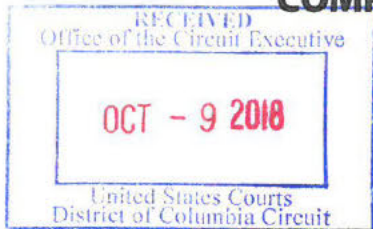


**JUDICIAL COUNCIL OF THE DISTRICT OF COLUMBIA CIRCUIT
COMPLAINT OF JUDICIAL MISCONDUCT OR DISABILITY**



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

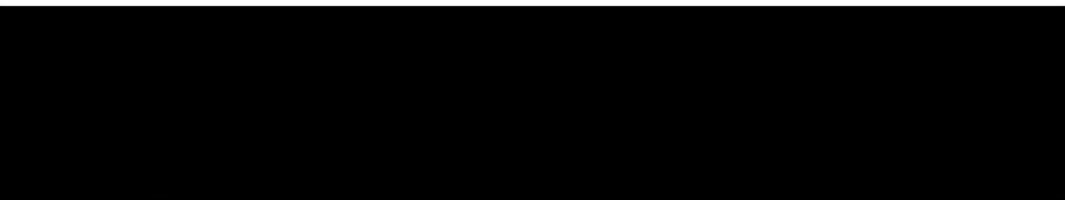
This form should be completed and mailed to the above address to the attention of the "Circuit Executive". The envelope should be marked "JUDICIAL MISCONDUCT COMPLAINT" or "JUDICIAL DISABILITY COMPLAINT". Do not put the name of the judge on the envelope.

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: Brett Kavanaugh

Court:

DC 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:

see attached 4 pages

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

In one of his earliest opinions, *Jane Doe v. DC*, 489 F.3d 376 (D.C. Cir. 2007), Judge Kavanaugh overruled U.S. District Judge Henry Kennedy's preliminary injunction, 374 F.Supp.2d 107 (D.D.C. 2005) and later summary judgment and permanent injunction, 232 F.R.D. 18 (D.D.C. 2005) and said that even when a severely intellectually disabled person expresses that they do not want an unnecessary elective surgery, the government can still impose that surgery against their wishes without violating constitutional or statutory rights.

Brian Hundley was a 41-year old graduate of Howard University School of Dentistry studying for his boards. He was sitting in his car, unarmed, when a 6'3", 204-pound off-duty police officer in street clothes ordered him to get out, and in short order shot and killed him with his 9mm Glock. The officer said he shot Brian because he moved his hand behind his back, but the jury specifically rejected that story in a special interrogatory verdict, and found for Brian's surviving loved ones. In *Hundley v. DC*, 494 F.3d 1097 (D.C. Cir. 2007), however, Judge Kavanaugh overruled the jury and found for the officer. The opinion describes the facts from the officer's point of view, *id.*, despite the jury rejecting the officer's story. As we have already been taught as 1Ls, in a situation like this, the judge is supposed to be deferential to the jury and state the facts in a light favorable to sustaining the jury's verdict. But this early opinion was just one of Judge Kavanaugh's regular departures from federal rules and constitutional standards.

Seventeen-year old Antonio Hester was sentenced to a maximum of ten years in prison as a minor. He had a learning disability, and DC public schools, which had been providing him special education for years, promised to continue to provide those services while he was incarcerated in Maryland, or, if they were not allowed into the prison, to provide compensatory services after his release. The Maryland prison did prevent DC from entering to provide Antonio with services, however, and DC then refused to provide services after release. U.S. District Judge Gladys Kessler held that DC had backed out of a consent decree and ordered the school district to provide Antonio with compensatory services. 433 F.Supp.2d 71 (D.D.C. 2006). Judge Kavanaugh disagreed, however, and not only reversed summary judgment but – glossing over a factual dispute he had with the district court (not the job of an appellate judge) and Judge Kessler's legal analysis – directed judgment against Antonio, erasing any chance of educational relief. *Hester v. DC*, 505 F.3d 1283 (D.C. Cir. 2007).

Judge Kavanaugh is no friend to liberty. In *U.S. v. Bullock*, 510 F.3d 342 (D.C. Cir. 2007) Kavanaugh justified ordering a person out of his car, detaining him, and searching his crotch area and under his pants by saying that the police had a

“reasonable suspicion” that the car was stolen because the person “could not produce registration and could not name the car’s owner,” 510 F.3d at 345–46. But the arrestee had given the car owner’s first name and his own driver’s license, and the police had confirmed that the driver’s license was clean and the car had never been reported missing or stolen. Judge Kavanaugh’s opinion upheld the arrestee’s 12-year prison sentence for possession of crack cocaine. Judge Kavanaugh consistently rules for the government in search-and-seizure. *U.S. v. Glover*, 681 F.3d 411 (D.C. Cir. 2012) (warrantless entry into house & a later search warrant lacking probable cause), *U.S. v. Washington*, 559 F.3d 573 (D.C. Cir. 2009) (giving deference to “aggressive traffic patrols” in “high crime areas”), *U.S. v. Spencer*, 530 F.3d 1003 (D.C. Cir. 2008) (permitting search of home), *U.S. v. Askew*, 529 F.3d 1119 (D.C. Cir. 2008) (dissenting from en banc opinion) (allowing police officers to partially unzip man’s jacket without consent after a pat down and later, after man was not identified by witness, to fully unzip the jacket).

