[redacted]

October 20, 2018

Judge Timothy M. Tymkovich, Chief Circuit judge
Byron White U.S. Courthouse
1823 Stout Street
Denver, CO 80257-1823.

JUDGE KAVANAUGH FOLLOWED THE RULES AND VIOLATED THE LAW

Dear Judge Tymkovich:

Judges Garland, Henderson and Griffith were scheduled to hear oral arguments but issued a summary judgment on other issues. I could have filed an ethics complaint against all 3 judges but filed a complaint only against [redacted] the ethics complaint and Judge Kavanaugh approved the decision. [redacted]

Out of 9,416 ethic complaints over 10 years including 103 by attorneys, 5 had action taken. The Federal Judiciary is incapable of policing itself. "Almost all complaints in recent years have been dismissed because they do not follow the law about such complaints. The law says that complaints about judges' decisions and complaints with no evidence to support them must be dismissed." This is on the 2nd Circuits website and the 10th Circuit has a similar caveat. A .05% "Action taken" rate certainly shows the success of this policy.

The "Rules for Judicial Conduct and Judicial-Disability Proceedings on page 52 at "h" calls for the Disqualification of Members of Committee on Judicial Conduct and Disability where it states that "No member of the Committee on Judicial Conduct and Disability is disqualified from participating in any proceeding under the Act or these Rules…unless the member believes that the consultation would prevent fair-minded participation."

In re Complaint of Judicial Misconduct states that if the judge believes that he or she can be **fair-minded** in his or her participation, recusal is not warranted. The fair-minded standard was changed in 1973 and is superseded by 28 U.S. Code 455(a) because the "Rules for Judicial Conduct and Judicial-Disability Proceedings" calls it a proceeding.

28 U. S. Code 455(a) states that "Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." Here you can see that Judge Kavanaugh followed the rules of "Rules for Judicial Conduct and Judicial-Disability Proceedings by possibly being fair-minded but violated the law which is § 455.

Based upon long standing relationships of the judges of the DC Circuit and being a part of the decision making process when I requested an en blanc review, Judge Kavanaugh violated § 455 and should have recused himself.

THE HISTORY OF § 455 (a) Prior to 1974, § 455 required a federal judge to disqualify himself in any case in which he has a substantial interest, has been of counsel, is or has been a material witness, or is so related to or connected with any party or his attorney as to render it improper, in his opinion, for him to sit on the trial, appeal, or other proceedings therein. In 1974, responding to certain circuits' articulation of a "duty to sit" in close cases, and criticism of § 455's subjectiveness, Congress amended § 455. As explicitly noted in the legislative history of § 455, Congress' objectives in adopting Canon 3C were to (1) conform § 455 to the ABA Code; (2) increase public confidence in the impartiality of the judiciary by replacing the subjective standard of the former § 455 with an objective standard; and (3) eradicate the "duty to sit. In keeping with these objectives, Congress attempted to "broaden and clarify the grounds for judicial disqualification." The current § 455 contains two subsections where recusal may be appropriate. Subsection (a) establishes the general standard for disqualification. It provides that any judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." The legislature incorporated an objective standard in § 455(a) for measuring the appearance of partiality "to promote public confidence in the impartiality of the judicial process by saying, in effect, if there is a reasonable factual basis for doubting the judge's impartiality, he should disqualify himself and let another judge preside over the case."' Furthermore, by making disqualification mandatory whenever a judge's "impartiality might reasonably be questioned," the amendment eradicated the duty-to-sit.' In this manner, the changes to § 455 codified each of Congress' stated objectives. Apart from the objective standard of § 455(a), § 455(b) enumerates specific circumstances, which if present, require a judge to recuse himself.'(Journal of Criminal Law and Criminology Volume 85 Issue 4 Spring Article 10 Spring 1995 A Look at the Extrajudicial Source Doctrine under 28 U.S.C. 455 by Toni-Ann Citera).

Based upon the above, would you rule that Judge Kavanaugh violated the law.

Thank you.

Very truly yours,

The Committee has asked for public comments on the proposed changes. I do not believe that the changes suggested will affect the .05% (.0005) rate of "actions taken" by the Committee on complaints filed.

While I am sure that you have heard of the "Blue Wall of Silence,",the "Black Robe of Silence" also exists. Below is a chart of the complaints and actions taken as well of complaints filed by attorneys. Of the 9,416 complaints through September 30, 2013, 5 actions were taken by the Judiciary Council of which 2 were in 2002 and 1 in 2003. In view of the fact that the Center for Public Integrity discovered that 10% of the judges rendered decisions in which they had a financial interest in one of the parties, this plus 5 actions out of 9,416 shows that the current enforcement of judicial conduct is a total failure. As a taxpayer, I either want this fixed so that a meaningful hearing results in a meaningful decision or the entire law should be scrapped in order to avoid waste. As this law is currently enforced, filing a complaint only leads to false hope especially in light of the 103 complaints filed by attorneys. These attorneys are courageous because they are risking their careers in order to right a wrong. Below are statistics from Table S-22.

