

June 21 2018

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Via:

U.S. Mail (Certified, Return Receipt Requested)

Re:

Judicial Misconduct Complaint №07-18-90037

PETITION FOR REVIEW

Pursuant to JCDR¹ 18(a,b), I hereby petition the **Judicial Council for review** of the “handling” (per JCDR 25(f)) of Judge Eastbrook’s opinion(/order) (dated May 18 2018), herein called “**JCOp2**,”² dismissing the above-captioned Complaint².

As **reason** therefor, I state my strong belief/conviction/knowledge that the JCOp2 as filed is wholly wrong, and even knowingly/willingly/criminally in-bad-faith false. Detailed support for this stated reason is given in the section on **Reasons for Review**, *infra*.

Included with this Petition² is a copy of the document

1 • **Judicial Conduct & Disability Rules** (most recent version, dated May 4 2016), <http://www.uscourts.gov/sites/default/files/guide-vol02e-ch03.pdf>.

2 • For clarity/simplicity, we write **Complaint², JCOp², JCOp²Ann, Petition²** when referring to the instant Judicial Misconduct Case, **№07-18-90037**. The numeral “2” is used to distinguish it from the earlier/related Judicial Misconduct Case, **№07-18-90014**, which we herein designate **Complaint¹, JCOp¹, JCOp¹Ann, Petition¹**.

“JCOp2Ann,” which is an *annotated version* of JCOp2 — **the annotations of which form part-and-parcel of this instant Petition2.**

REASONS FOR REVIEW

To begin, with: I hereby re-assert/re-affirm/re-incorporate (by reference) all the materials I have submitted to date (to both Judicial Council and Judicial Conference) regarding these matters (Complaint1 = №07-18-90014, Complaint2 = №07-18-90037). In addition to (i) the aforementioned JCOp2Ann, these materials include/incorporate: (ii) all of the information contained-in (or referred-to, transitively) my website (**<http://JudicialMisconduct.US>**); especially its (iii) webpage at [http://judicialmisconduct.us/CaseStudies/RyANvUS\(AlSCHULERvEASterBROOK\)](http://judicialmisconduct.us/CaseStudies/RyANvUS(AlSCHULERvEASterBROOK)); and its (iv) accompanying “amazing exegesis” **Memoir Annotated, “MemAnn”** at <http://judicialmisconduct.us/sites/default/files/2018-05/MemoirAnnotated.pdf>. Particular attention is now also drawn to: (v) the recent (May 28 2018) **Judicial Conference Petition for Review of Complaint1/№07-18-90014**,³ available online at <http://judicialmisconduct.us/sites/default/files/2018-05/JConfPetition.pdf>.

What is Judicial Misconduct All About, Really?

At the heart of the instant Petition2 is a fundamental (intentional, bad-faith) “misunderstanding,” by Judge Easterbrook (as well as certain other judges of the Seventh Circuit, mainly Judge Wood), about the core meaning of **Judicial Misconduct, properly so-called** — that is to say, in the sense of substantive Constitutional Justice itself, as embodied by, and the reason/impetus for, the governing laws (**JCDA**)⁴ and rules (**JCDR**).

3 • Whether not the cited Petition1 has *priorly* been “properly before” this Judicial Council is a matter of debate (as discussed at length in body of the Judicial Conference Petition for Review of Complaint1 itself). However: (i) Petition1 is certainly *now* “properly before” the Judicial Conference, and is hereby cited *now* in this instant Petition2, which therefore does bring it *now* (at Petition2-time) “properly before” this Judicial Council, so it cannot *now* be (again) “swept under the rug” by this Judicial Council. (ii) A second reason this Judicial Council cannot *now* “sweep Petition1 under the rug again” is given by the JCDR, which mandates **proactive seeking-out of Judicial Misconduct**, via the Council’s charter of “‘active inquisition’ (as opposed to ‘passive arbitration’), triggering the process of identifying a complaint” — JCDR 3 Commentary (paraphrased).

4 • **Judicial Conduct & Disability Act** (28 USC §332(d)(1),351-364).

