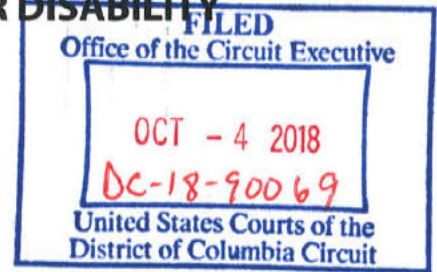


**JUDICIAL COUNCIL OF THE DISTRICT OF COLUMBIA CIRCUIT
COMPLAINT OF JUDICIAL MISCONDUCT OR DISABILITY**



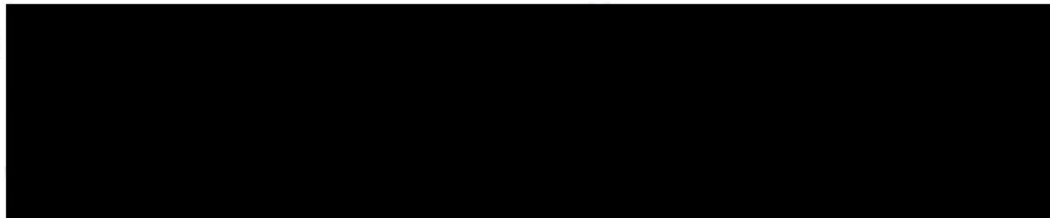
E. Barrett Prettyman U.S. Courthouse
333 Constitution Avenue, N.W.
Washington, D.C. 20001-2866
202-216-7340



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: The Honorable Brett M. Kavanaugh
Court: United States Court of Appeals, District of Columbia 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: Sept. 29, 2018

Judicial Council of the District of Columbia Circuit
E. Barrett Prettyman U.S. Courthouse
333 Constitution Avenue, N.W.
Washington, D.C. 20001-2866



Your Honors,

This is a Complaint under the Rules for Judicial-Conduct and Judicial-Disability Proceedings (the "Rules"). For ease of reference I will number the paragraphs that follow.

1. This Complaint is about the testimony that The Honorable Brett M. Kavanaugh, U.S.C.J., a Judge of the United States Court of Appeals for the District of Columbia Circuit, gave on Thursday, September 27, 2018, to the United States Senate Committee on the Judiciary, at a hearing of that Committee in the District of Columbia.
2. I have not coordinated this Complaint with anyone else. It is entirely my own work. I am submitting it because, in my opinion, Judge Kavanaugh committed misconduct, and his misconduct calls his judicial capacity into question (including in his present position).
3. I am writing this Complaint with care, but also in some haste, in the early hours of a Saturday on which I have much else to do. I will therefore state my general background, and describe briefly the ways in which I believe that Judge Kavanaugh committed misconduct.

Background of Complainant

4. I am an attorney and counselor at law duly admitted to practice in the State of New York.
5. I believe that some years ago, in connection with a habeas matter, I was also admitted to practice before the United States Supreme Court. I do not claim that membership in my work, so I am not sure, this morning, whether I technically am still a member of that Bar.
6. My law degree is from [REDACTED], my undergraduate degree is from [REDACTED] and for seven years, until [REDACTED] I attended [REDACTED]
7. In other words, I grew up in [REDACTED] That said, to be clear, I have no personal knowledge of what Judge Kavanaugh did, or did not do, in the 1980s and 1990s.
8. For about five years, from 1993 to 1998, I worked for [REDACTED] In that staff capacity, I attended many hearings of what was then the United States Senate Committee on Governmental Affairs. I saw many witnesses sworn in before that Committee, saw many questions asked by Senators, and saw many witnesses answer. In my view, witnesses before Senate committees generally answer questions truthfully.

9. Additionally, in [REDACTED], I clerked for [REDACTED] of the United States Court of Appeals for the Fifth Circuit.
10. Lastly, in recent years I have defended lawyers and law firms against accusations of professional misconduct. I have given CLE talks, both live and web-based, on attorney ethics. Since September 2016 I have also served as a member of the Committee on [REDACTED]
11. In this Complaint I obviously am not speaking for any of the above institutions or people. But it is with the above background—including personal experience in the Senate, appellate, litigation, and ethical contexts—that I have evaluated Judge Kavanaugh’s testimony.

Judge Kavanaugh’s Misconduct

12. From having read media reports about Judge Kavanaugh’s testimony, and from having reviewed portions of a transcript of that testimony posted by *The Washington Post*, I believe that Judge Kavanaugh committed judicial misconduct when he provided false testimony. He may have committed judicial misconduct in other ways as well.

False testimony

13. First and most importantly, in response to clear questions posed by Rachel Mitchell, Esq., Judge Kavanaugh testified as follows:

MITCHELL: Have you reviewed every entry that is in these calendars of May, June, July and August of 1982?

KAVANAUGH: I have.

MITCHELL: Is there anything that could even remotely fit what we’re talking about, in terms of Dr. Ford’s allegations?

KAVANAUGH: No.

