

**JUDICIAL COUNCIL OF THE DISTRICT OF COLUMBIA CIRCUIT
COMPLAINT OF JUDICIAL MISCONDUCT OR DISABILITY**

E. Barrett Prettyman U.S. Courthouse
333 Constitution Avenue, N.W.
Washington, D.C. 20001-2866
202-216-7340



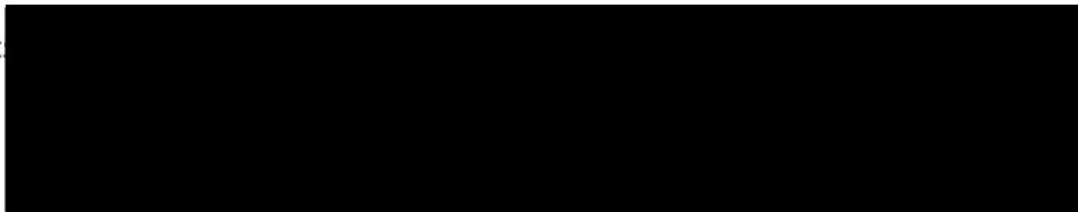
This form should be completed and mailed to the above address to the attention of the "Circuit Executive". The envelope should be marked "JUDICIAL MISCONDUCT COMPLAINT" or "JUDICIAL DISABILITY COMPLAINT". Do not put the name of the judge on the envelope.

The "Rules for Judicial-Conduct and Judicial-Disability Proceedings", adopted by the Judicial Conference of the United States, contain information on what to include in a complaint (Rule 6), where to file a complaint (Rule 7), and other important matters. Your complaint (this form and the statement of facts) should be typewritten and must be legible. Only the original form and up to a five page statement of facts should be submitted. No copies are required.

1. Name of Complainant

Address:

Telephone:



2. Name(s) of Judge(s) complained about: Judge Brett Kavanaugh

Court:

U.S. Court of Appeals for the D.C. Circuit

3. Does this complaint concern the behavior of the judge(s) in a particular lawsuit or lawsuits?

Yes No

If "yes" give the following information about each lawsuit (use reverse side if more than one):

Court:

Case number:

Are (were) you a party or lawyer in the lawsuit?

Party Lawyer Neither

If you are (were) a party and have (had) a lawyer, give the lawyer's name, address, and telephone number:

Docket number(s) of any appeals of above case(s) to the Court of Appeals, D.C. Circuit:

4. Have you filed any lawsuits against the judge?

Yes No

If "yes" give the following information about each lawsuit (use the reverse side if more than one)

Court: _____

Case number: _____

Present status of lawsuit: _____

Your lawyer's name: _____

Address: _____

Telephone: () -

Court to which any appeal has been taken in the lawsuit against the judge: _____

Docket number of the appeal: _____

Present status of the appeal: _____

5. **Brief Statement of Facts.** Attach a brief statement of the specific facts on which the claim of judicial misconduct or disability is based on up to five double-sided pages (8.5 x 11"). Include what happened, when and where it happened, and any information that would help an investigator check the facts. If the complaint alleges judicial disability, also include any additional facts that form the basis of that allegation. See Rule 6 (a) for further information on what to include in your statement of facts.

Declaration and Signature:

I declare under penalty of perjury that the statements made in this complaint are true and correct to the best of my knowledge.

Signature



Date:

10/4/2018

STATEMENT IN SUPPORT OF JUDICIAL MISCONDUCT COMPLAINT AGAINST JUDGE KAVANAUGH

I lodge a complaint against Judge Brett Kavanaugh under the Judicial Conduct and Disability Act of 1980 (the "Act"), which permits any person to file a complaint about the behavior of a federal judge, if the complainant believes the judge has engaged in misconduct "prejudicial to the effective and expeditious administration of the business of the courts." Rule 3(h)(1)(E) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings states that misconduct includes "engaging in partisan political activity or making inappropriately partisan statements." Rule 3(h)(2) goes on to provide that a complaint may address "conduct occurring outside the performance of official duties" of a judge, "if the conduct might have a prejudicial effect on the administration of the business of the courts, including a substantial and widespread lowering of public confidence in the courts among reasonable people."

