing, it rejected Judge Adams's factual and legal objections, which included his claim that the evaluation requirement was contrary to statutory and constitutional authority. JA76-94. The

Review Committee also upheld the Judicial Council's public reprimand for the Show Cause Order, the directive that Judge Adams comply with the evaluation requirement and any related treatment, and the directive that the special committee retain jurisdiction for up to two years. JA94-98.

But the Review Committee vacated the Judicial Council's order as to the temporary reassignment of Judge Adams's cases and suspension of the assignment of new cases, concluding that the findings made as of that time did not provide a sufficient basis for restricting Judge Adams's docket. JA96-97. The Review Committee explained, however, that such restrictions might become warranted should evidence later establish Judge Adams's incapacity. JA97.

"Having rejected Judge Adams's objections," the Review Committee explained that it "anticipate[d] that Judge Adams will expeditiously comply with the Judicial Council's Order, as affirmed by [the Review] Committee, that he submit to a mental health examination by a psychiatrist selected by the Special Committee." JA99. It explained that "continued failure to cooperate" could support sanctions by the Judicial Council, including temporary docket restrictions. *Id.*

3. Rather than "expeditiously comply[ing] with the Judicial Council's Order, as affirmed by [the Review] Committee," JA99, Judge Adams filed this suit against the Judicial Council and the Review Committee in September 2017. His

complaint sought, as relevant here, an injunction and related declaratory relief so that he would not have “to undergo a compelled psychiatric examination, to be disciplined for objecting in good faith to undergoing a compelled examination, . . . to accept any compelled medical treatment,” or to suffer any “limitation of Plaintiff’s docket, . . . further investigation into Plaintiff’s conduct on the bench, monitoring of Plaintiff’s conduct for two years, or other special restrictions on his actions as a federal judge.” JA29. As bases for the requested relief, Judge Adams alleged that the Act is unconstitutionally vague, that the evaluation requirement violates statutory and constitutional authority, that the investigation’s procedures failed to comport with the Due Process Clause, and that the challenged decisions interfered with separation of powers by amounting to a “constructive impeachment” of an Article III judge. JA23-29 (¶¶ 57-90). Judge Adams’s suit does not challenge the Judicial Council’s determination, affirmed by the Review Committee, that Judge Adams engaged in misconduct by issuing the Show Cause Order.

Defendants filed a motion to dismiss. The motion contended that the Act’s provision barring judicial review of Review Committee decisions, 28 U.S.C. § 357(c), deprived the district court of subject-matter jurisdiction over all of Judge Adams’s as-applied challenges, and that any facial constitutional challenges should be dismissed for failure to state a claim upon which relief can be granted. ECF No.

10. Before that motion had been fully briefed, however, defendants filed a second motion to dismiss, contending that the case had become moot as a result of a June 2018 Order and Memorandum issued by the Judicial Council. ECF No. 20.³

4. The Judicial Council's June 2018 decision explained that, following the Review Committee's decision the year before, the Judicial Council had, consistent with that decision, tasked the special committee with resuming its investigation. JA103. The special committee reported that Judge Adams "did not intend to undergo the required psychiatric examination" and had opted instead to file this suit "challenging the authority of the Judicial Council and the [Review] Committee to order the examination." JA103-04. The special committee recommended, consistent with the Review Committee's explanation that continued refusal to comply with the evaluation requirement could provide a basis for additional remedial action, that Judge Adams not be assigned new cases for six months. *Id.*

The Judicial Council considered, in addition to that special committee recommendation, a separate proposal to resolve the matter without imposing any docket restrictions. JA104. Consistent with that proposal, the judges of the

³ Plaintiff had filed an opposition to the first motion to dismiss (ECF No. 17), but the parties stipulated to stay defendants' deadline to file a reply brief pending resolution of the mootness issue. ECF No. 19; *see also* JA4 (Minute Order of September 5, 2018 staying reply brief deadline). No reply brief was ultimately filed, and the district court never reached the issues raised in the first motion to dismiss. *See* JA147 n.4.

Northern District of Ohio reported that Judge Adams’s “behavior had improved and stabilized,” that “there had been no recurrence of the sort of behavior that occasioned the misconduct finding,” and that “there had been no recent reports of courtroom misbehavior.” *Id.*

Following its “reassessment” of the matter, and in accord with the unanimous views of the judges of the Northern District of Ohio, the Judicial Council determined that docket restrictions and “further sanction” were not necessary. JA104. Consistent with that June 2018 decision, Judge Adams was no longer required to comply with the evaluation requirement, nor was any further active investigation ongoing as of that time. The Judicial Council did, however, “retain[] jurisdiction” for one more year, stating that it intended to “dismiss the complaint” at the end of that period as long as there was no further misconduct—which it was “hopeful” would be the case. *Id.*

In June 2019, the Judicial Council issued its final order. JA106. The Judicial Council “conclude[d] that no further misconduct by Judge Adams ha[d] occurred” and accordingly “dismiss[e]d the complaint” and “terminated” its jurisdiction over the matter. *Id.* The Judicial Council explained that it was “leaving in place the prior unchallenged components” of its 2016 order, but that “the challenged requirements of [that] order, including the directive that Judge Adams undergo a mental health evaluation, are no longer in effect.” *Id.*

5. Based on the Judicial Council’s June 2019 order and the parties’ existing briefing on whether the June 2018 order had mooted this case, the district court directed Judge Adams to address why the case should not be dismissed as moot. JA6 (Minute Order of July 8, 2019).⁴ In response, Judge Adams filed a motion seeking leave to amend his complaint. *See* JA107-27 (proposed amended complaint). Judge Adams proposed to seek only a declaratory judgment stating that the directive to obtain a mental health evaluation had been issued without statutory or constitutional authority, had been issued pursuant to unconstitutionally vague provisions of the Act, and had been issued in violation of procedural due process, rendering invalid the directive and the finding that Judge Adams committed misconduct by refusing to comply. *See* JA123-27 (¶¶ 61-77 and requests for relief).

