

№ 16-343

In the  
**Supreme Court**  
of the  
**United States**

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WALTER TUVELL

*Petitioner*

*v.*

INTERNATIONAL BUSINESS MACHINES (IBM)

*Respondent*

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***On Petition for Writ of Certiorari to the United  
States Court of Appeals for the First Circuit***

**PETITION FOR WRIT OF CERTIORARI,  
SUPPLEMENTAL BRIEF OF PETITIONER**

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WALTER E. TUVELL, PHD, *Pro Se*<sup>1</sup>  
836 Main Street  
Reading, Massachusetts 01867  
(781)944-3617 (h); (781)475-7254 (c)  
walt.tuvell@gmail.com

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1 • Tuvell is not “really” *pro se* — see main Petition ¶vif6.



## INTRODUCTION

Pursuant to Sup.Ct.R. 15.8, petitioner hereby submits this Supplemental Brief (“**SuppBrief**”) to his Petition for Writ of Certiorari (with Required Appendix), “**PetWritCert.**”

The primary purpose of this brief is to notify and transmit to this Court (in the appendix, “**SuppApX**”) the two **Complaints of Judicial Misconduct** petitioner has filed in connection with this case.<sup>2</sup> These documents were not available when the main PetWritCert was submitted.<sup>3</sup>

The only other content of this SuppBrief is a short list of errors/corrections to the PetWritCert (mostly minor/trivial).

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2 • Despite these Complaints of Judicial Misconduct, the observation of PetWritCert Petition ¶39 — “*Who Will Guard The Guards?*” — is still correct. Namely, the Supreme Court is indeed the “only answer,” because the Court can overrule the Judicial Councils/Conference, but not *vice versa*.

3 • The two Complaints of Judicial Misconduct were actually filed with the Judicial Council for the First Circuit on the same day (September 12, 2016) that the main PetWritCert was filed with the Supreme Court. However, those complaints were entirely conceived and authored during the preceding week, during which time the PetWritCert was undergoing its final hard-copy booklet production/printing process, hence the complaints were not available in time to be filed with the PetWritCert. As reformatted/reproduced here, these complaints include minor/trivial corrections of the originals filed with the Judicial Council (corrections which have also been submitted to the Judicial Council).

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## ERRATA/CORRIGENDA TO PETWRITCERT

The following *errors* (all minor/trivial, except for the “2016’ → ‘2015” fix) have been *discovered* in the *original* version<sup>4</sup> of the PetWritCert, and *corrected* as indicated:

- Errors discovered *during* the hard-copy booklet production process, and *hand-corrected* in all copies of the booklet *before* distribution:
  - ¶Petition<11/41>: “he was treated him” → “he was treated”.
  - ¶ReqApX[4/123]: “July 6, 2016” → “July 6, 2015”.
  - ¶ReqApX[120/123]: “¶m e46” → “¶me46” (no space).
- Errors discovered *after* distribution of the original hard-copy booklets:
  - ¶FrontCover:<sup>5</sup> “Nº \_\_\_\_\_” → “Nº **16-343**”.
  - ¶Petition<i/xii> and ¶Petition<6/41>: “esp. ¶24” → “esp. ¶24” (non-italics).<sup>6</sup>
  - ¶Petition<31/41>: “~~B-D~~” → “~~B-D~~” (non-bold-

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4 • All errors have been corrected in the latest PDF versions of PetWritCert.

5 • This change was made by design (not an “error”), once the case number became known.

6 • Printed in booklets as originally intended, but later decided that italics doesn’t look very good in this context.

face).

- ¶Petition<40/41>: “imperial” → “imperious”.
- The two blank pages between the Petition and the ReqApx should carry the customary notice, “{ *This page intentionally left blank.* }”.
- ¶ReqApxFrontCover: “(ReqApx)” → “(RE-QAPX)” (consistency).
- ¶ReqApx[61/123]: “Aff..” → “Aff.{,}”.<sup>7</sup>

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7 • *Note:* This double-period “error” was present in the original (un-reformatted) version of the document; it was intended to be corrected (detectably/visibly, as indicated)<sup>†</sup> in the reformatted version (Sup.Ct.R. 33(1)(b)), but was mistakenly missed. {<sup>‡</sup>. Certain other errors (only the worst, not all) in original (un-reformatted) documents were also corrected (detectably/visibly) when reformatted for PetWritCert’s Required Appendix (“**ReqApx**”).}

# COMPLAINT OF JUDICIAL MISCONDUCT, DISTRICT

Nº 01-16-90036

◀ 1 ▶

Judicial Council of the First Circuit

## COMPLAINT OF JUDICIAL MISCONDUCT OR DISABILITY

To begin the complaint process, complete this form and prepare the brief statement of facts described in item 4 (below). 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. The Rules are available in federal court clerks' offices, on individual federal courts' websites, and on [www.uscourts.gov](http://www.uscourts.gov).

