

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



E. Barrett Prettyman U.S. Courthouse
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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: Hon. Brett M. 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

10/5/2018

Judicial Council of the District of Columbia Circuit
Complaint of Judicial Misconduct

In re: Hon. Brett M. Kavanaugh

Complainant: 

STATEMENT OF FACTS

Judge Brett M. Kavanaugh has committed flagrant judicial misconduct in the course of his hearings before the Senate Judiciary Committee. He has made blatantly partisan appeals and attacks. He has perjured himself repeatedly. And he behaved with astonishing disrespect toward Senator Amy Klobuchar. Each of these actions alone would warrant censure. All of these actions together show that Judge Kavanaugh is unfit to be a federal judge.

This complaint is authorized under 28 U.S.C. § 351, which permits a complaint by “[a]ny person alleging that a judge has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts.” The judiciary’s Rules for Judicial-Conduct and Judicial-Disability Proceedings define judicial misconduct to include:

- “conduct occurring outside the performance of official duties 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 3(h)(2);
- “engaging in partisan political activity or making inappropriately partisan statements,” Rule 3(h)(1)(E); and
- “treating litigants, attorneys or others in a demonstrably egregious and hostile manner,” Rule 3(h)(1)(D).

Judge Kavanaugh’s behavior during the confirmation process amounts to judicial misconduct under these standards.

¹ I am submitting this complaint purely in my personal capacity. This complaint does not necessarily reflect the views of the law firm that I am affiliated with, its attorneys, or its clients.

I. PARTISAN POLITICAL ACTIVITY

Judge Kavanaugh began his partisan activity during the confirmation process by choosing to appear on Fox News on Monday, September 24, 2018. Appearing on television, by itself, is not necessarily partisan activity. But given President Trump's admiration of Fox News and that network's overt favoritism toward President Trump and the Republican Party, the choice to appear on Fox News was plainly a partisan act, aligning Judge Kavanaugh with the President and the Republican Party.

Judge Kavanaugh then ratcheted his partisan activity to an astonishingly inappropriate level in his opening statement before the Senate Judiciary Committee on Thursday, September 27, 2018.² Judge Kavanaugh described a "frenzy on the left . . . to block my confirmation." He complained about the behavior of "the Democratic Senate leader," a "Democratic senator," a "former head of the Democratic National Committee," and he said that "the behavior of several of the Democratic members of this committee at my hearing a few weeks ago was an embarrassment."³ He complained that an "allegation was held in secret for weeks by a Democratic member of this committee and by staff." He then said:

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 conspiracy-mongering about "revenge on behalf of the Clintons" and his complaints about "left-wing opposition groups" and a "frenzy on the left" reflect

² The transcript is available here: <https://www.nytimes.com/2018/09/26/us/politics/read-brett-kavanaughs-complete-opening-statement.html>.

naked partisanship that is unacceptable from a federal judge. Benjamin Wittes, a lawyer with “a long relationship” with Judge Kavanaugh, who “admired his career” and “vouched publicly for his character,” described Judge Kavanaugh’s opening statement as “an unprecedentedly partisan outburst of emotion from a would-be justice.”⁴ Wittes continued:

I cannot condone the partisanship—which was raw, undisguised, naked, and conspiratorial—from someone who asks for public faith as a dispassionate and impartial judicial actor. His performance was **wholly inconsistent with the conduct we should expect from a member of the judiciary.**⁵

Wittes was right. Judge Kavanaugh did not behave as a federal judge should. The judiciary cannot rewind the clock, but it can at least take appropriate action against Judge Kavanaugh for his misconduct. Only by doing so can the judiciary minimize the damage that Judge Kavanaugh has done to its reputation and demonstrate that, as an institution, it continues to deserve the country’s respect.

II. PERJURY

Judge Kavanaugh was under oath when he testified before the Senate Judiciary Committee. He disregarded that oath and lied repeatedly. The evidence of his perjury is overwhelming, and I will not detail all of his false statements here.⁶ I will, however, highlight several of Judge Kavanaugh’s lies:

³ This particular statement, in addition to being inappropriately partisan, is “demonstrably egregious and hostile” toward the Senators he was insulting, in violation of Rule 3(h)(1)(D) of the judiciary’s Rules for Judicial-Conduct and Judicial-Disability Proceedings.

⁴ Benjamin Wittes, *I Know Brett Kavanaugh, but I Wouldn’t Confirm Him*, The Atlantic (Oct. 2, 2018), <https://www.theatlantic.com/ideas/archive/2018/10/why-i-wouldnt-confirm-brett-kavanaugh/571936/>.