Rule 1.2 of the American Bar Association's Model Code of Judicial Conduct ("Model Code") states in pertinent part that a "judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary." The Comment to this Rule says the test for appearance of impropriety by a judge is whether the judge's conduct "would create in reasonable minds" a perception "that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge." This Comment also states that judges "should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens."

On September 27, 2018, Judge Brett Kavanaugh testified in a hearing before the Senate Judiciary Committee focused on whether he sexually assaulted Dr. Christine Blasey Ford. This hearing was watched by millions of Americans, and continues to be widely discussed. For many Americans, this televised hearing will be the only time they hear the words and experience the demeanor of a federal judge.

Regardless of Kavanaugh's desire to defend his reputation and promote his candidacy for a seat on the Supreme Court, his present position on the D.C. Circuit Court of Appeals constrains the testimony he was permitted to give and the way he was permitted to act before the Judiciary Committee. Under the

Act, Rules and Model Code, Judge Kavanaugh was required to conduct himself in a manner that promoted public confidence in our courts and in Judge Kavanaugh's personal temperament, impartiality and fitness. Judge Kavanaugh was required to testify without engaging in partisan political activity or making inappropriately partisan statements. There is no exception to these rules for judges seeking Senate confirmation. The very public nature of Judge Kavanaugh's testimony and the importance of the job he seeks made it that much more important that he comport himself in a way fitting for a federal judge.

The testimony cited below is taken from a transcript published by The Washington Post, see https://www.washingtonpost.com/news/national/wp/2018/09/27/kavanaugh-hearing-transcript/?utm_term=.3bb75af173d3. But I would also encourage you to review the videotaped testimony of Judge Kavanaugh because I believe it demonstrates the partisanship and lack of judicial temperament displayed by Judge Kavanaugh more than a written transcript. Here is a link to the video of the Sept. 27, 2018 Senate Judiciary Committee hearing:

<https://www.judiciary.senate.gov/hearings/watch?hearingid=1FF1B870-5056-A066-6094-8B3842CFEA51> The testimony of Judge Kavanaugh begins at time mark 5:24. In addition to his opening statement, I would like to especially point out his disrespectful interchange with Democratic Sen. Klobuchar during her questioning of him as another example of misconduct, which can be viewed on the referenced video at time mark 7:20-7:21.

During Judge Kavanaugh's testimony—and in particular during his prepared opening statement—he levelled frequent attacks and accusations against people and institutions he identified with the Democratic Party. The following are some examples of these attacks and accusations:

- “The behavior of several of the Democratic members of this committee at my hearing a few weeks ago was an embarrassment.”
- “Since my nomination in July, there's been a frenzy on the left to come up with something, anything to block my confirmation.”

- Shortly after I was nominated, the Democratic Senate leader said he would, quote, ‘oppose me with everything he’s got.’”
- “A Democratic senator on this committee publicly — publicly referred to me as evil — evil.”
- “Another Democratic senator on this committee said, quote, ‘Judge Kavanaugh is your worst nightmare.’”
- “A former head of the Democratic National Committee said, quote, ‘Judge Kavanaugh will threaten the lives of millions of Americans for decades to come.’”
- “And as we all know, in the United States political system of the early 2000s, what goes around comes around.”

The above statements are clearly partisan in nature. The only question is whether Judge Kavanaugh’s partisan statements were “inappropriate” under the Rules. I first note that his partisan statements appear on first blush to be gratuitous. For example, Judge Kavanaugh might simply have said that a senator referred to him as “evil,” or that there was a “frenzy” to block his confirmation, and he would effectively have made his point without naming a political party or side of the political divide. But if we look more closely at his statements, we can better see the reason behind Kavanaugh’s partisanship.