The district court granted defendants’ motion to dismiss the case as moot and denied Judge Adams’s motion to amend. JA128-47. The court explained that “there is no question that the underlying matter before the Judicial Council has been terminated” and there was “no reasonable expectation that the challenged

⁴ In March 2019, the district court, anticipating that “circumstances [were] likely to change within a relatively short period of time”—that is, by June 2019—had ordered that defendants’ mootness motion be “held in abeyance pending completion of the scheduled review of the judicial conduct complaint.” JA5 (Minute Order of March 4, 2019); *see also* ECF Nos. 23-25 (transcript of February 21, 2019 status conference during which the district court proposed abeyance, and the parties’ written responses to that proposal).

actions will recur,” as “nothing in the record” would suggest that any future “action of the plaintiff will again provoke the chain of highly unusual circumstances that culminated in the unique order that was challenged in this case.” JA140-41. The court further reasoned that, with “no pending proceeding, no ongoing review, and no shoe that can drop,” there was no ongoing injury to Judge Adams that a favorable decision could redress. JA141.

The court acknowledged that Judge Adams had, through his proposed amended complaint, sought to emphasize claimed ongoing effects on his reputation. JA141. But the court explained that those allegations did not save the case from mootness (and thus the proposed amendments were futile) because Judge Adams failed to “allege any ongoing tangible harm to plaintiff or his reputation that continues to flow from the now-terminated misconduct proceedings, beyond whatever vague negative impressions may arise from the fact that the misconduct proceeding took place and sanctions were ordered.” JA145. The court concluded that “even if plaintiff were to prevail in the action, there is no meaningful relief that the Court could grant to dispel the taint of the now dismissed matter.” JA146. In short, the district court reasoned that because Judge Adams had already “succeeded in his quest to have the Judicial [Council] withdraw its objectionable requests,” this case is moot. JA130.

SUMMARY OF ARGUMENT

Judge Adams brought this lawsuit as a collateral attack on an ongoing investigation into his misconduct and potential disability. He sought limited relief, contending that the Judicial Council and Review Committee did not have the authority to require him to undergo a mental health evaluation. While this suit was pending, however, the Judicial Council withdrew the directive that he undergo a mental health evaluation and terminated the investigation and any further proceedings. The previous directive to obtain an evaluation is no longer in effect and there is no reasonable expectation that it will be reinstated. Judge Adams's challenge is therefore moot.

Judge Adams attempts to save this case from mootness by contending that he continues to suffer a reputational injury flowing from the Judicial Council's earlier order directing him to undergo a mental health evaluation and its previous finding that he committed misconduct by refusing the special committee's request that he do so—what Judge Adams labels the “examination order” and the “misconduct finding.” *See* JA57, 59-60; Pl. Br. 14-27. But “case law makes clear that where reputational injury is the lingering effect of an otherwise moot aspect of a lawsuit, no meaningful relief is possible and the injury cannot satisfy the requirements of Article III.” *Foretich v. United States*, 351 F.3d 1198, 1212 (D.C. Cir. 2003). And the reputational injuries Judge Adams alleges here are precisely

such “lingering effects” of Judge Adams’s now-moot attempt to prospectively invalidate the directive that he undergo a mental health evaluation. A judicial opinion addressing defendants’ authority to compel a mental health evaluation cannot provide anything meaningful to Judge Adams that he has not already obtained through the withdrawal of the underlying directive to obtain the evaluation.

STANDARD OF REVIEW

This Court reviews the district court’s dismissal of a complaint on mootness grounds de novo. *Schmidt v. United States*, 749 F.3d 1064, 1068 (D.C. Cir. 2014). This Court reviews the district court’s denial of leave to amend a complaint for abuse of discretion. *Williams v. Lew*, 819 F.3d 466, 471 (D.C. Cir. 2016).

ARGUMENT

THIS CASE SOUGHT RELIEF FROM A REQUIREMENT THAT IS NO LONGER IN PLACE.

- A. Because there is no reasonable expectation that Judge Adams will be required to undergo a mental health evaluation, a decision in this case would not provide meaningful relief.**

Judge Adams filed this lawsuit in September 2017 seeking to invalidate defendants’ directives requiring him to undergo a mental health evaluation. Judge Adams’s complaint requested an injunction and a related declaratory judgment so that he would not have “to undergo a compelled psychiatric examination, to be disciplined for objecting in good faith to undergoing a compelled examination, . . .

to accept any compelled medical treatment,” or be faced with any of the other possible consequences that might flow from an ongoing investigation—including “limitation of Plaintiff’s docket,” “further investigation into Plaintiff’s conduct on the bench,” “monitoring of Plaintiff’s conduct for two years,” and, more generally, the possibility of “other special restrictions on his actions as a federal judge.”

JA29. At the time this suit was filed, the Review Committee had recently affirmed that Judge Adams was required to undergo a mental health evaluation and had warned him that he could be subject to future discipline should he continue to refuse to do so. *See* JA98-99 (Review Committee’s August 2017 decision describing future possible investigative and remedial steps). At that time, Judge Adams’s claim that there was “neither statutory nor constitutional power to compel Plaintiff to undergo an involuntary psychiatric examination,” JA24 (¶ 64), was therefore closely linked to the then-ongoing investigation.

Since then, however, “events have so transpired that [a] decision will neither presently affect the parties’ rights nor have a more-than-speculative chance of affecting them in the future,” mooting this case. *J.T. v. District of Columbia*, 983 F.3d 516, 522 (D.C. Cir. 2020) (quoting *Clarke v. United States*, 915 F.2d 699, 701 (D.C. Cir. 1990) (en banc)). In 2018, the Judicial Council, based on its “reassessment” and informed by reports of Judge Adams’s improved behavior, announced that the administrative proceedings would end a year later absent any

further misconduct, with “no further sanction” in the meantime. JA104. And a year later the Judicial Council issued an order “dismiss[ing] the [misconduct] complaint against Judge Adams,” “terminat[ing]” its jurisdiction over the matter, and confirming that “the directive that Judge Adams undergo a mental health evaluation” was “no longer in effect.” JA106. In short, the Judicial Council withdrew the underlying directive that Judge Adams undergo an evaluation. And as a result, there is no longer any basis for judicial action that would alter the legal relationship between the parties.