14. In my opinion, one of Judge Kavanaugh’s answers quoted above must have been a flat lie. If Judge Kavanaugh did review “every entry . . . in these calendars,” then he knew full well that his own calendar entry for July 1, 1982, “could [] remotely fit what we’re talking about, in terms of Dr. Ford’s allegations.” His second answer above should have been “Yes.”
15. Additionally it appears that Judge Kavanaugh lied about terms used for sexual conduct.
16. Judge Kavanaugh may also have lied about his own drinking habits and sexual experiences.
17. Because these lies were so obvious, much of the press is now describing Judge Kavanaugh—a sitting judge of the Court of Appeals for the District of Columbia; indeed, a member of the Circuit Judiciary Council to which this Complaint is addressed—as a liar. This coverage is bringing the courts of the United States into disrepute.
18. Unfortunately, for these reasons, I believe that Judge Kavanaugh has caused “a substantial and widespread lowering of public confidence in the courts among reasonable people.” Rule 3(h)(2).

19. It might be argued that Judge Kavanaugh was engaging in an “exculpatory no,” and that his lies about potentially criminal conduct are excusable for that reason. Judge Kavanaugh, however, has previously cited to the very Supreme Court case holding exactly the opposite. See Brett M. Kavanaugh, *The President and the Independent Counsel*, 86 Geo. L.J. 2133, 2165 n. 96 (1998) (quoting *Brogan v. United States*, 118 S. Ct. 805 (1998)).
20. For these reasons, I believe that when Judge Kavanaugh testified falsely before the United States Senate Committee on the Judiciary, he violated 18 U.S.C. § 1001.

Inappropriately partisan statements

21. Another troubling aspect of Judge Kavanaugh’s testimony was his blatant partisanship—his full-throated willingness to treat his nomination as a political contest. Apparently he accused opponents of his nomination of engaging in “a calculated and orchestrated political hit,” testified that this “hit” was motivated in part by a desire for “revenge on behalf of the Clintons,” and called a hearing of the Senate Judiciary Committee “a circus.” Further review of his testimony will, I believe, provide further examples of partisan statements.
22. These statements too can only cause “a substantial and widespread lowering of public confidence in the courts among reasonable people.” Unfortunately, and with all respect, these statements by Judge Kavanaugh do lower my own confidence in the ability of the Court of Appeals for the District of Columbia Circuit to properly decide politically salient cases, for as long as Judge Kavanaugh serves on that Court.
23. It is unclear whether Judge Kavanaugh himself thought that partisan divisiveness was an appropriate tone to strike, or whether he arrived at that conclusion after advice from others, including possibly the President of the United States. It is proper for a nominee to cooperate with the Executive Branch as to his or her nomination. But I believe it is improper for a sitting federal judge to be encouraged to dive into the political fray—and then to do just that, and with such enthusiasm abandon.
24. In this respect, Judge Kavanaugh seemed to be attempting not to defend his nomination—which he seemed to think might be in jeopardy—but rather to use his emotion, and his very partisan barbs, to gin up Republican voters for the midterm elections in six weeks.
25. If Judge Kavanaugh were now to choose to withdraw his nomination, I hope that he will do so in a more dignified and less partisan way, lest he give further basis for the conclusion that he has engaged in judicial misconduct by making inappropriately partisan statements.

Treating others in a hostile manner

26. Lastly, from the portions of the transcript that I have reviewed, it seems that Judge Kavanaugh interrupted Democratic member of the Judiciary Committee very often, and generally did not interrupt Republican members of the Committee.
27. Your Honors may also wish to determine whether Judge Kavanaugh interrupted his female questioners (including Ms. Mitchell) more often than his male ones.

28. On information and belief, it also appears that Judge Kavanaugh raised his voice, and responded contumaciously to questions by sitting United States Senators. He may have corrected this in one instance—by apologizing to Senator Amy Klobuchar—but on information and belief, that was not the only time that he badgered a United States Senator.
29. Generally speaking, sitting federal judges would do well to treat sitting Members of Congress with respect. Not to belabor an obvious and pragmatic point, but I trust that the badgered Senators will not remember Judge Kavanaugh's treatment of them, when the Senators next consider the Financial Services and General Government appropriations bill.
30. More judicially: If Judge Kavanaugh is so repeatedly and publicly discourteous to a group of Senators, then what effect will his discourtesy have on the confidence of the poor, the imprisoned, the disabled, the sick, and the otherwise powerless or marginalized, in the ability of the federal courts to adjudicate their cases without regard to power, wealth, or station?

Conclusion

31. As I understand Judge Kavanaugh's testimony, he displayed not merely a reluctance to own up to youthful misdeeds—reluctance that might, in some circumstances, be understandable—but actually something far worse.
32. It appears to me that Judge Kavanaugh is perfectly willing to lie—to lie repeatedly—about established facts, and also to engage in contumacious behavior in the most formal setting, in order to get the result that he wants.
33. That is the very opposite of what we all need from an Article III judge.

Respectfully submitted,