Year	Complaints Terminated	Dismissed	Action Taken	Filed by Attorney
2013	1167	1167	0	33
2012	1352	1352	0	29
2011	1454	1453	1	22
2010	1159	1159	0	19
2009	N/A	N/A		N/A

2008	N/A	N/A		N/A
2007	752	752	0	N/A
2006	619	618	1	N/A
2005	667	667	0	N/A
2004	784	784	0	N/A
2003	682	681	1	N/A
2002	780	778	2	N/A
			0	
TOTAL	**9416**	**9411**	**5**	**103**

N/A is not available

As an example of the shenanigans or highly questionable practices of the Committee, [redacted] heard a case [redacted] which oral arguments were ordered by the group that vets arguments, cancelled and a summary judgment given on issues not involving oral arguments. I could have filed an ethics complaint against all 3; however, I arbitrarily chose [redacted] heard the case and found no wrong doing. Had [redacted] found wrong doing by [redacted] would have also found wrong doing against [redacted] It is incomprehensible to me how [redacted] was not conflicted out. 28 U.S.C. 47 states that "no judge shall hear or determine an appeal from the decision of a case or issue tried by him." The same reasoning does apply to ethics complaint assuming that a meaningful hearing is desired as opposed to a whitewash. All it takes to show the conflict is 4 orders totaling 5 pages. Apparently, the abuse was so great that Rule 26 was presented by the Breyer Committee Report, 239 F.R.D. at 214-15. Rule 26 states that "Such transfers may be appropriate ... in the case of a serious complaint where there are multiple disqualifications among the original council, (There was an en blanc review and about ½ of the judges of the DC Circuit sat on the appeals panel as well as the 3rd judge involved, [redacted] where the issues are highly visible and a local disposition may weaken public confidence in the process ... or where a complaint calls into question policies or governance of the home court of appeals."

An interesting question arises as to why would an experience judge like [redacted] who heard it on appeal from [redacted] decision) do this? The only reason I can think of is that they mistakenly thought that once the appeal panel disposed of the complaint, nothing further would happen (as described by [redacted]) Apparently these judges know that Rules 11(g) (2), 11(g)(1), 18(c)(3), 19c) and 20(f) are not being followed because either the chief judge's order and supporting memorandum are not provided to the Conduct Committee or that the culture (which will be discussed later) in the Administrative Office and Conduct Committee causes the personnel to overlook any transgressions such as the one that occurred here. [redacted] did not realize that I strongly believe in Calvin Coolidge's motto that "Persistence and determination alone are omnipotent."

At the bottom of the Administrative Office's letter is a saying which is "A tradition of service to the Federal Judiciary." A more apt description would be "Advocate for the Federal Judiciary." [redacted] letters (including the unsigned one from August 19, 2014) attempt to obfuscate the issues involved by not providing a complete answer. When [redacted] stated that no further appeal was possible, [redacted] omitted the statement in Rule 21 "The Judicial Conference of the United States may, in its sole discretion, review any such Committee decision, but a complainant or subject judge does not have a right to this review." [redacted] makes no mention of the Committee's consideration. Therefore, I wanted to know if the Committee denied the request since the responsibility should be properly assigned to the individual.

[redacted]

Had the Administrative Office had its administrative controls in place, problem cases like mine should have been caught and corrected. At this point, the Judges in the various courts know that nothing will be done. Unfortunately, not everybody does the right thing and the Federal judges are no different. Transparency and tight control will improve the situation so that the Administrative Office does not need to be embarrassed by the Center for Public Integrity discovery that 10% of the judges rendered decisions in which they had a financial interest in one of the parties. Other areas of investigation might include counseling judges who have backlogs in their rulings such as Judge George B. Daniels in 2003 in which he had 289 motions in civil cases pending over 6 months, and Judge Daniels rendered a decision 3 years after the case began and after the HIV patient died. If he was that insensitive to the situation, I am confident that the backlog still exists as shown by the number of ethics complaints in Table S-22 although I do not know to what extent.These are examples of how the culture of not making waves affects the performance of the Administrative Office.

With regard to your informal counseling discussed by Arthur Hellman, it might work for future situation but what happens to the current party? They are stuck with the decision.

Rule 26 does suggest that a course of action for me--I should make "the issues ... highly visible " and try to "weaken public confidence in the process." It is a pity that doing the right thing is insufficient; however, I guess I am just naïve. To keep it simple, the 4 orders mentioned previously will be used to make my complaint highly visible. My avocation will be to make this case go viral and the chart above will certainly help. My goal is to reform the process and to have a meaningful hearing on the issues.

The Committee should institute reforms as opposed to Congress because the Congressional reforms will be much more controlling and hopefully more effective. Based upon the .05% "action taken" rate, I was optimistic that the Committee will make no changes.

Very truly yours,

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