Namely, such judges (Easterbrook, Wood, others) are plainly more interested in “gaming the system,” by stealthily seeking to instantiate/exploit subliminal/incipient (but not truly designed/intended/existent) loopholes for misbehaving/corrupt judges to sneak through — “putting a fast one over” on the Judicial System and the American Public, falsely protecting themselves via obfuscatory (but ultimately nonsensical) double-talk — contrary to the charter/“mission statement” of the JCDA/JCDR (as stated in JCDR 1, quoted at ¶4 *infra*).

Their primary tool for perpetrating their subterfuge is their cowering behind the following “universal plausibility-deniability generating” so-called “**merits-related**” **clause(s)**:

[The handling judge] may dismiss the complaint if [he/she] finds the complaint to be **directly related to the merits** of a decision or procedural ruling.

— JCDA 28 U.S.C. §352(b)(1)(A)(ii) (internal elisions omitted, emphasis added)

An allegation that calls into question the **correctness** of a judge’s ruling, including a failure to recuse, **without more**, is **merits-related**. [And basically, that “correctness” is the *only* judicial conduct that is “merits-related:” **“merits” and “correctness” are synonymous** for all practical purposes, as indicated by the phrase “*correctness — ‘the merits’ — of the ruling itself [as opposed to the reasons/motives for the ruling]*” embedded in the JCDR 3 Commentary.] If the decision or ruling is alleged to be the result of an **improper motive**, e.g., a bribe, *ex parte* contact, racial or ethnic bias, or **improper conduct in rendering a decision or ruling**, such as personally derogatory remarks irrelevant to the issues, the complaint is not cognizable *to the extent* that it attacks the merits [— but **otherwise it is cognizable**].

— JCDR 3(h)(3)(A) (emphasis added)

The problem is this: *to the extent* the meaning of “correctness without more” (as just quoted) is susceptible to interpretation/manipulation/argumentation (“words can be wrapped around it,” noting that it isn’t actually *formally/rigorously defined* by JCDA/JCDR/anywhere), the concept of “merits-related” can be (falsely) treated-to-be ill-defined and amorphous — perfectly suited to abuse by bad-faith judges intent on forwarding the perpetuation of judicial misconduct (at least, if it implicates themselves).

Revisiting the Definition of “Judicial Misconduct”

With that preliminary caveat (of the slipperiness of the language “merits-related/correctness without more”) out of the way, it is certain that the *primary* concern of the JCDA/JCDR is intended-to-be “**Judicial Misconduct properly so-called**” (in the sense of the preceding section, *supra*). That concept isn’t *directly/precisely/formally*⁵ defined, but its meaning/semantic is “circumscribed for most/all practical purposes” by the following *indirect charter/“mission statement,”* languaged in terms of its antithesis, “**conduct:**”

These Rules govern proceedings under the [JCDA, *cf.* 28 USC §351(a)], to determine whether a covered judge has engaged in **conduct prejudicial to the effective and expeditious administration of the business of the courts.**

— JCDR 1 (emphasis added)

Revisiting the Definition of “Merits-Related”

The JCDR’s “**merits-related clause**” (analyzed *c. §3 supra*) is to be interpreted *in the context* of the preceding amorphous definition/charter/“mission statement” of “Judicial Misconduct” — and not *vice versa*. That is, “good-conduct” cannot be divined as a wishful back-formation from “merits-related” (for, that would leave the even-more-ill-defined “merits-related”-catchphrase tail wagging the presumed-to-be-well-understood “good-conduct”-dog).

In the “best of all possible worlds” (https://en.wikipedia.org/wiki/Best_of_all_possible_worlds), nothing more would need to be said about the relationship between “conduct” and “merits.” It would/should be “obvious.” But, this being an imperfect world, the JCDR must cater to fallible humans, so for that reason it does go on to discuss merits-relatedness in the Commentary to JCDR 3. For our purposes here (in this Petition²), the JCDR’s most telling “conduct-*vis-à-vis*-merit” observation is given, again indirectly, by this passage:

[A]n allegation can meet the statutory [JCDA] standard even though the judge’s alleged conduct did not occur in the course of the performance of official duties.