When Judge Kavanaugh has ruled for a criminal defendant on a point of law, he has specifically noted that it made little to no material difference in the outcome for the defendant. *U.S. v. Smith*, 640 F.3d 358, 361 (D.C. Cir. 2011) (“The vacatur and remand of the felon-in-possession count does not affect Smith’s term of imprisonment”). *Hamdan v. United States*, 696 F.3d 1238, 1257, 1257 n.1 (D.C. Cir. 2012), overruled by *Al Bahlul v. United States*, 767 F.3d 1 (D.C. Cir. 2014) (“Hamdan was transferred in late 2008 to Yemen and then released there Our judgment would not preclude detention of Hamdan until the end of U.S. hostilities against al Qaeda[,] [n]or . . . any future military commission charges against Hamdan. . . [,] [n]or . . . appropriate criminal charges in civilian court.”); *US v. Bostick*, 791 F.3d 127, 162 (D.C. Cir. 2015) (“We affirm the judgments of conviction two of the defendants . . . are entitled to vacatur . . . and to resentencing under the advisory Sentencing Guidelines. . . The [life] sentence of the remaining defendant . . . is affirmed. We also remand for . . . technical corrections”); *US v. Williams*, 784 F.3d 798, 804 (D.C. Cir. 2015) (“We affirm the judgment of the District Court except that, consistent with this Court’s ordinary practice in these circumstances, we remand the case so that the District Court may address Williams’s claim of ineffective assistance of counsel in the first instance.”); *US v. Nwoye*, 824 F.3d 1129, 1133–34 (D.C. Cir. 2016) (“In 2013, after the termination of her supervised release, Nwoye filed a motion to vacate her conviction . . . [w]e reverse the judgment of the District Court and remand for further proceedings.”) (note that this case has been upheld as evidence of Judge Kavanaugh’s sympathy for criminal defendants and women; it should be noted that Judge Tatel had already dissented from the court’s affirmance of the conviction

years earlier, 663 F.3d 460 (D.C. Cir. 2011), and Judge Kavanaugh's ruling happened after the defendant had completed her sentence – and he nonetheless said the case was "close."); *US v. Burnett*, 827 F.3d 1108, 1112 (D.C. Cir.) ("We affirm the judgments of conviction and sentence in all respects, except that we vacate Burnett's sentence and remand for the District Court to resentence Burnett.");

In *U.S. v. Lathern*, 488 F.3d 1043 (D.C. Cir. 2007), Kavanaugh allowed the exclusion of exculpatory testimony from a defendant's witness and expert witness in upholding an 8-year /97-month prison sentence. Other rulings in favor of long sentences include *US v. Franklin*, 663 F.3d 1289 (D.C. Cir. 2011) (life sentence); *U.S. v. Duvall*, 705 F.3d 479 (D.C. Cir. 2013) (ruling against retroactive correction of crack cocaine disparity); *U.S. v. Wright*, 745 F.3d 1231 (D.C. Cir. 2014) (ruling against defendant in case alleging attorney conflict of interest); *U.S. v. Haight*, 892 F.3d 1271 (D.C. Cir. 2018) (reversing a 12 year, 8 month sentence and vacating because it should be at least a 15 year mandatory minimum sentence); *U.S. v. Knight*, 824 F.3d 1105 (D.C. Cir. 2016) (rejecting speedy trial act and due process claims and a number of challenges to sentences).

By way of contrast: When Carlos Gustavo Gardellini filed a false federal tax return and illegally used offshore accounts, the federal guidelines called for a 10- to 16-month prison sentence. But Judge Kavanaugh, *U.S. v. Gardellini*, 545 F.3d 1089 (D.C. Cir. 2008), upheld a no-prison-time sentence with five years of probation in Belgium for this white collar criminal with his wife and child, and none of the normal probation conditions or restrictions. Judge Williams dissented. In *U.S. v. Settles*, 530 F.3d 920 (D.C. Cir. 2008), Judge Kavanaugh held that it was permissible for the district court to consider alleged conduct for which the defendant was acquitted in calculating a criminal sentence using the factors in the sentencing guidelines.

In *Omar v. McHugh*, 646 F.3d 13 (D.C. Cir. 2011), Judge Kavanaugh held that American citizens have no Constitutional habeas corpus or due process rights to judicial review of whether they are likely to be tortured if they are transferred from U.S. to (in this case) Iraqi custody.

In *Harbury v. Hayden*, 522 F.3d 413 (D.C. Cir. 2008), Judge Kavanaugh ruled that CIA employees who tortured and killed Guatemalans could not be held accountable in US courts for their violations of international and US law.

Over a dissent, in *Jackson v. Gonzalez*, 496 F.3d 703 (D.C. Cir. 2007), Kavanaugh threw out a black prison guard's claim of discrimination, not even allowing it to go to trial, where the guard had shown evidence that he scored 98 out of 100 on qualification

exams and that the prison kept positions open for years and had never hired an African American at the level of job he was seeking.

He consistently ruled for the government in FOIA cases against government transparency. *Blackwell v. FBI*, 646 F.3d 37 (D.C. Cir. 2012), *Hodge v. FBI*, 703 F.3d 575 (D.C. Cir. 2013), *Sack v. DOD*, 823 F.3d 687 (D.C. Cir. 2016)

Against free speech when it applies to workers: In *Southern New England Telephone Company v. National Labor Relations Board*, 793 F.3d 93 (D.C. Cir. 2015) Kavanaugh denied NLRB's cross-application to enforce its order for the company to permit employees working in public to wear union shirts that said "Inmate" on the front and "Prisoner of (Company)" on the back.

He has shown a comparatively huge amount of concern for trivial or corporate rights, e.g., finding the CFPB unconstitutional, *PHH Corporation v. CFPB*, 839 F.3d 1 (D.C. Cir. 2016), or FAA regulations against flying model airplanes near D.C. monuments unlawful. *Taylor v. Huerta*, 856 F.3d 1089 (D.C. Cir. 2017)."