

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

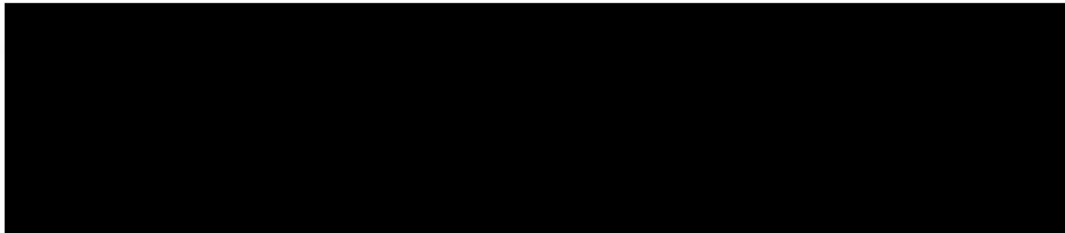
E. Barrett Prettyman U.S. Courthouse
333 Constitution Avenue, N.W.
Washington, D.C. 20001-2866
202-216-7340



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: JUDGE BRETT M. KAVANAUGH

Court: UNITED STATES COURT OF APPEALS - 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: 10/3/2018

October 3, 2018

Mark Langer
Circuit Clerk
United States Court of Appeals - District of Columbia Circuit
E. Barrett Prettyman United States Courthouse
333 Constitution Avenue NW
Room 5205
Washington, D.C. 20001

The Honorable Rebecca Beach Smith
Chair, Committee on Codes of Conduct
c/o General Counsel
Administrative Office of the United States Courts
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, N.E.
Washington, D.C. 20544

Re: Complaint of Judicial Misconduct

Dear Mr. Langer and Chief Judge Beach Smith:

The Code of Conduct for United States Judges states that judges should uphold the integrity and independence of the judiciary, should avoid impropriety and the appearance of impropriety in all activities, and should refrain from political activity. “Deference to the judgments and rulings of courts depends on public confidence in the integrity and independence of judges. The integrity and independence of judges depends in turn on their acting without fear or favor. Although judges should be independent, they must comply with the law and should comply with this Code. Adherence to this responsibility helps to maintain public confidence in the impartiality of the judiciary. Conversely, *violation of this Code diminishes public confidence in the judiciary and injures our system of government under law.*”¹ Judge Kavanaugh’s behavior before the Senate Judiciary Committee on September 27, 2018, and in the events surrounding and giving rise thereto, is in violation of the ethical standards set forth in the various codes of judicial conduct governing federal judges.²

¹ Commentary on Canon 1, Code of Conduct for United States Judges (emphasis added).

² See Code of Conduct for United States Judges; ABA’s Model Code of Judicial Conduct; D.C. Code of Judicial Conduct; and Maryland Code of Judicial Conduct, Title 18, Chapters 100-400, et seq.

Judge Kavanaugh has failed to maintain the integrity of the judiciary by lying, misleading, and/or misstating facts under oath on several occasions, including during the confirmation hearings for his appointment to the D.C. Circuit in 2006, as well as during the hearings for his appointment to the Supreme Court of the United States this year. Such false and misleading testimony includes, but is not limited to, his knowledge of republican staffers' unauthorized access to sensitive computer files of democratic senators, his relationship with and advocacy for other judicial nominees (e.g. William Pryor, William Haynes, and Charles Pickering), his knowledge of the CIA's "enhanced interrogation techniques" (a.k.a. torture), and his knowledge of the persistently inappropriate conduct of Judge Kozinski, for whom Kavanaugh clerked, and whose pervasive sexually explicit commentary has been widely acknowledged by clerks past and present.

Kavanaugh's pattern of dishonest and dishonorable conduct culminated in his testimony before the Senate Judiciary Committee on September 27, 2018, in which he appears to have given further false and misleading testimony regarding the facts surrounding the allegations of sexual assault brought by Christine Blasey Ford. For example, Judge Kavanaugh's testimony about the juvenile and offensive comments in his yearbook - The "Devil's Triangle," "Renate Alumni," and "Beach Week Ralph Club" - rang hollow and untrue. Kavanaugh lied about the drinking age in Maryland during his senior year of high school, and has been less than candid regarding the depth and breadth of his drinking habits in high school and college. And those are just the little things. He lied about the substantive allegations, as well. Kavanaugh claimed that witnesses had "refuted" Dr. Ford's story, which is false and misleading. Kavanaugh further asserted that his friend Mark Judge, whom Dr. Ford places in the room at the time of the alleged assault, had provided "sworn testimony" to the committee and that "this allegation has been hidden by the committee." These statements were also false. There was no sworn testimony from Mark Judge, only a letter from his lawyer stating that Mark Judge had no memory of the alleged incident. Finally, Judge Kavanaugh's statement that the matter had already "been investigated" was also false. As an experienced judge, Brett Kavanaugh knows that words matter. Therefore, it is hard to believe his false and misleading statements were accidental. Judge Kavanaugh knows better.

