

**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



DC-18-90029

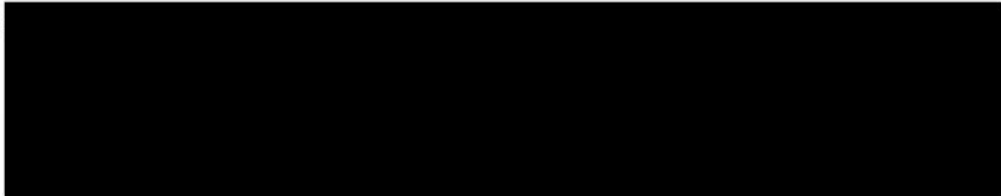
This form should be completed and mailed to the above address to the attention of the "Circuit Executive". The envelope should be marked "JUDICIAL MISCONDUCT COMPLAINT" or "JUDICIAL DISABILITY COMPLAINT". Do not put the name of the judge on the envelope.

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: SCOTUS nominee, Brett Kavanaugh

Court: nominee for Supreme Court (served as judge on US Court of Appeals, DC 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: 9/7/18

To Whom It May Concern:

Supreme Court nominee, Brett Kavanaugh, has perjured himself several times, under oath to Congress, and should immediately withdraw from the Supreme Court nomination and be prosecuted per Section 1621 which covers general perjury, and stipulates that anyone who "willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true" is guilty of perjury and shall be fined or imprisoned up to **five years**, or both. Mr. Kavanaugh is unfit to serve in the highest court of the United States.

Examples of perjury (9 PAGES TOTAL):

1. Lying about involvement in Warrantless Wiretapping

In December of 2005, the New York Times dropped a bombshell report. "Months after the Sept. 11 attacks," it read, "President Bush secretly authorized the National Security Agency to eavesdrop on Americans and others inside the United States to search for evidence of terrorist activity without the court-approved warrants ordinarily required for domestic spying, according to government officials."

Five months later, Supreme Court nominee Brett Kavanaugh — then a senior Bush White House official and a nominee for his current job as a federal appellate judge — had a confirmation hearing. In that 2006 hearing, Sen. Patrick Leahy (D-VT) asked if Kavanaugh ever saw "documents relating to the President's NSA warrantless wiretapping program." Kavanaugh's response was unequivocal.

"I learned of that program when there was a New York Times story — reports of that program when there was a New York Times story that came over the wire, I think on a Thursday night in mid December of last year." the judge-to-be claimed.

When Leahy pressed Kavanaugh, asking if the nominee heard "anything about it prior to the New York Times article," Kavanaugh's response was even more definitive — "nothing at all."

There's just one problem with Kavanaugh's 2006 claim that he knew nothing about the program. This problem:

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Yoo, John C <John.C.Yoo@usdoj.gov>
BCC: timothy flanagan (timothy flanagan [WHO])
Sent: 9/17/2001 3:28:35 AM
Subject: : 4A issue

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 17-SEP-2001 07:28:35.00
SUBJECT: : 4A issue
TO: "Yoo, John C" <John.C.Yoo@usdoj.gov> ; "Yoo, John C" <John.C.Yoo@usdoj.gov> [UNKNOWN]
)
READ: UNKNOWN
BCC: timothy flanagan (timothy flanagan [WHO])
READ: UNKNOWN
End Original ARMS Header

Any results yet on the 4A implications of random/constant surveillance of phone and e-mail conversations of non-citizens who are in the United States when the purpose of the surveillance is to prevent terrorist/original violence?

2. Lying under oath about stolen documents

In 2002, a GOP aide on the Senate Judiciary Committee, Manuel Miranda, stole thousands of documents belonging to the committee's Democratic staff. At the time, Kavanaugh was a White House lawyer working on judicial nominations, which included working alongside Miranda. In 2003, President Bush nominated Kavanaugh to his current position on the DC Circuit Court of Appeals and his confirmation hearing was held in 2004—though he was not confirmed until two years later. During his 2004 hearing, Kavanaugh denied ever receiving any of the documents Miranda stole. Asked if he “ever come across memos from internal files of any Democratic members given to you or provided to you in any way?” he replied, “No.” In 2006, also under oath, he again denied ever receiving stolen documents.

But newly released documents show that Miranda had indeed sent Kavanaugh information from the stolen internal documents. The nominee continues to deny he knew the information was stolen. But he can no longer deny he received it.