— JCDR Commentary on Rule 3(h)(2)

5 • “The phrase ‘prejudicial to the effective and expeditious administration of the business of the courts’ is not subject to precise definition.” — JCDR, Commentary on Rule 3.

This passage/language immediately implies, of course, that **Judicial Misconduct can also occur within the course of the performance of official duties.**

The reason this passage is so telling/important for us (in this Petition2, but also in Petition1) is that Judges Wood and Easterbrook, in their dismissals of our two Complaints, invoke the **“merits-related” clause — which they equate, in all observable essentials, with “in the course of the performance of official duties.”** But **that is (in-bad-faith) false,** as just proved. Instead, what is closer to truth, as also just proved, is that **“merits-related” is to be equated/synonymous with “correctness of decision”** (c. ¶3 *supra*).

The point being, what? The point being, this:

Both our Complaints (Complaint1, Complaint2) relate to Easterbrook’s **performance of official duties, other than correctness of decisions — i.e., other than “merits-related.”** *Nowhere*, in either of our Complaints, do we say anything remotely like: “Judicial Misconduct was committed because Easterbrook’s decisions in *Ryan v. U.S.* were ‘incorrect’.” Instead, we (following Alschuler) do say things like (paraphrasing): Judicial Misconduct was committed because Easterbrook: (i) “lied;” and (ii) “falsified facts and laws;” and (iii) “bullied;” and (iv) “back-jumped counsel by unsought rulings (ignoring the standard Principle of Party Presentation (PPP) protocol, see MemAnn ¶83D);” and (v) “denied the right to be heard;” (vi) etc. — see Complaint1 (and see of course MemAnn *passim* for precise statements and proofs of all allegations, as just partially listed here, and summarized at MemAnn ¶8).

These complained-of-things (just listed in the preceding paragraph) are indeed exactly the kind of stuff for which the Judicial Misconduct JCDA/JCDR guidelines/laws/rules are tailored. For, they are all the results of **“improper motives/biases/considerations”** (in the sense of JCDR 3(h)(3)(A), ¶3 *supra*) — hence they are 100% eligible/cognizable/right-down-the-middle complaints of Judicial Misconduct. They are, quite unambiguously, “allegation[s] attack[ing] the propriety of arriving at rulings [as opposed to merits/correctness of the rulings per se] with an illicit or improper motive”⁶ (JCDR 3 Commentary, emphasis added). They **certainly do** amount to **“conduct prejudicial to**

6 • Noting, of course, that “motives” cannot ever be directly determined with absolute certainty because “we are not in the judges’ heads,” hence “motives” can only be indirectly inferred by external/noticeable indicia.

the effective and expeditious administration of the business of the courts” (the very definition/charter/“mission statement” of Judicial Misconduct, *cf.* JCDR 1, quoted at ¶4 *supra*).⁷ They **certainly do** amount to **“hav[ing] 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”** (JCDR 3(h)(2)) — BY VIRTUE OF THE NOW-ESTABLISHED (outside-of-official-judicial-duties) **PUBLICATION/VERIFICATION OF THE DEVASTATING ALSCHULER MEMOIR ITSELF!**

Therefore, for Wood and Easterbrook to (falsely) dismiss our Complaints on the basis of “merits-related/correctness” (as they have done) is (in-bad-faith) false. So: their dismissals must now be reviewed/revisited/reinterpreted/reevaluated/reversed by this Judicial Council.

For More ...

See the detailed annotation comments in JCOpp2Ann, which is to be viewed as *part-and-parcel* of this Petition2, as already mentioned in the PETITION FOR REVIEW section, *supra*.

CONCLUSION

For the reasons delineated herein — in the overall context, of course, of *all* the materials and arguments Petitioner has submitted for both Complaint1 = №07-18-90014 and Complaint2 = №07-18-90037 — this Judicial Council really needs to “do its job,” as demanded/rationalized by the JCDA/JCDR, and issue a positive/conclusive finding of Judicial Misconduct, against both judges Easterbrook and Wood.

Sincerely,



Walter E. Tuvell

7 • And further, of course, they respond-to and satisfy the concerns-in-the-large of the Constitutional Federal Judiciary, and the American public.