Your complaint (this form and the statement of facts) should be typewritten and must be legible. For the number of copies to file, consult the local rules or clerk's office of the court in which your complaint is required to be filed. Enclose each copy of the complaint in an envelope marked "COMPLAINT OF MISCONDUCT" or "COMPLAINT OF DISABILITY" and submit it to the appropriate clerk of court. **Do not put the name of any judge on the envelope.**

1. Name of Complainant: Walter Tuvell  
 Contact Address: 836 Main St.

*Complaint of Judicial Misconduct, District*

- Daytime telephone: Reading, Mass. 01867  
(781)475-7254
2. Name(s) of Judge(s): Casper  
Court: United States District  
Court, D.Mass.
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:

Court: United States District  
Court, D.Mass.

Case Number: Tuvell v. IBM,  
Nº13-11292-DJC

Docket number of any appeal to the 1<sup>st</sup> Circuit:  
Nº15-1914

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

Party       Lawyer       Neither

◀ 2 ▶

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

Robert S. Mantell, BBO# 559715  
111 Devonshire St., 4<sup>th</sup> Floor  
Boston, MA 02109  
(617)742-7010



RMantell@TheEmploymentLawyers.com

4. **Brief Statement of Facts.** Attach a brief statement of the specific facts on which the claim of judicial misconduct or disability is based. 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.
5. **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)	<u>/s/ Walter Tuvell</u>
(Date)	<u>September 12, 2016</u>





## STATEMENT OF FACTS

### What Happened, Where, and When

I hereby accuse Judge Casper of **Judicial Misconduct**, concerning the case *Tuwell v. IBM*, in which I am Plaintiff. Specifically: she wrongfully ***lied***<sup>1</sup> (***falsifying all the “facts of the case”***), substantively adversely to me (by dismissing the case at summary judgment) on the basis of her lies.

The complained-of behavior occurred in Casper’s **falsified opinion (“Op”)**, issued for *Tuwell v. IBM* (July 6, 2015).

### Grounds For Complaint

This section summarizes this Complaint ***only briefly/summarily*** (per instructions for filing this Complaint). For reference to ***complete details fully elaborated***, see the section *Further Information To Aid Investigation, infra*.

### A

In her opinion (Op ¶1–2 §II),<sup>2</sup> Judge Casper cor-

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1 • “Lie” = “known falsehood intended to harm” ~ “**abuse of judicial power.**”

2 • Notation used throughout: § = section(s); ¶ = paragraph(s); ρ = page(s); ℓ = line(s); f = footnote(s); e = endnote(s); ι = inline-note(s) (embedded in footnotes/endnotes).

rectly identified/stated her **Standard of Review** at summary judgment — proving she was *fully aware* of what she was ***bound/promised by oath*** (28 USC §453) to observe. Namely, Casper expressly wrote (Op ¶2): “The Court ‘view[s] the record in the light most favorable to the nonmovant, drawing reasonable inferences in his favor.’” (Tuvell was non-movant.)

**But then she immediately turned around and lied** — namely, she refused to do what she **just promised to do.**

For, Casper then vouchsafed (Op ¶2 §III 1<sup>st</sup> ¶), referring to case documents by their docket/“D.” numbers, emphasis added):

The facts are as represented in **IBM’s statement of material facts, D. 74,** and undisputed by Tuvell, D. 82, unless otherwise noted. ◀2▶

And this is indeed how she then proceeded to act.