The Department of Education is nearing completion of its search of its files, and those of its predecessor agency, HEW."

Q So, the Reagan Justice Department conducted an exhaustive review of its litigation files and assembled the documents responsive to the Senate's request. This stands in marked contrast to the stonewalling of the current Justice Department.

Q What happened next to the boxes of school desegregation memos assembled by the Reagan Justice Department?

A On September 2, 1987, nine days after reporting to the Senate on its efforts to locate and assemble documents responsive to the Senate's request, the Department of Justice sent Chairman Biden a letter, stating:
"Attached is one set of copies of documents assembled by the Department in response to your August 19, 1987 request for documents relating to the nomination of Robert Bork. . . ."

Q So, it is clear that the Justice Department transmitted all of the documents not objected to (specifically, not a handful of Saratoga documents objected to by Nixon's lawyers).

Q What were three school desegregation documents I have in my hand a sample of the documents provided by the Justice Department to the Senate during the Bork nomination regarding school desegregation.

A For example, there is a memo from Assistant Solicitor General Frank Easterbrook (then acting in the same capacity as Mr. Espada, now a judge on the Seventh Circuit). In this memo, Easterbrook analyzes school desegregation efforts in Philadelphia. In this memo to the Solicitor General, Robert Bork, Easterbrook states, "The Civil Rights Division and I recommend AMICUS PARTICIPATION in support of petitioner."

Q Easterbrook suggested that the Third Circuit's decision in *Verbeiner v. School District of Philadelphia*, that the local schools were "separate but equal" in this case involving a female student seeking entry would adversely affect the enforcement of Title IX and amendments prohibiting sex discrimination in education. In the memo, one can see Easterbrook's analysis of whether discrimination based on sex should be reviewed under a strict scrutiny standard or the lowest level of review, which is known as rational basis review.

Q Attached to that memo is the memorandum of the Acting Assistant Attorney General for the Civil Rights Division, Stanley Sotolinger.

Q Another example of a school desegregation memo to the Solicitor General discussed in the Bork nomination involves the desegregation of Negro schools in the case of *United States v. School District of Omaha*. In that case, the memo to Solicitor General Bork argued that the Civil Rights Division should be permitted to appeal an adverse decision by the district court in decrees that found erroneously that the school district's desegregation was not based on intent to segregate. That memo analyzes why the decision below was wrong and why the law should be corrected to reflect a better understanding of the standards for finding unlawful segregation based on race.

Q Specifically, the author of that memo argued that "We believe that an appeal of the district court's decision in this case is essential in order to develop the law on the issue of proof necessary to establish a showing of intent to segregate in a northern school system."

Q We believe Mr. Espada's memos contain similar suggestions about how the law should be developed, which reflect his unscripted views of the state of the law and its direction.

Q For another memo disclosed in the Book nomination involves the case of Lee and United States v. Memphis City School System, relating to desegregation in Alabama. That memo to Solicitor General Robert Bork requests authority to appeal a lower court decision refusing to desegregate elementary schools, one white and one African American, as well as dismantling of the segregation state-wide.

Q These are just a few of the memos provided to the Senate by the Justice Department during the Book nomination relating to school desegregation (with all of those Busing cases between 1969 and 1977 enforcing Brown v. Board). They were clearly provided as part of the Justice Department's submission of memos requested by the Senate in document request number 9, which I read in full earlier.

Q You would think this would be enough evidence to refute the groundless claims of Republicans that memos from lower level attorneys written to the Solicitor General have never been provided in past nominations or that the above memos were stolen? But there is even more evidence.

Q A second example also comes from the Book nomination.

Q In a letter dated August 16, 1987, then-Chairman Biden wrote to the Justice Department and requested numerous memos.

Q Included in this request was what was identified as request number 10. That request asked for the Justice Department to provide to the Senate, numerous "documents constituting, describing, referring in whole or in part to the participation of Solicitor General Robert H. Bork in the nomination of the position of the United States

Q In the Solicitor General's office, line attorneys, Assistant Solicitors General, in the same role as Eargas, write the recommendations to the Solicitor General analyzing what the law is or should be and whether the case would help move the law in one direction or another.