Intervening events arising from defendants’ voluntary conduct moot a case if: “(1) ‘there is no reasonable expectation that the alleged violation will recur,’ and (2) ‘interim relief or events have completely and irrevocably eradicated the effects of the alleged violation.’” *Larsen v. U.S. Navy*, 525 F.3d 1, 4 (D.C. Cir. 2008) (cleaned up) (quoting *County of Los Angeles v. Davis*, 440 U.S. 625, 631 (1979)). Those criteria are satisfied here.

First, there is no reasonable expectation that defendants will resurrect the directive that Judge Adams undergo a mental health evaluation or take any other action that inflicts a future injury. The Judicial Council in June 2019 relinquished its jurisdiction and dismissed the misconduct complaint given the lack of any recent “recurrence of the sort of behavior that occasioned [its earlier] misconduct finding.” JA104 (June 2018 order); JA106 (June 2019 order concluding that “no

further misconduct” had occurred during the previous year and that jurisdiction over the proceedings would therefore be “terminated”). As a result of the Judicial Council’s 2018 and 2019 decisions, it is not reasonable to expect that Judge Adams will be required to undergo a mental health evaluation, to accept medical treatment, to have his docket limited, to be further investigated or monitored, or to be otherwise disciplined based on the investigation at issue in this case. Judge Adams’s original request for relief, *see* JA29, is therefore a request to prevent events that he has not shown are likely to occur in the future.

This Court has emphasized in a case arising in an analogous context that it may not “assume that the party seeking relief”—here, Judge Adams—“will repeat the type of misconduct that would once again place him or her at risk of [the claimed] injury.” *McBryde v. Committee to Review Circuit Council Conduct & Disability Orders of Judicial Conference of U.S.*, 264 F.3d 52, 56 (D.C. Cir. 2001) (quoting *Honig v. Doe*, 484 U.S. 305, 320 (1988)). Here, as the district court explained, “there is nothing in the record to suggest that some action of the plaintiff will again provoke the chain of highly unusual circumstances that culminated in the unique order that was challenged in this case.” JA140-41. Indeed, Judge Adams in his opening brief does not contend otherwise. *See generally* Pl. Br. The absence of a dispute provides a sufficient basis to conclude that the alleged violations of Judge Adams’s rights will not recur. *See Cicero v.*

Mnuchin, 857 F.3d 407, 415 (D.C. Cir. 2017) (no likelihood that alleged violations will recur where the plaintiffs “never even suggested” there was).

Second, the post-filing developments here “‘eradicat[ed] the effects of the alleged violation.’” *Larsen*, 525 F.3d at 4 (quoting *Davis*, 440 U.S. at 631). Judge Adams cannot demonstrate a reasonable expectation that he will again be compelled to undergo a mental health evaluation, or be disciplined or sanctioned for refusing to do so, based on the investigation he challenged in this case. The previous directive compelling the mental health evaluation has no remaining prospective effect, as there is no ongoing connection between that directive and any future obligation, discipline, or sanction that Judge Adams can reasonably expect to face. Judge Adams seeks an opinion addressing defendants’ statutory and constitutional power to compel a mental health evaluation, as well as reaching related claims about whether such an evaluation violates due process. *See* JA123-26 (¶¶ 61-77 and requests for relief in proposed amended complaint). But because alleged injuries attached to having to undergo an evaluation or having consequences imposed for refusing to do so are no longer at issue, the decision Judge Adams seeks “would accomplish nothing—amounting to exactly the type of advisory opinion Article III prohibits.” *Larsen*, 525 F.3d at 4.

B. Judge Adams’s alleged reputational injury does not save this case from mootness.

Judge Adams nevertheless insists that this case is not moot because, he says, he suffers an ongoing injury to his reputation. Judge Adams claims this injury flows from two closely intertwined aspects of the now-terminated administrative proceedings: what he labels the Judicial Council’s “examination order” (directing Judge Adams to undergo the evaluation that had been requested by the special committee, *see* JA59-60) and “misconduct finding” (the Council’s related statement that Judge Adams had improperly interfered with the special committee’s investigation by refusing to undergo the evaluation, *see* JA57).⁵

Judge Adams is mistaken. Adjudicating his claims would amount to an end-run around the principle that “past injuries alone are insufficient” to establish jurisdiction for “forward-looking” declaratory relief. *NB ex rel. Peacock v. District of Columbia*, 682 F.3d 77, 82 (D.C. Cir. 2012) (quoting *Dearth v. Holder*, 641 F.3d 499, 501 (D.C. Cir. 2011)); *see also City of Los Angeles v. Lyons*, 461

⁵ To the extent Judge Adams relies on allegations that appear only in his proposed amended complaint (as the district court understood him to be doing, *see* JA141-47), Judge Adams’s proposal to resurrect the case by amending the complaint was futile, as the district court concluded (an issue this Court reviews for abuse of discretion). This Court need not parse the differences between the original complaint and the proposed amended complaint, however, because Judge Adams’s arguments about ongoing reputational injury fail under any standard of review.

U.S. 95, 104-05, 109 (1983); *O’Shea v. Littleton*, 414 U.S. 488, 495-96 (1974).

This conclusion follows for two reasons explained in greater detail below.

First, Judge Adams’s claimed reputational injury is controlled by the case law that “makes clear that where reputational injury is the lingering effect of an otherwise moot aspect of a lawsuit, no meaningful relief is possible and the injury cannot satisfy the requirements of Article III.” *Foretich v. United States*, 351 F.3d 1198, 1212 (D.C. Cir. 2003). These cases follow directly from Article III’s requirements of injury, traceability, and redressability. “In all the cases in which this court, (in line with Supreme Court precedent), has found that the effects of an alleged injury were not eradicated, some tangible, concrete effect, traceable to the injury, and curable by the relief demanded, clearly remained.” *Penthouse Int’l, Ltd. v. Meese*, 939 F.2d 1011, 1019 (D.C. Cir. 1991) (citation omitted); *see also Already, LLC v. Nike, Inc.*, 568 U.S. 85, 96 (2013) (explaining that a plaintiff cannot survive mootness by “rely[ing] on theories of Article III injury that would fail to establish standing in the first place”). When “harm to reputation arises as a byproduct of government action” that “itself no longer presents an ongoing controversy,” Article III’s requirements are not satisfied: “Because the cause of the reputational harm is an otherwise moot government action, a judicial declaration that the action was unlawful is not likely to provide any further relief beyond that

resulting from the expiration of the action itself.” *Foretich*, 351 F.3d at 1212-13 (emphasis omitted).

