

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

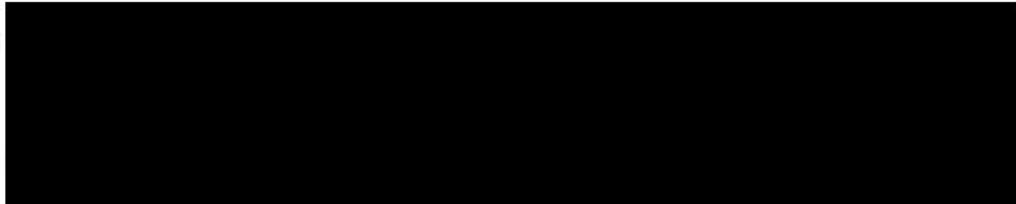
E. Barrett Prettyman U.S. Courthouse  
333 Constitution Avenue, N.W.  
Washington, D.C. 20001-2866  
202-216-7340



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 Kavanaugh  
Court: D.C. Circuit Court of Appeals

- 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: October 2, 2018

**BACKGROUND**

Under the Judicial Conduct and Disability Act of 1980 (the “Act”), Congress created a procedure allowing any person to file a complaint about the behavior of a federal judge, if the complainant believes the judge has engaged in misconduct “prejudicial to the effective and expeditious administration of the business of the courts.” The process of filing a complaint under the Act is governed by the terms of the Act itself, and by the Rules for Judicial-Conduct and Judicial-Disability Proceedings (the “Rules”). Rule 3(h)(1)(E) of the Rules expressly states that misconduct under the Act and the Rules includes “engaging in partisan political activity or making inappropriately partisan statements.” Rule 3(h)(2) goes on to provide that a complaint under the Act and the Rules may address “conduct occurring outside the performance of official duties” of a judge, “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.”

The Act and the Rules specify conduct that is widely understood to be inappropriate for any judge. For example, Rule 1.2 of the American Bar Association’s Model Code of Judicial Conduct (“Model Code”) states that a judge must at all times “act in a manner that promotes public confidence in the independence, integrity and impartiality of the judiciary.” The Comment to this Rule provides that the test for appearance of impropriety is whether a judge’s conduct “would create in reasonable minds” a perception “that reflects adversely on the judge’s honesty, impartiality, temperament, or fitness to serve as a judge.” This Comment also states that judges “should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens.”

On September 27, 2018, Judge Brett Kavanaugh testified in a hearing before the Senate Judiciary Committee on whether he sexually assaulted Christine Blasey Ford when both Kavanaugh and Ford were in high school. This hearing was watched by millions of Americans and continues to be widely discussed.

For many Americans, this televised hearing may be the only time they hear the words and experience the demeanor of a federal judge.

It is understandable that Judge Kavanaugh would vigorously defend himself against the charges brought by Dr. Ford. But notwithstanding Kavanaugh's evident desire to clear his name, his present position as a federal judge constrains what he is permitted to say and how he is permitted to behave. Under the Act, Rules and Model Code, Judge Kavanaugh is required to conduct himself in a manner that promotes public confidence in our courts and in Kavanaugh's personal temperament, impartiality and fitness. There is no exception to these rules for judges seeking Senate confirmation. In fact, the very public nature of Kavanaugh's testimony and the importance of the job he seeks makes it that much more important that he comport himself in a way fitting for a federal judge while he seeks promotion to the Supreme Court.

NOTE: the testimony cited below is taken from a transcript published by The Washington Post, see [https://www.washingtonpost.com/news/national/wp/2018/09/27/kavanaugh-hearing-transcript/?utm\\_term=.3bb75af173d3](https://www.washingtonpost.com/news/national/wp/2018/09/27/kavanaugh-hearing-transcript/?utm_term=.3bb75af173d3). I urge that the testimony described below be watched as well as read, as this is the only way to experience the belligerence and hostility displayed by Judge Kavanaugh during his testimony. See, for example, <https://www.youtube.com/watch?v=OZ7ovA37u-0>.

## **FACTS**

During Judge Kavanaugh's testimony—and in particular during his opening statement—he levelled frequent inappropriate partisan attacks and accusations against people and institutions he identified with the Democratic Party. The following are examples of these attacks and accusations:

- “The behavior of several of the Democratic members of this committee at my hearing a few weeks ago was an embarrassment.”
- “Since my nomination in July, there's been a frenzy on the left to come up with something, anything to block my confirmation.”

- “Shortly after I was nominated, the Democratic Senate leader said he would, quote, ‘oppose me with everything he’s got.’”
- “A Democratic senator on this committee publicly — publicly referred to me as evil — evil.”
- “Another Democratic senator on this committee said, quote, ‘Judge Kavanaugh is your worst nightmare.’”
- “A former head of the Democratic National Committee said, quote, ‘Judge Kavanaugh will threaten the lives of millions of Americans for decades to come.’”