The **problem** is that “D.74” is *Defendant’s Statement of Facts* (“**DSOF**”) (and “D.82” is *Plaintiff’s Response to DSOF* (“**RespDSOF**”)). **THAT WAS FALSE** (i.e., Casper lied about her duty/promise to uphold/observe her **Standard of Review, *supra***)! For, in order to “view the record in the light most favorable to the nonmovant,” Casper was bound by law to **credit**, not the DSOF (nor RespDSOF) at all, but **instead** *Plaintiff’s Statement of*

*Facts* (“**PSOF**”), “D.83.”<sup>3</sup> Yet, the **PSOF** is *nowhere mentioned/credited* in Casper’s Op. By thus **strenuously excluding (a fortiori not crediting) the PSOF** from her “deliberations,” Casper committed an *egregious bald-faced-lie*(-of-omission), thereby rendering a **false opinion**. This is **MISCONDUCT**.<sup>4</sup> (Period.)

*This proves our contention (Judicial Misconduct by Casper). QED.*

## B

To further emphasize the perversity of Casper’s now-proven perfidious “**PSOF-Exclusion**” ploy, we recall that the DSOF and PSOF (and *not any other* document, such as RespDSOF<sup>5</sup>) are **the only two documents required to be submitted** by the parties at a proceeding for summary judgment, according to **FRCP-LR 56.1** (relevant part, emphasis added):

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3 • And, the PSOF *does indeed* defeat the motion for summary judgment, as the merest cursory perusal trivially reveals.

4 • **More, it is manifestly unconscionable, grave miscarriage of justice, corruption of the judicatory process, subversion of judicial integrity, fraud upon the judicial system (by a judge), etc.**

5 • Noting, however, that the RespDSOF (which Casper’s Op pretends to rely upon) references to the PSOF fully nineteen (19) times — yet Casper **refused to follow any of those nineteen pointers into the PSOF itself, not even once!**

**Motions for summary judgment** *shall* include a concise statement of the material facts of record [DSOF] as to which the moving party contends there is no genuine issue to be tried[.] ... A party opposing the motion *shall* include a concise statement of the material facts of record [**PSOF**] as to which it is contended that there exists a genuine issue to be tried[.] ... Material facts of record set forth in the statement required [DSOF] to be served by the moving party will be deemed for ◀ 3 ▶ purposes of the motion to be admitted by opposing parties *unless* [and *only unless*] controverted by the statement required [**PSOF**] to be served by opposing parties.

And in fact, **both** (i) the PSOF itself, as well as (ii) the official district court docket sheet, *prominently advertise* **LR 56.1** using “inescapable blazing lights” within their respective “four corners” — thereby *guaranteeing* that Casper was **positively/affirmatively notified** of the PSOF’s signal importance. Thusly (emphasis added):

- **Pursuant to LR 56.1**, Plaintiff hereby submits his Statement of Facts in Material Dispute [**PSOF**], which is being filed to support his Opposition to Defendant’s Motion for Summary Judgment. — *PSOF* ¶1, *unnumbered* ¶ preceding ¶1 (*the very first substantive words of the PSOF itself*).

- 02/12/2015 | 83 | **Statement of Material Facts L.R. 56.1** re 73 MOTION for Summary Judgment filed by Walter Tuvell. (Mantell, Robert) (Entered: 02/12/2015) — *Docket entry for D.83 (= PSOF).*

Finally, to well-and-truly “seal the deal” (of assuring the PSOF received the court’s attention it demanded/deserved), Tuvell’s counsel (and Tuvell himself, who was present in the courtroom) received this reciprocal solemn assurance from Casper at oral argument:

I’m going to have to cutoff argument there, counsel, but **I assure you that I will go back and look at your papers carefully** [*obviously* referring to PSOF, because *that’s the only “paper” that really “matters” (by Rule, LR 56.1)*] — *Transcript p2009–11 (emphasis added).*

So: despite every conceivable precaution being thus taken — *none of which Casper could possibly have been “accidentally mistaken” about* — Casper **blithely ignored the PSOF wholly**. Thus: Casper affirmatively refused to even review/consider (much less “weigh” [though “weighing” would have been improper, according to the tenets of summary judgment review], or *credit*) the **one-and-only** document (PSOF) Plaintiff was **actually required** to submit to her summary judgment proceeding! That is: not only did Casper (i) abridge the duties charged to her **by law** (Standard of Review), but she (ii) doubly

abridged her duties by **ignoring judicial Rule (LR 56.1)**. ◀ 4 ▶

It is **MISCONDUCT** for *any* judge, in *any* jurisdiction, to “*dis*” (*disregard/dismiss/disagree/disrespect/dissemble*) basic Rules of Court. (Period.)