Second, this suit does not involve reputational injury that “derives directly from an unexpired and unretracted government action.” *Foretich*, 351 F.3d at 1213. To be sure, when a challenged government action “remains in force” and a plaintiff can show that injury to reputation is “a concrete and direct result” of unexpired and unretracted government action, it may be possible to craft a declaratory judgment that “provide[s] meaningful relief.” *Id.* at 1214. But Judge Adams has not met that standard here.

1. Judge Adams’s alleged reputational injuries are nothing more than “the lingering effect of an otherwise moot aspect of [this] lawsuit,” *Foretich*, 351 F.3d at 1212. This case challenges the authority of the Judicial Council and the Review Committee to compel Judge Adams to undergo a mental health evaluation as part of the investigation into his judicial misconduct and potential disability. The reputational injury Judge Adams identifies (Pl. Br. 26-27) is “a cloud of suspicion regarding his mental competence and fitness to serve as a federal judge.” The cause of any such reputational harm, however, is “an otherwise moot government action,” *Foretich*, 351 F.3d at 1213: the initial determination that a mental health evaluation was warranted. Defendants have since withdrawn the directive to undergo a mental health evaluation, and Judge Adams does not contend that a

requirement to undergo a mental health evaluation is likely to be reinstated in the future. It follows that “no meaningful relief is possible and the injury cannot satisfy the requirements of Article III.” *Id.* at 1212.

Judge Adams nevertheless asks this Court to allow him to seek a judicial opinion on the lawfulness of the withdrawn mental health evaluation directive by attempting to couch his claims as presenting distinct challenges to what he calls the “examination order” and “misconduct finding” contained in the Judicial Council’s 2016 decision. But nothing in the Judicial Council’s 2016 decision has independent prospective effect in light of the Judicial Council’s later determination, as explained in its 2018 and 2019 decisions, that an evaluation is no longer warranted.

Judge Adams’s only theories supporting relief are that “Defendants had neither the statutory nor constitutional power to require Plaintiff to undergo a psychiatric examination,” JA124 (¶ 67), and that in having previously compelled such an evaluation, defendants violated his due process rights. JA123-26 (¶¶ 61-64, 70-77). A declaratory judgment—the only form of relief Judge Adams seeks, *see* Pl. Br. 10; JA126—would not provide any meaningful relief given the withdrawal of the directive that he undergo the evaluation. The Judicial Council publicly declared that the previous “directive that Judge Adams undergo a mental

health evaluation” was no longer necessary because Judge Adams’s colleagues had reported that his “behavior had improved and stabilized.” JA104, 106.

As the district court explained, “at the end of the day,” Judge Adams already “succeeded in his quest to have the Judicial [Council] withdraw its objectionable requests.” JA130. So “even if plaintiff were to prevail in [this] action, there is no meaningful relief that the Court could grant to dispel the taint of the now dismissed matter.” JA146; *cf. Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 107 (1998) (“[P]sychic satisfaction is not an acceptable Article III remedy.”).

The lingering reputational harm that Judge Adams claims is similar to the injuries that this Court has consistently held insufficient to survive mootness. *McBryde* is particularly instructive. In that case, which was similarly brought by a federal district judge who was investigated pursuant to the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980, the Fifth Circuit Judicial Council had imposed, and the Review Committee had upheld, two docket-related restrictions—a one-year suspension of new case assignments and a three-year suspension from presiding over certain cases—that had expired by the time the case reached this Court. 264 F.3d at 54-55. Although the Court acknowledged that those expired suspensions might “have continuing reputational effects,” it explained that any such reputational injury would have merely been “a secondary effect of an otherwise moot action,” and was therefore insufficient to save the case

from mootness. *Id.* at 57. At bottom, the Court “[could not] see how” declaratory relief addressing the lawfulness of those expired sanctions “would rehabilitate [Judge McBryde’s] reputation.” *Id.*

Like the expiration of the suspensions in *McBryde*, the withdrawal of the directive that Judge Adams undergo a mental health evaluation mooted that directive’s primary effects, leaving in its wake—if anything—reputational injury arising “as a secondary effect of an otherwise moot action.” 264 F.3d at 57. In fact, the mootness defect here is even more apparent than in *McBryde*. The suspensions at issue in *McBryde* expired of their own accord, *id.* at 54-55, whereas here, the Judicial Council affirmatively withdrew the underlying directive that Judge Adams undergo an evaluation. *See* JA104, 106. When a plaintiff complains that the withdrawal of challenged government action has not afforded everything he sought through the suit, there is no basis to conclude that “a declaratory judgment would be likely to do so.” *Penthouse*, 939 F.2d at 1019 (holding that there was insufficient ongoing reputational injury flowing from a government letter that labeled the plaintiff’s publication as pornography and allegedly discouraged retailers from selling it, in light of the government’s retraction of the letter).⁶

⁶ Judge Adams argues (Pl. Br. 23) that “[n]o government determination was at issue in *Penthouse*,” and “no official adverse determination was ever made.” Those are distinctions without a difference. What was challenged in *Penthouse* was a government investigatory letter that, due to its contents and dissemination,

Numerous cases in addition to *McBryde* and *Penthouse* confirm that where, as here, claimed reputational injury is a mere “byproduct of government action” that “itself no longer presents an ongoing controversy,” *Foretich*, 351 F.3d at 1212-13 (emphasis omitted), the case is moot. *See, e.g., Anderson v. Carter*, 802 F.3d 4, 10-11 (D.C. Cir. 2015) (holding that a journalist’s claim of reputational injury flowing from a Defense Department decision to terminate a credential allowing him to be embedded within a military unit was insufficient to satisfy Article III because “the alleged reputational injury is the ‘lingering effect of an otherwise moot action’” (quoting *Foretich*, 351 F.3d at 1212)); *Gul v. Obama*, 652 F.3d 12, 16-21 (D.C. Cir. 2011) (holding that alleged reputational injury of being labeled an “enemy combatant” was a secondary effect of an otherwise moot issue and explaining that the label itself did not bring with it the type of effect that was “susceptible to judicial correction”); *Foretich*, 351 F.3d at 1210-12 (holding that although plaintiff’s reputation “arguably was harmed” by a law altering plaintiff’s custodial rights, that component of plaintiff’s claimed reputational injury was “merely the secondary effect” of injury to the custodial rights themselves).

triggered the claim of reputational injury. *See* 939 F.2d at 1013-14, 1018-19. *Penthouse* stands for the proposition that once an original government action is withdrawn, any “lingering effects” of the original action on reputation “normally do not furnish a basis for Article III standing” or save a case from mootness. *See Foretich*, 351 F.3d at 1214 (discussing *Penthouse*).