The above statements are clearly partisan in nature. The Merriam-Webster online dictionary defines “partisan” as “feeling, showing, or deriving from strong and sometimes blind adherence to a particular party, faction, cause, or person.” While this definition focuses on partisanship in favor of a political party, it’s clear (particularly in a two-party system) that partisanship also includes strong animosity to a particular party.

The only remaining question is whether Judge Kavanaugh’s partisan statements were “inappropriate” within the meaning of the Rules. We should note that Kavanaugh’s partisan statements appear on first blush to be gratuitous. For example, Kavanaugh might simply have said that a senator referred to him as “evil,” or that there was a “frenzy” to block his confirmation, and he would effectively have made his point without naming a political party or side of the political divide. But if we look more closely at his statements, we can better see the reason behind Kavanaugh’s partisanship.

Kavanaugh’s partisan statements before the Judiciary Committee were necessary to make a larger point: Kavanaugh claimed that a wide cabal of Democrats were orchestrating a campaign of false allegations against him. Kavanaugh’s accusations centered around the idea that Dr. Ford’s confidential July 30 letter to Senator Feinstein was purposely kept secret by Feinstein and other Democrats, so that it could be released at a time most damaging to Kavanaugh and his nomination. As Kavanaugh himself put




it in his testimony, “When it was needed, this allegation was unleashed and publicly deployed over Dr. Ford’s wishes.” In his testimony, Kavanaugh repeatedly accused Democrats, the left and even the Clintons of playing a role in a conspiracy to defeat Kavanaugh’s Supreme Court nomination:

- “And then — and then as no doubt was expected — if not planned — came a long series of false last-minute smears designed to scare me and drive me out of the process before any hearing occurred.”
- “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.”

Kavanaugh’s accusations here have no foundation in fact. Dr. Ford’s July 30 letter to Senator Feinstein was marked “CONFIDENTIAL,” signed “In Confidence” and contains Ford’s direction to “maintain this as confidential until we have further opportunity to speak.” Clearly, Senator Feinstein had no authority to reveal this letter when she first received it, and Kavanaugh does not appear to be arguing otherwise. Instead, Kavanaugh appears to be saying that the allegations in the letter never should have been released. As noted above, Kavanaugh stated that the letter was released “over Dr. Ford’s wishes.”

The public record indicates that Judge Kavanaugh is not telling the truth here. Dr. Ford’s letter was released on or prior to September 23, with the consent of Dr. Ford’s lawyers (see <https://www.usatoday.com/story/news/politics/2018/09/23/christine-blasey-ford-letter-alleged-assault-brett-kavanaugh/1406932002/>). Prior to that, rumors of Dr. Ford’s accusation had circulated in the press during the second week of September, leading Dr. Ford to reveal her identity in a September 16 article in the Washington Post.



There remains an open question: how did the press learn of the accusations made by Dr. Ford in her letter to Senator Feinstein? During the September 27 hearings, two theories were put forth on how the press learned of these allegations: either the allegations were leaked by Senator Feinstein or her staff, or else friends of Dr. Ford revealed the story to the press without Dr. Ford's knowledge. Senator Feinstein has denied the latter allegation, and there's presently no way to know how this information reached the press.

Understanding this information, we can now place Judge Kavanaugh's statements before the Judiciary Committee in the proper context. In his testimony, Kavanaugh conjured a wide-ranging conspiracy among Democrats and "the left" to defeat his candidacy for the Supreme Court through a "calculated and orchestrated" campaign to release false information about him at a time selected to do the greatest possible damage. These statements are partisan, as they are directed against a particular political party and one side of the political divide. They are inappropriate, as they state a wild conspiracy theory with no basis in fact. The most reasonable explanation for what happened is the one suggested by Senator Feinstein: the press learned of Dr. Ford's accusation through friends of Dr. Ford. But even if Senator Feinstein or members of her staff released this information to the press, this would not prove Kavanaugh's claim, that he is the victim of an organized campaign run by multiple Democratic senators, the Democratic Party, the Clintons and unnamed organizations on "the left."

## **CONCLUSION**

Judge Kavanaugh made repeated, inappropriately partisan statements to the Senate Judiciary Committee during his testimony on September 28, and is thus guilty of misconduct under the Act and the Rules. This misconduct is particularly egregious, as it took place in front of millions of people, at a time when scrutiny of the law and the judiciary is at its highest, and where Kavanaugh had a clear duty to display judicial temperament and deportment. I ask that the circuit chief judge or other appropriate authority take appropriate action to address Kavanaugh's misconduct. Thank you.