Q In those appeals, a lower level attorney would write a memo making the recommendation, that memo would be reviewed by a direct supervisor and then submitted to the Solicitor General who would then make an oral decision whether to accept the recommendation to appeal (or intervene as amicus) or not. Upon reviewing those attorney memos, a Senate staffer would then examine whether the Solicitor General accepted the recommendation and, if so, whether they took the same position in the publicly filed briefs on appeal as amicus.

Q If the recommendations were accepted and appeal or amicus were authorized, then the other attorney would be asked to write briefs (or even lower, like the Civil Division) consistent with the decision of the SG. Those briefs would be edited by direct supervisors (not the SG) and then would be reviewed by a head of the office (for example, the SG if the brief were going to the Supreme Court, or a Deputy in the Civil Division if the case were going to a circuit court, such as the 9th Circuit).

Q Many of the memos relating to appeal requests and provided in Book's nomination were written to Bork, not by Bork.

Q What was the Reagan Administration's response to the request of memos by line attorneys to Solicitor General Bork?

Q Did they say "like this Administration does -- we have never given you such documents in the past? No, because that was not true.

Q Did they claim that past document disclosures were based on a claim of wrongdoing? No, because that was not true.

3. Lying about legal involvement in detention of so-called enemy combatants/torture

During his 2006 confirmation hearing, Kavanaugh told Sen. Dick Durbin (D-Ill.) that he “was not involved” in legal questions related to the detention of so-called enemy combatants. But Durbin said (<https://twitter.com/SenatorDurbin/status/1037447824500289540>) Thursday that records show that there are at least three recorded examples of Kavanaugh participating in discussions of Bush administration detainee policy (see highlighted link for verbiage from that confirmation hearing). Kavanaugh stood by his prior answer, even though he considers himself a “textualist”. He lied then and he is lying now.

4. Lied about involvement in nomination of Judge William Pryor

In Kavanaugh’s 2004 confirmation hearing, Sen. Ted Kennedy (D-Mass.) asked the nominee about his support for William Pryor’s nomination to the 11th Circuit, given that Pryor had called *Roe v. Wade* “the worst abomination of constitutional law in our history.” Kavanaugh responded, “That was not one that I worked on personally.” Newly released documents suggest otherwise. Emails ([https://www.judiciary.senate.gov/imo/media/doc/09-06-18%20GWB%20Document%20Production%20\(Leahy,%20Coons,%20Blumenthal,%20Booker%201\).pdf](https://www.judiciary.senate.gov/imo/media/doc/09-06-18%20GWB%20Document%20Production%20(Leahy,%20Coons,%20Blumenthal,%20Booker%201).pdf)) from the Bush White House show that Kavanaugh was involved in selecting Pryor, interviewing him, and shepherding his nomination through the Senate.

From: Charnes, Adam <Adam.Charnes@usdoj.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett.M.Kavanaugh>
CC: Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin.A.Powell>; Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto.R.Gonzales>
Sent: 12/11/2002 2:26:49 AM
Subject: : Re: CA11

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL INBOX MAIL
CREATOR: "Charnes, Adam" <Adam.Charnes@usdoj.gov> ["Charnes, Adam" <Adam.Charnes@usdoj.gov> / UNKNOWN]
CREATION DATE/TIME: 11 DEC 2002 09:20:49 AM
SUBJECT: : Re: CA11
TO: Brett M. Kavanaugh [BP=Brett.M.Kavanaugh/WHO/EOP@EOP [WHO]]
FROM: UNKNOWN
CC: Benjamin A. Powell [BP=Benjamin.A.Powell/WHO/EOP@EOP [WHO]]
BCC: UNKNOWN
CC: Alberto R. Gonzales [CG=Alberto.R.Gonzales/WHO/EOP@EOP [WHO]]
DELETED: UNKNOWN
End Original ARMS Header

Brett, at your request, I asked Matt to speak with Fryer about his interest. Fryer responded that he was "intrigued" but needed to speak with his wife. Incidentally, he will be at the WH today for a Christmas party, and is staying at the Willard, so you might want to speak with him directly. Also, we should probably communicate, either directly or through Matt, a deadline for him to let us know definitively, because of the time pressure imposed by Steele's nomination.