Judge Adams argues (Pl. Br. 25) that even if this Court agrees with the district court that his claimed reputational injury is a mere secondary effect of an otherwise moot action, he “has made the necessary allegations to avoid mootness.” As the district court explained (JA145-46), however, Judge Adams’s lingering injury is unlike the collateral consequences that have saved other cases from mootness. *See, e.g., Reeve Aleutian Airways v. United States*, 889 F.2d 1139, 1143 (D.C. Cir. 1989) (collateral consequences included a drop in the plaintiff’s business); *American Fed’n of Gov’t Emps. v. Reagan*, 870 F.2d 723, 726 (D.C. Cir. 1989) (collateral consequences included ongoing proceedings related to charges of unfair labor practice); *Doe v. U.S. Air Force*, 812 F.2d 738, 740-41 (D.C. Cir. 1987) (collateral consequences included government retention of allegedly unconstitutionally obtained information, and redress for any constitutional violations could include the compelled surrender of retained copies). In contrast to such concrete and tangible collateral consequences that are fairly traceable to the source of the alleged injury and redressable through the relief sought, Judge Adams’s claimed ongoing injury amounts to, as the district court put it, nothing more than “vague negative impressions” that “may arise from the fact that the misconduct proceeding took place and sanctions were ordered.” JA145. That is not enough.

Judge Adams attempts to salvage his claims of reputational injury by noting (Pl. Br. 25) that a litigant in a case pending before him referenced the misconduct proceedings in a complaint by the litigant against Judge Adams. Judge Adams also alleges a connection between the misconduct proceedings and a few Sixth Circuit decisions holding that cases previously assigned to Judge Adams met the standards for reassignment to other judges on remand. *See* JA121-22 (¶¶ 53-54); Pl. Br. 11 n.4. But Judge Adams fails to show that these actions are plausibly traceable to the now-inoperative directive that he obtain a mental health evaluation or the related finding that he committed misconduct by refusing to undergo the evaluation—rather than the existence of the judicial conduct and disability proceedings and the reprimand for Judge Adams’s treatment of magistrate judges. Judge Adams therefore fails to show how the declaratory judgment he seeks would redress these claimed injuries. Moreover, Judge Adams’s argument relies on a strained assumption that multiple panels of Sixth Circuit judges have allowed the judicial conduct and disability proceedings to affect their views on entirely separate legal proceedings, and that a declaratory judgment addressing the lawfulness of the mental health evaluation requirement could somehow remedy Judge Adams’s claimed injury. Article III requires more than such patent “speculation about the decisions of independent actors.” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 414 (2013).

2. Judge Adams is similarly mistaken in his repeated assertion (Pl. Br. 16-18, 21, 26) that his claimed reputational injury “derives directly from an unexpired and unretracted government action,” *Foretich*, 351 F.3d at 1213. In support of that assertion, Judge Adams seeks (Pl. Br. 13, 17) to recast the past recitation of the evaluation directive by the Judicial Council (what he terms the “examination order”), and the related misconduct finding based on Judge Adams’s defiance of the special committee’s underlying directive to obtain the evaluation (what he terms the “misconduct finding”), as unexpired and unretracted government actions. But the underlying cause of Judge Adams’s claimed reputational injury is the now-withdrawn directive that he undergo a mental health evaluation, and the declaratory remedy he seeks is targeted accordingly. Judge Adams claims that “Defendants had neither the statutory nor constitutional power to require Plaintiff to undergo a psychiatric examination,” JA124 (¶ 67), and that the directive to undergo the evaluation failed to comport with due process. JA123-26 (¶¶ 61-64, 70-77). That argument seeks to challenge the mere fact of the earlier investigation and the investigative tools employed, not unexpired and unretracted government action. Indeed, the judicial conduct and disability proceedings are over, and the directive that Judge Adams undergo a mental health evaluation is “no longer in effect”—that is, the underlying directive is neither unexpired nor unretracted. JA106.

Judge Adams misses the mark in his attempts to compare his claim of reputational harm to the non-moot aspect of the claimed reputational injury in *McBryde*. In *McBryde*, in addition to holding that docket-related suspensions had become moot, this Court exercised jurisdiction based on a claim of reputational injury linked to a public reprimand. 264 F.3d at 56-57. That reprimand embodied a specific sanction pursuant to the Act, *see* 28 U.S.C. § 354(a)(2)(A)(ii)-(iii) (codified at the time of *McBryde* as 28 U.S.C. § 372(c)(6)(B)(v)-(vi)), and was based on the conclusion that Judge McBryde had ““engaged for a number of years in a pattern of abusive behavior.”” 264 F.3d at 57 (quoting special committee report). In those circumstances, this Court held that a declaratory judgment could “relieve Judge McBryde of much of the resulting injury” to his reputation that was caused by the issuance of “stigmatizing reports.” *Id.* This contrasted with the Court’s stated inability to “see how” anything a court could “say at [Judge] McBryde’s behest” about the expired suspensions “would rehabilitate his reputation.” *Id.* at 57.

Here, however, Judge Adams does not challenge a specific sanction with ongoing prospective effect, but rather the withdrawn directive that he undergo a mental health evaluation. Contrary to Judge Adams’s argument, neither a withdrawn order directing him to undergo a mental health evaluation nor a finding that he committed misconduct by refusing to comply saves this case from

mootness: to adjudicate the lawfulness of those aspects of the proceedings, Judge Adams would require a court to focus on the lawfulness of a specific, now-withdrawn directive to obtain a mental health evaluation. *See* JA123-26 (¶¶ 61-77). But nothing a court could “say at [Judge Adams’s] behest” about the lawfulness of the specific, now-withdrawn mental health evaluation directive “would rehabilitate his reputation.” *McBryde*, 264 F.3d at 57. Because the directive to obtain a mental health evaluation has been withdrawn (unlike the stigmatizing reports underlying the live reputational injury in *McBryde*), “a judicial declaration that the action was unlawful is not likely to provide any further relief beyond that resulting from the expiration of the action itself.” *Foretich*, 351 F.3d at 1213.