## C

The only remaining issue for us to address here is the extent to which Casper’s actions(/inactions) do, indeed, satisfy the criteria for “Judicial Misconduct,” in the sense of this Complaint.

This Complaint is governed by two authorities:

- **Judicial Conduct & Disability Act (“JCDA”)** — *Judicial Councils Reform and Judicial Conduct and Disability Act* (28 USC §332(d)(1),351–364, 1980).
- **Judicial Conduct & Disability Rules (“JCDR”)** — *Rules for Judicial-Conduct and Judicial-Disability Proceedings* (Judicial Conference of the United States, March 11, 2008).

The JCDA itself *nowhere formally defines* the term “misconduct.” Rather, its definition (or, “meaning”) is imputed, by the JCDR §3(h)(1), from a certain *phrase* in the leading provision of the JCDA:

Any person alleging that a judge has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts [**misconduct**] ... 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. — *JCDA §351(a), relevant part, emphasis added.*

The JCDR (*Commentary on Rule 3, “CommR3”*) acknowledges that the phrase (*supra*) used by the JCDA to deduce the meaning of “misconduct” “is not subject to precise definition,” and for that reason the JCDR provides various examples and dialectic to adumbrate it. For our purposes here, we cite to the following points (emphasis added throughout) — **these listed items are, individually and jointly, sufficient to support our proposition that Casper’s actions do indeed satisfy the meaning of Judicial Misconduct:**

- CommR3 states: “[T]he *Code of Conduct for United States Judges* [‘CodCon,’ a.k.a. ‘**Judicial Ethics**’] may be informative ...”. And, the CodCon reciprocally affirms (*CodCon Commentary to Canon 1*): “Th[is] Code ... may also provide standards of conduct for application in proceedings under the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 (28 USC §§ 332(d)(1), ◀ 5 ▶ 351-364).” Anent, the CodCon specifically provides:
  - A judge should uphold the **integrity** and independence of the judiciary. An independent and **honorable** judiciary is *indispensable to justice* in our society. —



*CodCon Canon 1.*

- ***Respect for Law [Including Judicial Rules].*** A judge should ... act at all times in a manner that promotes *public confidence* in the *integrity and impartiality* of the judiciary. ... An appearance of impropriety occurs when reasonable minds, with knowledge of all the relevant circumstances disclosed by a reasonable inquiry, would conclude that the judge's *honesty, integrity, impartiality, temperament, or fitness to serve as a judge is impaired*. **Public confidence** in the judiciary is eroded by irresponsible or improper conduct by judges. A judge **must avoid** all **[actual] impropriety** and **[even] appearance** of impropriety. This prohibition applies to both **professional** and personal conduct. — *CodCon Canon 2A and its Commentary.*
  
- A Judge Should **Perform the Duties of the Office [Which Includes Judicial Rules] Fairly, Impartially and Diligently** ... A judge should be **faithful to, and maintain professional competence in, the law** and should not be swayed by partisan interests, public clamor, or fear of criticism. ... A judge should accord to *every* person who has a legal interest in a proceeding, and

*Complaint of Judicial Misconduct, District*

that person’s lawyer, **the full right to be heard according to law.** — *Cod-Con Canons 3,3A(1,4).*

- The JCDR (§3(h)(3)(A); CommR3) excludes from the definition of misconduct allegations which are “[d]irectly related to the merits of a decision or procedural ruling. ... Any allegation that calls into question the correctness of an official action of a judge — ***without more*** — is merits-related.” But the JCDR then helpfully proceeds to explore the boundaries of “official actions” that ***“are ‘more’;***” i.e., that ***“are not ‘merits-related’;***” i.e., that ***are eligible for a finding of misconduct:***
  - An allegation that a judge ruled against the complainant because the complainant is a **member of a particular ... group**<sup>6</sup> ... is ... not merits-related. Such an allegation attacks the propriety of **arriving at rulings with an illicit or improper motive** [e.g., *ignoring Rules*]. — *CommR3.*
  - An allegation that a judge treated litigants or attorneys in a **demonstrably**

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6 • I **do allege** that Casper’s PSOF-Exclusion scheme was informed by her animus (and that of other elements of the federal judiciary) towards the class nature of my case (namely, *employment discrimination/retaliation*), and hence of me myself (namely, an employment case litigant). This allegation is expressed quite vociferously in my Petition for Writ of Certiorari (see section *Further Information To Aid Investigation, infra*), esp. Petition ¶xi7, p15f21.

egregious and hostile manner while on the bench<sup>7</sup> is also not merits-related. — *CommR3*.