"A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety."³ "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 impropriety and appearance of impropriety. This

³ Canon 1, Rule 1.2 of the DC Code of Judicial Conduct.

prohibition applies to both professional and personal conduct. A judge must expect to be the subject of constant public scrutiny and accept freely and willingly restrictions that might be viewed as burdensome by the ordinary citizen.”⁴ Judge Kavanaugh’s consistent inconsistencies regarding the grave allegations against him cast serious doubt upon his honesty, trustworthiness, integrity, and fitness for the most prestigious seat any member of the legal profession could ever hope to fill - a lifetime appointment to the Supreme Court of the United States of America. Judge Kavanaugh plays fast and loose with the truth, on issues big and small. Is this a person we want on the nation’s highest court, responsible for upholding truth, justice, and the rule of law - or any court at all?

Even outside the multiple credible allegations of sexual assault, Judge Kavanaugh has shown himself to be in violation of the code of judicial conduct, and unfit for the position. Judge Kavanaugh himself has touted the importance of an independent judiciary. In his own words, “the Supreme Court must never, never be viewed as a partisan institution.”⁵ Canon 2(B) of the Code of Conduct states “A judge should not allow family, social, political, financial, or other relationships to influence judicial conduct or judgment.” Further, “[a] judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon ... political affiliation....” However, in his September 27, 2018 testimony, Kavanaugh called the allegations “an orchestrated political hit” and railed against “the Left” and “the Clintons,” thereby destroying any myth of judicial independence, impartiality, or nonpartisanship. “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.”⁶ The thin veil of Judge Kavanaugh’s impartiality has been pierced, and irrevocably so.

Finally, Judge Kavanaugh himself has stated that the following attributes are needed to be a “good judge” - to have the “proper demeanor,” to keep one’s “emotions in check,” to be “calm amidst the storm,” and to “demonstrate civility.”⁷ Judge Kavanaugh’s demeanor during the September 27, 2018 hearing belied his repeated claims of a calm and even-keeled judicial temperament. His behavior does not comport with accepted standards of judicial ethics as codified in the Code of Judicial Conduct for United States Judges, the American Bar

⁴ Commentary on Canon 2A, Code of Conduct for United States Judges; see also Comment on Canon 1, Rules 1.1 and 1.2 of the DC Code of Judicial Conduct.

⁵ Judge Brett Kavanaugh during his September 4, 2018 Opening Statement before the Senate Judiciary Committee.

⁶ Code of Conduct for United States Judges, Canon 3(A): A Judge Should Perform the Duties of the Office Fairly, Impartially and Diligently (emphasis added); see also, Canons 1 (A Judge Should Uphold the Integrity and Independence of the Judiciary) and 2 (A Judge Should Avoid Impropriety and the Appearance of Impropriety in All Activities).

⁷ From a 2015 speech titled “The Judge as Umpire” given to the Columbus Law School at Catholic University.

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Complaint of Misconduct

Association's Model Code, nor the Code of Judicial Conduct in D.C. or Maryland. And an investigation into the allegations against him may reveal far more serious violations. If Congress and the United States Government refuse to take meaningful action to investigate the allegations against Judge Kavanaugh, it falls to the judicial branch to do so, without the self-serving constraints currently being imposed on the FBI by the executive branch. The integrity of the highest court of the land depends on it, but so, too, does the public's trust in, and respect for, every judge in this country who sits on the bench, and every person who carries a bar card. Judge Kavanaugh is not just an outlier in the legal community, but stands to occupy a life-long position that serves as the gold standard to which all other lawyers and judges are compared. He stands to be promoted to one of the ten most powerful positions in this country. If he is permitted to step onto that pedestal without first demonstrating his fitness for the role, then what does any of it mean anymore? What is it but a black robe, like the curtain in the Wizard of Oz, shrouding the imposter who hides behind it? I shouldn't have to say this to a judge seeking appointment to the Supreme Court of the United States - but there is no presumption of innocence in a job interview. Kavanaugh bears the burden of proving that he is eligible for the position of great power and authority that he seeks.

Imagine if you received allegations such as those set forth by Christine Blasey Ford, Deborah Ramirez, and Julie Swetnick regarding a little known judge or lawyer within your jurisdiction (or a doctor, or a teacher, or a mechanic, for that matter). Would you continue to hire that person and utilize their services, to trust them with your case, your health, your child, your car? Or would such allegations spark concern, and a desire to learn more? I would like to think such claims would be taken seriously, and investigated thoroughly, no matter the career or calling. I would like to think this is the only responsible course of action. Please do not allow yourselves to be cowed by the pomp, circumstance, and partisan politics of this Supreme Court nomination in our currently divisive and intransigent political climate. This not about left versus right. This is about right versus wrong.

Very Truly Yours,