Notably, Judge Adams chose not to challenge several aspects of the administrative proceedings in this case, including the public reprimand for Judge Adams’s “personally demeaning” behavior toward a magistrate judge, JA58-59. As the district court correctly observed, “the sanctions the judge chose to challenge in this case have been terminated and no longer have effect.” JA145.

Judge Adams’s reliance (Pl. Br. 19-21) on *Foretich* and *Meese v. Keene*, 481 U.S. 465 (1987), is similarly misplaced. In *Foretich*, the plaintiff challenged a law “embodying a congressional determination that [the plaintiff] is a child abuser and a danger to his own daughter.” 351 F.3d at 1213. The plaintiff’s reputational

injury in *Foretich* was his “principal complaint” and was separable from aspects of his injury that had become moot when his child had reached the age of majority.

Id. Meanwhile, there was a close nexus between the relief sought and the reputational harm: “the very things that” would ultimately “render the [congressional determination] an unconstitutional bill of attainder,” as the Court would conclude, “directly [gave] rise to a cognizable injury to [the plaintiff’s] reputation.” *Id.* Crucially, *Foretich* distinguished the determination there from an expired or retracted government action, emphasizing that the relevant act of Congress “remain[ed] in force.” *Id.* at 1214. Here, by contrast, Judge Adams challenges the legal basis for the withdrawn directive that he undergo a mental health evaluation, and it follows that no meaningful redress is possible.

Likewise, in *Keene*, the plaintiff claimed reputational harm from the Department of Justice’s decision to label his films as “political propaganda,” and the Court reasoned that a favorable decision could have unburdened the plaintiff from having “to choose between exhibiting the films and incurring the risk that public perception of [the Department’s] criminal enforcement scheme will harm [the plaintiff’s] reputation.” 481 U.S. at 477. Because *Keene* addressed standing, not mootness, there was no occasion to address the situation presented here: a request for a declaratory judgment that would require opining on the merits of a moot issue. In any event, unlike the specific benefits that could have flowed from

a favorable decision in *Keene*, the declaratory judgment Judge Adams seeks would not provide him anything meaningful beyond what he has already obtained.

C. Declaratory relief is in any event inappropriate.

Because declaratory relief represents “an exercise of the court’s discretionary, equitable powers,” courts must always “determine” whether such relief “would be appropriate” under equitable principles. *Penthouse*, 939 F.2d at 1019. A court “will normally refrain from” awarding declaratory relief “[w]here it is uncertain that declaratory relief will benefit the party alleging injury.” *Id.* at 1020; *see also Foretich*, 351 F.3d at 1216; *MBIA Ins. Corp. v. FDIC*, 708 F.3d 234, 245-46 (D.C. Cir. 2013). Such restraint is especially warranted “where the court can avoid adjudication of difficult or novel constitutional questions.” *Foretich*, 351 F.3d at 1216.

Here, it is highly “uncertain that declaratory relief will benefit” Judge Adams. *Penthouse*, 939 F.2d at 1020. Whatever a court might hypothetically decide about the validity of certain investigative measures employed in the course of the judicial conduct and disability proceedings, no court decision can erase the fact that the proceedings took place, and that unanimous groups of Article III judges initially determined that a mental health evaluation of Judge Adams was necessary. Whereas the core purpose of declaratory relief is to “establish a binding adjudication that enables the parties to enjoy the benefits of reliance and repose

secured by res judicata,” 18A Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure* § 4446 (3d ed.), here there is no reason to think any meaningful benefits would follow should a court decide the case in Judge Adams’s favor.

Further, Judge Adams ultimately seeks adjudication of novel constitutional questions. *See* JA123-26 (¶¶ 61-77). The Review Committee noted that the questions before it about the mental health evaluation raised a “matter of first impression under the [Act],” JA98. Because this lawsuit seeks a ruling on similarly novel constitutional questions, declaratory relief should be withheld as a matter of equitable discretion. *See Penthouse*, 939 F.2d at 1019-20 (denying a request for declaratory judgment in light of uncertainty about whether declaratory relief would provide any benefit, combined with being “faced with a constitutional issue of first impression” that should not be decided “until it is squarely presented”).

CONCLUSION

For the foregoing reasons, the judgment of the district court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 8,915 words, excluding the parts of the brief exempted under Rule 32(f). This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Microsoft Word 2016 in Times New Roman 14-point font, a proportionally spaced typeface.

/s/ Kevin B. Soter

Kevin B. Soter

ADDENDUM

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28 U.S.C. § 351. Complaints; judge defined

(a) Filing of Complaint by Any Person.—Any person alleging that a judge has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts, or alleging that such judge is unable to discharge all the duties of office by reason of mental or physical disability, may file with the clerk of the court of appeals for the circuit a written complaint containing a brief statement of the facts constituting such conduct.

(b) Identifying Complaint by Chief Judge.—In the interests of the effective and expeditious administration of the business of the courts and on the basis of information available to the chief judge of the circuit, the chief judge may, by written order stating reasons therefor, identify a complaint for purposes of this chapter and thereby dispense with filing of a written complaint.

(c) Transmittal of Complaint.—Upon receipt of a complaint filed under subsection (a), the clerk shall promptly transmit the complaint to the chief judge of the circuit, or, if the conduct complained of is that of the chief judge, to that circuit judge in regular active service next senior in date of commission (hereafter, for purposes of this chapter only, included in the term “chief judge”). The clerk shall simultaneously transmit a copy of the complaint to the judge whose conduct is the subject of the complaint. The clerk shall also transmit a copy of any complaint identified under subsection (b) to the judge whose conduct is the subject of the complaint.

(d) Definitions.—In this chapter—

(1) the term “judge” means a circuit judge, district judge, bankruptcy judge, or magistrate judge; and

(2) the term “complainant” means the person filing a complaint under subsection (a) of this section.