- *Note:* My contemporaneous Petition to the Supreme Court (PetWritCert, cf. section *Further Information To Aid Investigation, infra*) is “orthogonal” (*not germane*) to the instant Complaint:
  - The *existence of a[] [potential] appellate remedy* is ...[in an instance like this one] ... *irrelevant* to whether an allegation is merits-related. — *CommR3*.

## Further Information To Aid Investigation

I have filed a *Petition for Writ of Certiorari* (“**Petition**”), with *Required Appendix* (“**ReqApx**”) — together referred to as “**PetWritCert**” — with the Supreme Court. That PetWritCert contains a **full treatment** of the behavior complained-of *supra*. Accordingly, PetWritCert is **hereby incorporated in its entirety by reference**, and it **must be consulted** to truly comprehend this Complaint.

For the aid/convenience of the investigator, the

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7 • “On the bench” means “acting in the official capacity of a judge” (not necessarily “behavior inside the courtroom”). The treatment charged herein — **PSOF-Exclusion** — is obviously “demonstrably egregious and hostile” (namely, undisguised improper/illicit motive of “overlooking” the PSOF), and is “in official capacity.”

following further materials accompany this Complaint:

- Hard-copy (booklet) of PetWritCert.<sup>8,9</sup> ◀ 7 ▶
- Soft-copy of PetWritCert (file *PetWritCert+Apx.pdf* on USB drive).<sup>10</sup>
- Soft-copy of an *Optional Appendix*, “**OptApx**” (file *PetOptApx.pdf* on USB drive).<sup>11</sup>
- Soft-copies of this District Complaint, as well as the accompanying Appeals Complaint, on the USB drive.

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8 • **Notice of typographical errors:** Three typos have been hand-corrected in all extant copies of the booklets (including the forty copies sent to the Supreme Court). They occur on pages “Petition <11/41>,” “ReqApx [4/123],” and “ReqApx [120/123].”

9 • The hard-copy booklet is just a “courtesy” — there’s no real necessity to include it herewith, because the *same information* is contained in the soft-copy (f10 *infra*).

10 • The soft-copy of PetWritCert of course consists of precisely the same contents as the hard-copy booklet (including the corrections noted in f8 *supra*).<sup>†</sup> {†· Noting, though, that the PDF contains color images, while the booklet production process changes that to desaturated black-and-white (per Supreme Court Rule).}

11 • The OptApx was prepared as an adjunct to PetWritCert, but has not been submitted to the Supreme Court (because there is no provision for doing so — in the posture of a Petition for Writ of Certiorari, only the Petition itself and its ReqApx are permitted to be filed). The OptApx includes (along with other information) *copies* of certain *original* documents filed in *Tuvell v. IBM* — as opposed to the same documents, which are also included in the ReqApx, but which have there been *reformatted* (per Supreme Court Rule).

Not accompanying this Complaint are the totality of *all Tuvell v. IBM* case documents (though the *most important* ones for our purposes are indeed included in ReqApx and OptApx). All such documents are relevant in some degree, of course; it is *assumed* the investigator has access to them, and *will(/must)* consult them.

**Reminder #1** (*Implementation of the Judicial Conduct and Disability Act of 1980, “Breyer Committee Report,”* September 2006, ¶45, screenshot,<sup>†</sup> emphasis added):

Of the 20 dispositions we found **problematic**:

- 11 involved dismissals in which the sole problem was the chief judge’s **failure to undertake an adequate limited inquiry** before dismissing the complaint, usually as **“frivolous”**;
- two involved dismissals in which the main or sole problem was the chief judge’s **mistakenly** regarding the complained-of behavior as **“directly related to the merits”** of a decision or procedural ruling”;

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<sup>†</sup> • { Per Supreme Court Rule, the screenshot appearing in the original complaint is here reformatted, and its color highlighting is here desaturated to black-and-white (~grey). }

**Reminder #2: “High-visibility”** cases (such as this one, potentially) are of particular interest, universally. *Breyer Committee Report*, ¶67ff.



