

January 29, 2019

I hereby petition the judicial council for review of Judicial Complaint No. 10-18-90103 [REDACTED] [REDACTED] v former Circuit Judge Brett M Kavanaugh), as well as the other complaints filed against former Circuit Judge Brett M Kavanaugh (redacted versions listed here: <https://www.ca10.uscourts.gov/ce/misconduct/kavanaugh-complaints>) for the following reasons:

1. Even though former Circuit Judge Brett M Kavanaugh is no longer a judge covered by the Judicial Conduct and Disability Act, 28 U.S.C. § 351 *et seq.*, he was a judge covered by the Act when he committed acts that comprise misconduct.
2. Commentary to Rule 11(e) in the Rules for Judicial Conduct and Judicial Disability Proceedings states "As long as the subject of the complaint performs judicial duties, a complaint alleging judicial misconduct must be addressed."
3. The order released by the Judicial Council of the Tenth Circuit incorrectly states that the commentary provided under Rule 11(e) only pertains to those judicial duties that are under the jurisdiction of the Act.
4. There is nothing in the Act or in the Rules for Judicial Conduct and Judicial Disability Proceedings that qualify the commentary under Rule 11(e) to limit it to those judicial duties that are under the jurisdiction of the Act.
5. The legal definition for judicial duties is as follows: "A judicial duty, within the meaning of the Constitution, is such a duty as legitimately pertains to an officer in the department designated by the Constitution as the judicial. By this designation is meant the judiciary in the true sense of the term. [Wilkins v. State, 113 Ind. 514, 519 (Ind. 1888)]."¹
6. Rule 20(b)(C) states that the Judicial Committee may refer the complaint to the Judicial Conference of the United States with the Council's recommendations for action. The Judicial Council should do this as a discretionary action, along with its recommendations, asking the Judicial Conference to review Rule 11(e), the commentary that states that the Act pertains to any complaint as long as he or she performs judicial duties, and the legal definition of "judicial duties."
7. Rule 20(b)(2) in the Rules for Judicial Conduct and Judicial Disability Proceedings states that "A judicial council must refer a complaint to the Judicial Conference if the council determines that a circuit judge or district judge may have engaged in conduct that (A) might constitute ground for impeachment; or (B) in the interest of justice, is not amenable to resolution by the judicial council." This is a "Mandatory action."
8. The complaints received against former Circuit Judge Kavanaugh and the order released by the Judicial Council of the Tenth Circuit both make the case that (A) former Circuit Judge Kavanaugh engaged in conduct that may constitute ground for impeachment, and (B) in the interest of justice, these complaints are not amendable to resolution by the judicial council.

¹ <https://definitions.uslegal.com/j/judicial-duty/>

- a. The Judicial Council of the Tenth Circuit states in its order on the complaints, "The allegations contained in the complaints are serious...".
 - b. The allegations about the inappropriate partisan statements that demonstrate bias and lack of judicial temperament in the complaints are also indisputable, as they occurred on nationally-broadcasted television.
 - c. Judge Henderson, former Justice Stevens and more than 2,400 law professors have concluded that there was misconduct.
9. The indisputable comments made on television by now Justice Kavanaugh, which constitute judicial misconduct, and have reduced public confidence in the judicial branch of the government and in the highest court of the United States.
 10. "Without public confidence, the judicial branch could not function." (*In re Raab*, 100 N.Y.2d 305, 315-316, 763 N.Y.S.2d 213, 218 (2003).)
 11. Based on the above points, I hereby petition the Judicial Council of the tenth Circuit to review my complaint of now Justice Kavanaugh and refer the complaint to the Judicial Conference of the United States.

Signed this 29 day of January, 2019.



cc: Congressman Jerrold Nadler, Chairman of the Judiciary Committee, U.S. House of Representatives