Statutory Notes and Related Subsidiaries

Severability

Pub. L. 107–273, div. C, title I, §11044, Nov. 2, 2002, 116 Stat. 1856, provided that: “If any provision of this subtitle [subtitle C (§§11041–11044) of title I of div. C of Pub. L. 107–273, enacting this chapter, amending sections 331, 332, 372, 375, and 604 of this title, and section 7253 of Title 38, Veterans’ Benefits, and enacting provisions set out as a note under section 1 of this title], an amendment made by this subtitle, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the

remainder of this subtitle, the amendments made by this subtitle, and the application of the provisions of such to any person or circumstance shall not be affected thereby.”

28 U.S.C. § 352. Review of complaint by chief judge

(a) Expeditious Review; Limited Inquiry.—The chief judge shall expeditiously review any complaint received under section 351(a) or identified under section 351(b). In determining what action to take, the chief judge may conduct a limited inquiry for the purpose of determining—

(1) whether appropriate corrective action has been or can be taken without the necessity for a formal investigation; and

(2) whether the facts stated in the complaint are either plainly untrue or are incapable of being established through investigation.

For this purpose, the chief judge may request the judge whose conduct is complained of to file a written response to the complaint. Such response shall not be made available to the complainant unless authorized by the judge filing the response. The chief judge or his or her designee may also communicate orally or in writing with the complainant, the judge whose conduct is complained of, and any other person who may have knowledge of the matter, and may review any transcripts or other relevant documents. The chief judge shall not undertake to make findings of fact about any matter that is reasonably in dispute.

(b) Action by Chief Judge Following Review.—After expeditiously reviewing a complaint under subsection (a), the chief judge, by written order stating his or her reasons, may—

(1) dismiss the complaint—

(A) if the chief judge finds the complaint to be—

(i) not in conformity with section 351(a);

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

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

(B) when a limited inquiry conducted under subsection (a) demonstrates that the allegations in the complaint lack any factual foundation or are conclusively refuted by objective evidence; or

(2) conclude the proceeding if the chief judge finds that appropriate corrective action has been taken or that action on the complaint is no longer necessary because of intervening events.

The chief judge shall transmit copies of the written order to the complainant and to the judge whose conduct is the subject of the complaint.

(c) Review of Orders of Chief Judge.—A complainant or judge aggrieved by a final order of the chief judge under this section may petition the judicial council of the circuit for review thereof. The denial of a petition for review of the chief judge's order shall be final and conclusive and shall not be judicially reviewable on appeal or otherwise.

(d) Referral of Petitions for Review to Panels of the Judicial Council.— Each judicial council may, pursuant to rules prescribed under section 358, refer a petition for review filed under subsection (c) to a panel of no fewer than 5 members of the council, at least 2 of whom shall be district judges.

28 U.S.C. § 353. Special committees

(a) Appointment.—If the chief judge does not enter an order under section 352(b), the chief judge shall promptly—

- (1) appoint himself or herself and equal numbers of circuit and district judges of the circuit to a special committee to investigate the facts and allegations contained in the complaint;
- (2) certify the complaint and any other documents pertaining thereto to each member of such committee; and
- (3) provide written notice to the complainant and the judge whose conduct is the subject of the complaint of the action taken under this subsection.

(b) Change in Status or Death of Judges.—A judge appointed to a special committee under subsection (a) may continue to serve on that committee after becoming a senior judge or, in the case of the chief judge of the circuit, after his or her term as chief judge terminates under subsection (a)(3) or (c) of section 45. If a judge appointed to a committee under subsection (a) dies, or retires from office under section 371(a), while serving on the committee, the chief judge of the circuit may appoint another circuit or district judge, as the case may be, to the committee.

(c) Investigation by Special Committee.—Each committee appointed under subsection (a) shall conduct an investigation as extensive as it considers necessary, and shall expeditiously file a comprehensive written report thereon with the judicial council of the circuit. Such report shall present both the findings of the investigation and the committee's recommendations for necessary and appropriate action by the judicial council of the circuit.

28 U.S.C. § 354. Action by judicial council**(a) Actions Upon Receipt of Report.—**

(1) Actions.—The judicial council of a circuit, upon receipt of a report filed under section 353(c)—

(A) may conduct any additional investigation which it considers to be necessary;

(B) may dismiss the complaint; and

(C) if the complaint is not dismissed, shall take such action as is appropriate to assure the effective and expeditious administration of the business of the courts within the circuit.

(2) Description of possible actions if complaint not dismissed.—

(A) In general.—Action by the judicial council under paragraph (1)(C) may include—

(i) ordering that, on a temporary basis for a time certain, no further cases be assigned to the judge whose conduct is the subject of a complaint;

(ii) censuring or reprimanding such judge by means of private communication; and

(iii) censuring or reprimanding such judge by means of public announcement.

(B) For Article III judges.—If the conduct of a judge appointed to hold office during good behavior is the subject of the complaint, action by the judicial council under paragraph (1)(C) may include—

(i) certifying disability of the judge pursuant to the procedures and standards provided under section 372(b); and

(ii) requesting that the judge voluntarily retire, with the provision that the length of service requirements under section 371 of this title shall not apply.

(C) For magistrate judges.—If the conduct of a magistrate judge is the subject of the complaint, action by the judicial council under paragraph (1)(C) may include directing the chief judge of the district of the magistrate judge to take such action as the judicial council considers appropriate.

(3) Limitations on judicial council regarding removals.—

(A) Article III judges.—Under no circumstances may the judicial council order removal from office of any judge appointed to hold office during good behavior.

(B) Magistrate and bankruptcy judges.—Any removal of a magistrate judge under this subsection shall be in accordance with section 631 and any removal of a bankruptcy judge shall be in accordance with section 152.

(4) Notice of action to judge.—The judicial council shall immediately provide written notice to the complainant and to the judge whose conduct is the subject of the complaint of the action taken under this subsection.

(b) Referral to Judicial Conference.—

(1) In general.—In addition to the authority granted under subsection (a), the judicial council may, in its discretion, refer any complaint under section 351, together with the record of any associated proceedings and its recommendations for appropriate action, to the Judicial Conference of the United States.