Judge Kavanaugh’s partisan statements before the Judiciary Committee were necessary to make a greater point: Judge Kavanaugh sought to accuse Democrats of orchestrating a campaign of false sexual allegations against him. Judge Kavanaugh’s accusations centered around the idea that Dr. Ford’s confidential July 30, 2018 letter to Senator Feinstein was purposely kept secret by Sen. Feinstein and other Democrats, so that it could be released at a time most damaging to Judge Kavanaugh and his nomination. Judge Kavanaugh testified, “When it was needed, this allegation was unleashed and publicly deployed over Dr. Ford’s wishes.” Judge Kavanaugh repeatedly accused Democrats, the left and even the Clintons of playing a role in a conspiracy to defeat his Supreme Court nomination:

- “And then — and then as no doubt was expected — if not planned — came a long series of false last-minute smears designed to scare me and drive me out of the process before any hearing occurred.”
- “This whole two-week effort has been a calculated and orchestrated political hit, fueled with apparent pent-up anger about President Trump and the 2016 election. Fear that has been unfairly stoked about my judicial record. Revenge on behalf of the Clintons. And millions of dollars in money from outside left-wing opposition groups.”

Judge Kavanaugh’s partisan accusations had no foundation in fact. Dr. Ford’s July 30 letter to Senator Feinstein was marked “CONFIDENTIAL,” signed “In Confidence” and contains Dr. Ford’s direction to “maintain this as confidential until we have further opportunity to speak.” Clearly, Senator Feinstein had been asked by Dr. Ford not to reveal this letter when she first received it. Instead, Judge Kavanaugh appears to imply that the allegations in the letter never should have been released, not at any time. As noted above, Judge Kavanaugh stated that the letter was released “over Dr. Ford’s wishes.”

The public record indicates that Judge Kavanaugh is not truthfully basing his allegations against Sen. Feinstein and the Democrats on fact. Dr. Ford’s letter was publicly released on or prior to September 23, with the consent of Dr. Ford’s lawyers (see <https://www.usatoday.com/story/news/politics/2018/09/23/christine-blasey-ford-letter-alleged-assault-brett-kavanaugh/1406932002/>). Prior to that, rumors of Dr. Ford’s accusation had circulated in the press during the second week of September, and Dr. Ford revealed her identity in a September 16 article in the Washington Post. https://www.washingtonpost.com/investigations/california-professor-writer-of-confidential-brett-kavanaugh-letter-speaks-out-about-her-allegation-of-sexual-assault/2018/09/16/46982194-b846-11e8-94eb-3bd52dfe917b_story.html?utm_term=.bda3c1c99d58

But rather than stick to facts, in his testimony, Judge Kavanaugh conjured a wide-ranging conspiracy among Democrats and “the left” to defeat his candidacy for the Supreme Court through a “calculated and orchestrated” campaign to release false information about him at a time selected to do the greatest possible damage. His further comment, stated with ire, that “what goes around comes around” was reasonably interpreted by many who watched as a threat that Democratic or perceived left-leaning parties should fear potential retribution if they come before him as a judge. These statements are partisan, as they are directed against a particular political party and one side of the political divide. They are inappropriate, as they state a wild conspiracy theory with no basis in fact and include what many perceived as a threat, or at a minimum an undermining of any confidence that parties would be treated fairly and impartially by this judge. The most reasonable explanation for what happened is the one suggested by Senator Feinstein: the press learned of Dr. Ford’s accusation through friends of Dr. Ford. But even if Senator Feinstein or members of her staff released this information to the press, this would not prove Judge Kavanaugh’s claim, that he is the victim of an organized campaign run by multiple Democratic senators, the Democratic Party, the Clintons and unnamed organizations on “the left.”

CONCLUSION

Judge Kavanaugh made repeated, inappropriately partisan statements to the Senate Judiciary Committee during his testimony on September 27, 2018 and thus engaged in judicial misconduct under the Act and the Rules. He also displayed inappropriate demeanor and undermined public confidence in the fairness and impartiality of the judiciary. This misconduct is particularly egregious, as it took place in front of millions of people, at a time when scrutiny of the law and the judiciary is at its highest, and where Kavanaugh had a clear duty to display judicial temperament and deportment. I ask that the circuit chief judge or other appropriate authority take appropriate action to address Judge Kavanaugh’s misconduct.

Thank you.