



# Complaints against Brett Kavanaugh dismissed by federal judicial council

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WASHINGTON, DC - JULY 09: U.S. Circuit Judge Brett M. Kavanaugh looks on as U.S. President Donald Trump introduces him as his nominee to the United States Supreme Court during an event in the East Room of the White House July 9, 2018 in Washington, DC.

**(CNN)** — A US judicial council on Tuesday dismissed 83 complaints that had been lodged against new Supreme Court Justice Brett Kavanaugh, arising largely from statements he made during his contentious September confirmation hearings.

In a 10-page order, the judicial council of a Denver-based US appeals court said the complaints -- the first of which were referred to the court by Chief Justice John Roberts on October 10 -- could not be acted on because Kavanaugh, as a justice, is no longer covered by the judiciary's misconduct rules.

Tenth US Circuit Court of Appeals Chief Judge Timothy Tymkovich, who wrote the council's order, noted that the complaints alleged that Kavanaugh had made false statements in his September hearings, as well as at earlier nomination proceedings before the Senate Judiciary Committee, in 2004 and 2006 when he was up for an appeals court seat on the District of Columbia Circuit.

The complaints generally alleged that Kavanaugh had voiced inappropriate partisan statements, demonstrating bias and a lack of judicial temperament, and had treated members of the Senate Judiciary Committee disrespectfully.

"The allegations contained in the complaints are serious," Tymkovich wrote, "but the Judicial Council is obligated to adhere to the Act. Lacking statutory authority to do anything more, the complaints must be

dismissed because an intervening event -- Justice Kavanaugh's confirmation to the Supreme Court -- has made the complaints no longer appropriate for consideration under the Act."

That resolution was not a surprise. Legal experts had earlier observed that the 1980 law covering judicial misconduct excludes the nine Supreme Court justices. Yet the action closes out one more chapter of the confirmation hearings that consumed the nation's capital for several weeks and reverberated in November's midterm elections.

Kavanaugh, who built a solidly conservative record as an appeals court judge, succeeded retired Justice Anthony Kennedy, a conservative centrist who often cast the crucial vote on social policy issues, for example, to uphold abortion rights, to endorse racial affirmative action on campus and to declare a right to same-sex marriage.

Legal experts previously noted that Congress chose not to include Supreme Court justices in the law because of their position at the top of the third branch of government under the Constitution. When the Judicial Conduct and Disability Act was passed in 1980, experts said, members of Congress were concerned that it might have appeared unseemly for the justices to fall under the authority of any lower court disciplinary panel.

Gabe Roth, director of the watchdog group Fix the Court, said in a statement, "Today's decision underscores the need for the Supreme Court to adopt its own code of conduct or for Congress to write one if the justices cannot be bothered."

A Supreme Court spokeswoman said Kavanaugh had no comment on the council's action.

Asked for reaction soon after the order came Tuesday afternoon, Sen. Cory Booker of New Jersey, a Democratic member of the Judiciary Committee who clashed repeatedly with Kavanaugh at the hearings, called the decision "stunning" but declined to elaborate because he wants to read the council's findings first.

The council's order Tuesday said anyone who had filed complaints could petition for review within the next 42 days. But the judiciary's past practices excluding Supreme Court justices make it unlikely any appeal would be successful.

For Supreme Court justices, the only route to removal is impeachment and conviction by Congress. That has never occurred for a high court justice, and it is rare even for lower court judges. In the past three decades, only three lower court judges have been impeached by the House and convicted by the Senate. In those situations, the offenses were related to bribery and perjury.

## Complaints against Kavanaugh

Kavanaugh, who had served for 12 years on the DC Circuit, won the life-tenured seat after a bitter partisan fight and a 50-48 Senate vote on October 6. Senate Democrats criticized his conservative positions on the law during the first round of hearings, but the more volatile session came when Christine Blasey Ford, now a professor at Palo Alto University, accused the nominee of sexually assaulting her at a party when they were both in high school. She said he had been drinking alcohol.

Kavanaugh denied her claims and sharply criticized Democratic senators as they questioned him. In one notable moment that was the subject of several of the complaints filed, Kavanaugh turned the tables on Democratic Sen. Amy Klobuchar of Minnesota when she asked him if he had ever blacked out from drinking.

"Have you?" he responded angrily.

During the televised hearing, Kavanaugh also asserted that Ford's allegations had arisen from "a calculated and orchestrated political hit, fueled with apparent pent-up anger about President Trump and the 2016 election ... revenge on behalf of the Clintons and millions of dollars in money from outside left-wing opposition groups."

The former President George W. Bush aide who previously served with independent counsel Ken Starr's investigation of President Bill Clinton also asserted, "As we all know, in the United States political system of the

early 2000s, what goes around comes around."

Kavanaugh later wrote an essay for the Wall Street Journal, acknowledging, "I was very emotional last Thursday, more so than I have ever been. I might have been too emotional at times. I know that my tone was sharp, and I said a few things I should not have said."

The allegations handled on Tuesday, by Tymkovich and seven other appellate and district judges, stretched from Kavanaugh's time as a nominee for the DC Circuit more than a decade ago to his explosive testimony after Ford made her allegations public.

According to the order, "the complaints generally allege that Justice Kavanaugh in his appearances before the Senate Judiciary Committee ... falsely testified about his involvement in various events or programs while he was Assistant White House Counsel and Secretary to the President during the George W. Bush administration; ... falsely testified about his personal conduct, behavior, and recollection of events prior to his joining the federal judiciary; and ... displayed partisan bias and a lack of appropriate judicial temperament."

A review of the 83 complaints reveals that some dated back more than a decade, alleging that Kavanaugh had lied about the Bush administration's anti-terrorism policies and his involvement with controversial judicial nominees during that tenure.

But most of the complaints targeted his impassioned and seemingly vengeful statements, repeatedly noting his assertion that "what goes around comes around." He was also accused of misrepresenting his history of alcohol consumption.

The vast majority questioned his judicial temperament. One allegation deemed his testimony "evasive, aggressive and condescending. When questioned by female Senators he acted like a bully, often interrupting and improperly posing questions to his interrogator."

A separate review of Kavanaugh's Senate testimony also dissolved. The American Bar Association had said it was re-evaluating the "well qualified" rating it had previously given him because of the sexual assault allegations and his response during September 27 testimony. But the group ended its review after the Senate confirmed Kavanaugh on October 6.

Separately on Tuesday, Tymkovich declined to recuse himself from the case arising from a complaint that Kavanaugh had advocated for Tymkovich's confirmation to the 10th Circuit in 2003, when Kavanaugh worked for Bush.

"The source for the allegations appears to be documents provided to the Senate Judiciary Committee during Justice Kavanaugh's Supreme Court confirmation hearing," Tymkovich wrote. "A search of those documents reveals only that Justice Kavanaugh sent an email shortly after I was confirmed proposing a press release about numerous judicial nominees, one of whom was me. I am otherwise unaware that Justice Kavanaugh had any participation in my nomination or confirmation."

*This story has been updated.*