# COMPLAINT OF JUDICIAL MISCONDUCT, APPEALS

Nº 01-16-90041

◀ 1 ▶

Judicial Council of the First Circuit

## COMPLAINT OF JUDICIAL MISCONDUCT OR DISABILITY

To begin the complaint process, complete this form and prepare the brief statement of facts described in item 4 (below). 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. The Rules are available in federal court clerks' offices, on individual federal courts' websites, and on [www.uscourts.gov](http://www.uscourts.gov).

Your complaint (this form and the statement of facts) should be typewritten and must be legible. For the number of copies to file, consult the local rules or clerk's office of the court in which your complaint is required to be filed. Enclose each copy of the complaint in an envelope marked "COMPLAINT OF MISCONDUCT" or "COMPLAINT OF DISABILITY" and submit it to the appropriate clerk of court. **Do not put the name of any judge on the envelope.**

1. Name of Complainant: Walter Tuvell  
 Contact Address: 836 Main St.

*Complaint of Judicial Misconduct, Appeals*

- Daytime telephone: Reading, Mass. 01867  
(781)475-7254
2. Name(s) of Judge(s): Torruella, Lynch,  
Thompson; Howard,  
Kayatta
- Court: United States Court  
of Appeals, First Cir.
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:

Court: United States District  
Court, D.Mass.

Case Number: Tuvell v. IBM,  
Nº13-11292-DJC

Docket number of any appeal to the 1<sup>st</sup> Circuit:  
Nº15-1914

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:

Andrew P. Hanson, BBO# 672696  
One Boston Place, Suite 2600



Boston, MA 02108

(617)933-7243

AndrewPHanson@gmail.com

4. **Brief Statement of Facts.** Attach a brief statement of the specific facts on which the claim of judicial misconduct or disability is based. 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.
5. **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)

/s/ Walter Tuvell

(Date)

September 12, 2016





## STATEMENT OF FACTS

### What Happened, Where, And When

I hereby accuse Judges (I)(panel) Torruella, Lynch, Thompson, and (II)(*en banc*) Torruella, Lynch, Thompson, Howard, Kayatta, of **Judicial Misconduct**, concerning the case *Tuvell v. IBM*, in which I am Appellant/Plaintiff. Specifically: they wrongfully *lied*<sup>1</sup> (*falsely supporting the District Judge's falsification of all the "facts of the case"*), substantively adversely to me ((I)(panel) by affirming summary judgment dismissal of the case, and (II)(*en banc*) by denying rehearing), on the basis of their lies.

The complained-of behavior occurred in (I) (panel) the panel's **falsified opinion ("PanOp")**, issued for *Tuvell v. IBM* (May 13, 2016), and in (II)(*en banc*) the *en banc* court's subsequent **falsified denial ("DenReh") of petition for rehearing ("Pe-tReh")** (June 15, 2016).

### Grounds For Complaint

This section summarizes this Complaint ***only briefly/summarily*** (per instructions for filing this Complaint). For reference to ***complete details fully elaborated***, see the section *Further Information To*

1 • "Lie" = "known falsehood intended to harm" ~ "abuse of judicial power."

*Aid Investigation, infra.*

## A

We first address the (I)(panel) Affirmation of Summary Judgment Dismissal portion of this Complaint.

In their opinion (PanOp ¶4),<sup>2</sup> the panel judges correctly identified/stated their **Standard of Review** for *review* of a summary judgment decision — proving they were *fully aware* of what they were ***bound/promised by oath*** (28 USC §453) to observe. Namely, the panel expressly wrote (PanOp ¶4): “Under the plenary [more commonly called ‘de novo’] standard of review [hence, bound by **FRCP-LR 56.1**] ...”

**But then they immediately turned around and lied — namely, the panel judges refused to do what they just promised ◀ 2 ▶ to do** (recalling the **LR 56.1** argumentation already presented in the accompanying District Complaint, cf. section *Further Information To Aid Investigation, infra*).