(2) Special circumstances.—In any case in which the judicial council determines, on the basis of a complaint and an investigation under this chapter, or on the basis of information otherwise available to the judicial council, that a judge appointed to hold office during good behavior may have engaged in conduct—

(A) which might constitute one or more grounds for impeachment under Article II of the Constitution, or

(B) which, in the interest of justice, is not amenable to resolution by the judicial council,

the judicial council shall promptly certify such determination, together with any complaint and a record of any associated proceedings, to the Judicial Conference of the United States.

(3) Notice to complainant and judge.—A judicial council acting under authority of this subsection shall, unless contrary to the interests of justice, immediately submit written notice to the complainant and to the judge whose conduct is the subject of the action taken under this subsection.

28 U.S.C. § 355. Action by Judicial Conference

(a) In General.—Upon referral or certification of any matter under section 354(b), the Judicial Conference, after consideration of the prior proceedings and such additional investigation as it considers appropriate, shall by majority vote take such action, as described in section 354(a)(1)(C) and (2), as it considers appropriate.

(b) If Impeachment Warranted.—

(1) In general.—If the Judicial Conference concurs in the determination of the judicial council, or makes its own determination, 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.

(2) In case of felony conviction.—If a judge has been convicted of a felony under State or Federal law and has exhausted all means of obtaining direct review of the conviction, or the time for seeking further direct review of the conviction has passed and no such review has been sought, the Judicial Conference may, by majority vote and without referral or certification under section 354(b), transmit to the House of Representatives a determination that consideration of impeachment may be warranted, together with appropriate court records, for whatever action the House of Representatives considers to be necessary.

28 U.S.C. § 356. Subpoena power

(a) Judicial Councils and Special Committees.—In conducting any investigation under this chapter, the judicial council, or a special committee appointed under section 353, shall have full subpoena powers as provided in section 332(d).

(b) Judicial Conference and Standing Committees.—In conducting any investigation under this chapter, the Judicial Conference, or a standing committee appointed by the Chief Justice under section 331, shall have full subpoena powers as provided in that section.

28 U.S.C. § 357. Review of orders and actions

(a) Review of Action of Judicial Council.—A complainant or judge aggrieved by an action of the judicial council under section 354 may petition the Judicial Conference of the United States for review thereof.

(b) Action of Judicial Conference.—The Judicial Conference, or the standing committee established under section 331, may grant a petition filed by a complainant or judge under subsection (a).

(c) No Judicial Review.—Except as expressly provided in this section and section 352(c), all orders and determinations, including denials of petitions for review, shall be final and conclusive and shall not be judicially reviewable on appeal or otherwise.

28 U.S.C. § 358. Rules

(a) In General.—Each judicial council and the Judicial Conference may prescribe such rules for the conduct of proceedings under this chapter, including the processing of petitions for review, as each 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 judge whose conduct is the subject of a complaint under this chapter;

(2) the judge whose conduct is the subject of a complaint under this chapter be afforded an opportunity to appear (in person or by counsel) at proceedings conducted by the investigating panel, 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; and

(3) the complainant be afforded an opportunity to appear at proceedings conducted by the investigating panel, if the panel concludes that the complainant could offer substantial information.

(c) 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, and any such rule promulgated by a judicial council may be modified by the Judicial Conference. No rule promulgated under this section may limit the period of time within which a person may file a complaint under this chapter.

28 U.S.C. § 359. Restrictions

(a) Restriction on Individuals Who Are Subject of Investigation.—No judge whose conduct is the subject of an investigation under this chapter shall serve upon a special committee appointed under section 353, upon a judicial council, upon the Judicial Conference, or upon the standing committee established under section 331, until all proceedings under this chapter relating to such investigation have been finally terminated.

(b) Amicus Curiae.—No person shall be granted the right to intervene or to appear as amicus curiae in any proceeding before a judicial council or the Judicial Conference under this chapter.

28 U.S.C. § 360. Disclosure of information

(a) Confidentiality of Proceedings.—Except as provided in section 355, 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 to the extent that—

- (1)** the judicial council of the circuit in its discretion releases a copy of a report of a special committee under section 353(c) to the complainant whose complaint initiated the investigation by that special committee and to the judge whose conduct is the subject of the complaint;
- (2)** the judicial council of the circuit, the Judicial Conference of the United States, 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 judge under article I of the Constitution; or
- (3)** such disclosure is authorized in writing by the judge who is the subject of the complaint and by the chief judge of the circuit, the Chief Justice, or the chairman of the standing committee established under section 331.

(b) Public Availability of Written Orders.—Each written order to implement any action under section 354(a)(1)(C), which is issued by a judicial council, the Judicial Conference, or the standing committee established under section 331, shall be made available to the public through the appropriate clerk's office of the court of appeals for the circuit. Unless contrary to the interests of justice, each such order shall be accompanied by written reasons therefor.

28 U.S.C. § 361. Reimbursement of expenses

Upon the request of a judge whose conduct is the subject of a complaint under this chapter, the judicial council may, if the complaint has been finally dismissed under section 354(a)(1)(B), 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 that judge during the investigation which would not have been incurred but for the requirements of this chapter.

28 U.S.C. § 362. 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.

28 U.S.C. § 363. Court of Federal Claims, Court of International Trade, Court of Appeals for the Federal Circuit

The United States Court of Federal Claims, the Court of International Trade, and the Court of Appeals for the Federal Circuit shall each prescribe rules, consistent with the provisions of this chapter, establishing procedures for the filing of complaints with respect to the conduct of any judge of such court and for the investigation and resolution of such complaints. In investigating and taking action with respect to any such complaint, each such court shall have the powers granted to a judicial council under this chapter.

28 U.S.C. § 364. Effect of felony conviction

In the case of any judge or judge of a court referred to in section 363 who is convicted of a felony under State or Federal law and has exhausted all means of obtaining direct review of the conviction, or the time for seeking further direct review of the conviction has passed and no such review has been sought, the following shall apply:

- (1) The judge shall not hear or decide cases unless the judicial council of the circuit (or, in the case of a judge of a court referred to in section 363, that court) determines otherwise.
- (2) Any service as such judge or judge of a court referred to in section 363, after the conviction is final and all time for filing appeals thereof has expired, shall not be included for purposes of determining years of service under section 371(c), 377, or 178 of this title or creditable service under subchapter III of chapter 83, or chapter 84, of title 5.