----- Original Message -----
From: Brett M. Kavanaugh<bmk@eop.eop.gov>
To: Charnes, Adam <Adam.Charnes@usdoj.gov>
Cc: Benjamin A. Powell<ba@eop.eop.gov>; Benjamin A. Powell<ba@eop.eop.gov>; Alberto R. Gonzales<ar@eop.eop.gov>; Alberto R. Gonzales<ar@eop.eop.gov>
Sent: Tue Dec 10 16:18:57 2002
Subject: Re: CA11

Adam, actually, I think we should discuss this. Makes sense to think through this carefully for many reasons. In particular, we perhaps should think about recommending Fryer for CA11 and Steele for one of the district seats, which would be a very solid result on both CA11 and district court and avoid a potentially serious problem that we can discuss.

Embedded
Origin: Name: "Charnes, Adam" <Adam.Charnes@usdoj.gov>
To: FILE: 12/10/2002 02:07:03 PM
pid:2110.ppt

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

Committee Confidential

REV_00223834

From: Joel Pardue [REDACTED]
To: [REDACTED]
BCC: Brett M. Kavanaugh (Brett M. Kavanaugh@WHO/EOP [WHO])
Sent: 6/5/2003 10:06:28 AM
Subject: Emergency Umbrella Meeting Tomorrow
Attachments: P_LCTYG003_WHO.TXT_1.txt

***** Begin Original AMO Header *****

MSGID TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Joel Pardue [REDACTED] (Joel.Pardue [REDACTED])

[UNKNOWN]

CREATION DATE/TIME: 5-JUN-2003 14:07:28.00

SUBJECT: Emergency Umbrella Meeting Tomorrow

TO: [REDACTED] (UNKNOWN [])

READ:UNKNOWN

BCC: Brett M. Kavanaugh (Brett M. Kavanaugh@WHO/EOP [WHO])

READ:UNKNOWN

***** End Original AMO Header *****

There will be an emergency umbrella meeting tomorrow at 11:00 PM (right after the 11:00 call) at the law firm of Baker & Hostetler [REDACTED]. We need to discuss nominee Paul Propp's hearing next Wednesday and there are important confirmation process issues with Judge Kuhl that need to be addressed.

Do you Yahoo!!
Free online calendar with sync to Outlook®.
- acti.stn
ATT CREATION TIME/DATE: 5 07:00:00.00
File attachments of P_LCTYG003_WHO.TXT 1.txt

From: Powell, Benjamin A.
To: william_smith@judiciary.senate.gov
<william_smith@judiciary.senate.gov>; Brian A. Benzckowski@usdoj.gov
<Brian.A.Benzckowski@usdoj.gov>; William.Hall2@usdoj.gov
<William.Hall2@usdoj.gov>; William.Hall2@usdoj.gov <Kavanaugh, Brett
M.>; William.Hall2@usdoj.gov <Snee, Ashley> [REDACTED]
<Smith, Matthew E.>
Sent: 6/5/2003 3:33:56 PM
Subject: 4pm conference number

We are having a 4pm conf call to discuss Fryor and coordinate plans and efforts. Let me know if you are not available.
Call-in number below.

Time: 4:00pm June 5

Dial in #: [REDACTED]

Code: [REDACTED]

Ben Powell

[REDACTED]

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Yoo, John C <John.C.Yoo@usdoj.gov>
BCC: timothy flanigan (timothy flanigan [WHO])
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SUBJECT: : 4A issue
TO: "Yoo, John C" <John.C.Yoo@usdoj.gov> ("Yoo, John C" <John.C.Yoo@usdoj.gov> [UNKNOWN])
READ: UNKNOWN
BCC: timothy flanigan (timothy flanigan [WHO])
READ: UNKNOWN
End Original ARMS Header

Any results yet on the 4A implications of random/constant surveillance of phone and e-mail conversations of non-citizens who are in the United States when the purpose of the surveillance is to prevent terrorist/criminal violence?

5. Significantly downplayed his role in nomination of Judge Charles Pickering

Mr. Kavanaugh was willfully deceitful during his 2006 confirmation hearing, Kavanaugh downplayed his role in the nomination of Charles Pickering, a controversial judicial appointee. "This was not one of the judicial nominees that I was primarily handling," Kavanaugh said. But new emails (<https://www.nytimes.com/2018/08/16/us/politics/brett-kavanaugh-pickering-nomination.html>) show he may have been more involved than he let on.

Thank you for considering + investigating this complaint - I truly appreciate it!