For, the panel then vouchsafed (PanOp ¶4, emphasis added):

[W]e **perceive no genuine issue of material fact** and agree with the district court that IBM is entitled to judgment as a matter

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2 • Notation used throughout: § = section(s); ¶ = paragraph(s); ¶ = page(s); ℓ = line(s); f = footnote(s); e = endnote(s); ι = inline-note(s) (embedded in footnotes/endnotes).

of law. ... Simply said, [(i)] **the district court got it right.** [(ii)] **It closely considered each of Tuvell's arguments** and, in clear terms and for persuasive reasons, rejected them.

And this is indeed how the panel then proceeded to act.

The **problems** are that the relied-upon district court **neither** [(i)] “got it right,” **nor** [(ii)] “considered [‘closely’ or otherwise] each of Tuvell’s arguments.” **THOSE WERE FALSE** (i.e., the panel judges **lied about their duty/promise to uphold/observe their plenary/de novo Standard of Review, supra!** For, both [(i)] and [(ii)] are *obviously false*, as the merest cursory (*de novo*) perusal trivially reveals.<sup>3</sup> By thus **whole-heartedly (= unre-servedly, unquestioningly, blindly, hook-line-and-sinker) swallowing the district judge’s (false) “conclusions”** — *after de novo* review, *no less* — the panel judges committed an *egregious cover-up bald-faced lie* (-of-commission), thereby rendering a **false opinion**. This is **MISCONDUCT**.<sup>4</sup> (Period.)

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3 • Cf. the District Complaint accompanying the instant Appellate Complaint, boxed paragraph on p2 (esp. f3), which introduces the hyper-critical role of Plaintiff’s Statement of Facts, “**PSOF**”. Noting that, *of course*, all relevant case materials were indeed properly forwarded to the appellate panel, including (i) the **PSOF** (Appellate Joint Appendix p151–178), and (ii) oral argument **transcript**.

*This proves our contention (Judicial Misconduct by the panel judges). QED.*

## B

But there's more. Not only did the appellate panel judges render a false opinion, *supra*, but then they *additionally* took the further *gratuitous* step to falsely "*rub it in,*" by flaunting the following *superflu-*◀ 3 ▶*ously abusive/snide* language (PanOp ¶4–5):

We have made it abundantly clear that “when lower courts have supportably found the facts, applied the appropriate legal standards, articulated their reasoning clearly, and reached a correct result, a reviewing court ought not to write at length merely to hear its own words resonate.” ... This is one of those cases.

Since *all* these assertions were *lies* (based on their plainly false *de novo* review/opinion, *supra*), this abusive language is hereby ***challenged***. That is, we hereby accuse the panel judges of further ***MIS-CONDUCT***, by abridging JCDR CommR3:<sup>5</sup>

[Concerning] a non-frivolous allegation that

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4 • **More, it is manifestly unconscionable, grave miscarriage of justice, corruption of the judicatory process, subversion of judicial integrity, fraud upon the judicial system (by judges), etc.**

5 • The reference to “JCDR CommR3,” is defined in the accompanying District Complaint of Judicial Misconduct ¶4; cf. section *Further Information To Aid Investigation, infra*.

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a **judge’s language** in a ruling reflected an improper motive[:] If the judge’s language was relevant to the case at hand ... then the judge’s choice of language is presumptively merits-related and excluded, **absent evidence apart from the ruling itself suggesting an improper motive**. If, on the other hand [i.e., if “*an improper motive*” is implicated, as here], the **challenged language** [*supra*] does not seem relevant on its face, then an additional inquiry under Rule 11 is necessary.

## C

We turn now to the (II)(*en banc*) Denial of Rehearing portion of this Complaint.

The **Standard of Review** for reviewing (I) a summary judgment decision (already discussed, *supra*), is different from that for reviewing (II) a petition for rehearing (discussed now). The former (I) is concerned with Appellant/Plaintiff’s “case-in-chief,” as presented to both the district and appellate courts; while the latter (II) is concerned with “issues of mistake” made by the appellate court.<sup>6</sup> The distinction between the two different Standards of Review was

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6 • This latter item (II) reasonably *presumes* that mistakes made at district-level are identified/corrected at appellate-level, under *de novo* review (*supra*); but in the instant case, since the appellate panel *whole-heartedly adopted* the district judge’s reasoning, hence district-level mistakes are equivalent to appellate-level mistakes here.