⁵ *Id.* (emphasis added). See also Eric Levitz, *Kavanaugh’s Partisan Rage Was Disqualifying—Even If He’s Innocent*, Daily Intelligencer (Oct. 3, 2018), nymag.com/daily/intelligencer/2018/10/brett-kavanaugh-hearing-partisan-rage-ford-was-disqualifying-fbi-jeff-flake-senate.html.

⁶ Detailed summaries of Judge Kavanaugh’s false statements, with reference to the evidence that proves those statements false, can be found at:

- He lied about the meaning of “boofed,” saying it referred to flatulence. The evidence is overwhelming that it referred to anal sex.
- He lied about the meaning of “Devil’s Triangle,” saying it was a drinking game. The evidence is overwhelming that it referred to a sex act between two men and a woman.
- He lied about the extent of his drinking in college. As a Yale classmate, Chad Ludington said, “I can unequivocally say that in denying the possibility that he ever blacked out from drinking, and in downplaying the degree and frequency of his drinking, **Brett has not told the truth.**”⁷
- He lied about the drinking age in Maryland when he was in high school, thus lying about whether he illegally drank underage.⁸
- He lied when he said that “Beach Week Ralph Club” referred to his “weak stomach” rather than to vomiting from drinking too much alcohol. This lie is beyond ridiculous.

Additional lies by Judge Kavanaugh are detailed in the articles referred to in the footnotes. Those lies vary in their severity, but the sheer number of lies is remarkable.

All the evidence shows that Judge Kavanaugh drank excessively in high school and college and was part of a group that made repeated misogynistic references to sexual exploits, real or imagined. Rather than telling the truth about what he and his friends were like, he lied repeatedly about his past. Judge Kavanaugh’s youthful misbehavior doesn’t amount to judicial misconduct. But lying under oath about that misbehavior (and other subjects) does.

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- Tara Golshan, *Did Brett Kavanaugh perjure himself? The debate, explained*, Vox.com (Oct. 2, 2018), <https://www.vox.com/2018/10/2/17927606/brett-kavanaugh-perjury-lied-congress>
 - Paul Blumenthal & Jennifer Bendery, *All the Lies Brett Kavanaugh Told*, Huffington Post (Oct. 1, 2018), https://www.huffingtonpost.com/entry/brett-kavanaugh-lies_us_5bb26190e4b027da00d61fcd
 - Paul Rosenberg, *Brett Kavanaugh’s perjury avalanche—50 years in the making*, Salon.com (Sept. 8, 2018), <https://www.salon.com/2018/09/08/brett-kavanaughs-perjury-avalanche-50-years-in-the-making/>

⁷ Chad Ludington’s Statement on Kavanaugh’s Drinking and Senate Testimony, as published by The New York Times (Sept. 30, 2018), <https://www.nytimes.com/2018/09/30/us/politics/chad-ludington-statement-brett-kavanaugh.html>

III. DEMONSTRABLY EGREGIOUS AND HOSTILE BEHAVIOR

Judge Kavanaugh's treatment of Senator Amy Klobuchar during the Judiciary Committee's hearing was "egregious and hostile" by any standard. They had the following exchange:⁹

- Senator Klobuchar: So you're saying there's never been a case where you've drunk so much that you didn't remember what happened before or part of what happened?
- Judge Kavanaugh: You're asking about blackout, **I don't know, have you?**
- Senator Klobuchar: Could you answer the question, judge? I just—so, you have, that's not happened? Is that your answer?
- Judge Kavanaugh: Yeah, **and I'm curious if you have.**

Judge Kavanaugh's response to Senator Klobuchar is the sort of thing one might expect from a hostile teenager, not a federal judge. The fact that Judge Kavanaugh later apologized does not make up for that behavior. No federal judge would tolerate such adolescent, disrespectful behavior in his or her courtroom, and it is unthinkable for a federal judge to have so little self-control and so little respect for a senator during a formal hearing.

CONCLUSION

Judge Kavanaugh's partisan, dishonest, and disrespectful behavior has led to "a substantial and widespread lowering of public confidence in the courts among reasonable people." Rules for Judicial-Conduct and Judicial-Disability Proceedings 3(h)(2). He merits the sternest sanction that his fellow judges can deliver.

⁸ It is not plausible that a lawyer with Judge Kavanaugh's training could have made an innocent mistake about when Maryland changed its drinking age.

⁹ Video of the exchange, and an article summarizing it, are here: Dan Mercia, *Kavanaugh gets combative with Democratic senator over questions about drinking*, CNN (Oct. 27, 2018), <https://www.cnn.com/2018/09/27/politics/kavanaugh-klobuchar-questions-about-drinking/index.html>