**expressly** rehearsed ◀ 4 ▶ in Petitioner/Appellant/Plaintiff's PetReh ¶¶. *Viz.* (lightly edited in conformity with the present context):

The (I) *panel's review* of the district court's opinion is *de novo*: the panel looks at appellant's case-in-chief with fresh eyes, and comes to its own independent determination, owing no deference to the district court's opinion; raising issues of *mistake* by the district court would be out-of-bounds for that inquiry. By Rule, it is only **here**, at (II) **re-hearing level**, that **issues of *mistake* are in order** (FRAP 35,40). Since the appellate panel adopted the district's opinion, any **mistakes** at the district level are equally attributable to the appellate level, so are also appropriate here.

Thus, as required by Rule (FRAP 35,40), the PetReh did in fact expressly exhibit the panel's (and district's) "mistakes"<sup>7</sup> — very *politely* (it being expected the *en banc* court would easily "see through" the panel's "smokescreen"/("mistakes"/lies)). Yet despite that "silver-platter presentation," the *en banc* judges insisted on: (i) ignoring the "inconvenient" facts placed under their noses; (ii) unquestioningly/blindly accepting the panel's "decision;" and (iii) mindlessly/senselessly denying rehearing.<sup>8</sup>

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7 • Indeed, so well-thought-out was the PetReh, that it comprises the *foundational model* upon which our PetWritCert submitted to the Supreme Court was constructed.

By thus **whole-heartedly swallowing the panel's (and district's) obviously falsified "conclusions,"** the *en banc* judges committed an *egregious* **double-down all-in cover-up bald-faced lie** (contrary to oath, 28 USC §453), thereby rendering a **false denial of rehearing.** This is ***MISCONDUCT.***<sup>9</sup> (Period.)

*This proves our contention (Judicial Misconduct by both panel and en banc judges). QED.*

## D

Based upon the many reasons presented herein (*supra*) — and, since *both* (I) the panel judges *and* (II) the *en banc* judges **whole-◀ 5 ▶heartedly swallowed** the original district judge's faithless infidelities — I hereby charge the panel and *en banc* judges with **all the exact same charges**<sup>10</sup> I have leveled against the district judge, in the accompanying District Complaint of Misconduct (cf. its section *Further Information To Aid Investigation*).

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8 • The *en banc* order to deny rehearing only mumbled something vague about a “lack of sufficient number of votes” (paraphrase) — not exactly a “mindful” rationale.

9 • Repeat *f4 supra* here.

10 • Recalling that the panel judges are *additionally* charged with abusive language (cf. *supra*); and hence so are the *en banc* judges (since they whole-heartedly swallowed the panel's writing).



## Further Information To Aid Investigation

Accompanying the instant “**Appeals Complaint**” I am **concurrently** filing a separate-but-related *Complaint of Misconduct* (“**District Complaint**”), against the associated district judge for this case.

That District Complaint contains, in its **totality** (especially in its section *Further Information To Aid Investigation*), and references therein (particularly to **PetWritCert**), contains a much fuller treatment of the behavior complained-of herein *supra* (especially, the district court’s contribution, which was **wholeheartedly swallowed** at appellate level). Hence, **all** of that material is **hereby incorporated in its entirety by reference**, and it **must be consulted** to truly comprehend *this* Appeals Complaint too.

**Reminder #1** (*Implementation of the Judicial Conduct and Disability Act of 1980, “Breyer Committee Report,”* September 2006, p45, screenshot,<sup>†</sup> emphasis added):

Of the 20 dispositions we found **problematic**:

- 11 involved dismissals in which the sole problem was the chief judge’s **failure to**

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<sup>†</sup> • { *Per Supreme Court Rule, the screenshot appearing in the original complaint is here reformatted, and its color highlighting is here desaturated to black-and-white (~grey).* }

undertake an adequate limited inquiry before dismissing the complaint, usually as “frivolous”;

- two involved dismissals in which the main or sole problem was the chief judge’s mistakenly regarding the complained-of behavior as “directly related to the merits” of a decision or procedural ruling”;

**Reminder #2: “High-visibility”** cases (such as this one, potentially) are of particular interest, universally. *Breyer Committee Report*, ¶67ff.





