
**PETITION FOR RECONSIDERATION
OR IN THE ALTERNATIVE
REQUEST FOR REVIEW BY JUDICIAL CONFERENCE**

Submitted to

**THE JUDICIAL CONFERENCE COMMITTEE
ON JUDICIAL CONDUCT AND DISABILITY
and
THE JUDICIAL CONFERENCE OF THE UNITED STATES**

In Re C.C.D. No. 11-01

Although the Rules for Judicial-Conduct and Judicial-Disability Proceedings do not appear to contemplate a petition for reconsideration of a decision issued by the Committee, the Rules also do not preclude such a petition from being submitted. Additionally, Rule 21(g) indicates that the Committee's decision is not final as it is subject to review by the Judicial Conference.

Therefore, I hereby submit this petition requesting that the Committee on Judicial Conduct and Disability reconsider its November 17, 2011 decision issued in C.C.D. No. 11-01, related to my complaint of judicial misconduct filed against the Honorable Judge George C. Paine II. In the alternative I request that the Judicial Conference conduct a review of the Committee's decision for the purpose expressed below, as an exercise of its authority under Rule 21(g).

Specifically, I ask for reconsideration or review of the Committee's decision not to impose any disciplinary sanctions whatsoever on Judge Paine despite a clear finding by the Committee "that Judge Paine's club membership violates Canons 2A and 2C of the Code of Conduct for United States Judges and constitutes misconduct" under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64. (Memorandum of Decision, p.2)

ARGUMENT

I filed my complaint against Judge Paine in May 2008. I have dutifully appealed through each stage of the process as specified in the Rules for Judicial-Conduct and Judicial-Disability Proceedings, having had my complaint initially dismissed by the Chief Judge for the Sixth Circuit and then by a majority of the Judicial Council of the Sixth Circuit.

I appreciate the clear and unambiguous finding by the Committee that federal judges must adhere to Canon 2C, and that the Belle Meade Country Club "invidiously discriminates against women and African Americans for purposes of Canon 2C and, consequently, that Judge Paine's membership in the organization runs afoul of that Canon." (Memorandum of Decision, p.10).

Forty-two (42) months after filing my complaint, I am pleased that the Committee has found that Judge Paine's membership in a private club that discriminates on the bases of sex and gender constitutes a violation of Canon 2C. I am displeased, however, that the Committee declined to impose any discipline whatsoever on Judge Paine despite a finding that he has, for approximately two decades, been in violation of Canon 2C for maintaining his Belle Meade membership despite having actual knowledge that the club engages in discriminatory membership practices.

The Committee stated that Judge Paine had announced his forthcoming retirement, and "For that reason, and because this decision represents the first enforcement of Canon 2C, there is no cause at this point for us to take disciplinary action." (Memorandum of Decision, p.17)

I submit that those are not appropriate reasons to decline to impose discipline on a judge who has knowingly been in violation of the Code of Conduct, and therefore ask for reconsideration or review of the Committee's decision not to impose disciplinary sanctions on Judge Paine. I do not request reconsideration or review of the Committee's other findings or conclusions.

1. Judge Paine's Impending Retirement Immaterial

That Judge Paine is retiring in the near future should have no bearing on disciplinary sanctions that relate to his actions in the past. Judge Paine's imminent retirement is unrelated to and has no connection with my complaint nor on his knowing membership in a discriminatory club, in violation of Canon 2C, for over two decades. The Committee indicated that if Judge Paine did *not* plan to retire, "we would be required to revisit this conclusion [not to impose discipline]." (Memorandum of Decision, p.17).

To withhold discipline on the basis that the judge complained of *plans* to retire (but has not yet done so) belittles the 3 ½-year process that ultimately resulted in the Committee determining that there was in fact a violation of Canon 2C. This sets a terrible precedent: Federal judges who are named in misconduct complaints that survive initial screenings and go before Judicial Councils can simply announce their retirement, and use the Committee's decision in this case to argue why no discipline should be imposed even if there is a finding of misconduct.

Neither Judge Paine nor any other judge should get a "free pass" when they are found to have violated the Code of Conduct simply because they intend to retire. This is inherently arbitrary – another federal judge who commits the same misconduct but has no plans to retire would, based on the language in the Committee's decision, be subject to discipline. Why should a similarly situated judge who has engaged in misconduct, but who has announced his retirement, not be subject to the same discipline? The bare fact of impending retirement has no bearing on the facts of the complaint or the judge's past conduct, and thus should be immaterial when determining whether disciplinary sanctions should apply, as in this case.

2. First Enforcement of Canon 2C Immaterial

As for this decision representing "the first enforcement of Canon 2C," that factor also is immaterial. I submit there is no justifiable reason why a federal judge should get one free bite at the Code of Conduct apple on the basis that there has been no prior *enforcement* of the Canon that the judge has violated. This is analogous to applying qualified immunity to judges who violate the Code of Conduct, when neither the Code nor the Rules contemplate such.

“In 1983, the Judicial Conference adopted language in Canon 2’s commentary indicating that membership in discriminatory organizations is improper, but left the ultimate determination of propriety to the particular judge. As is relevant to this complaint, Canon 2C and the pertinent commentary were adopted in 1992.” (Memorandum of Decision, p.9, fn.10).

Therefore, since the initial adoption of language related to discriminatory organizations in 1983, or at least since the adoption of the current language of Canon 2C in 1992, Judge Paine knew it was improper and a violation of the Code of Conduct to “hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, or national origin.” Yet Judge Paine had actual knowledge of discriminatory membership practices at the Belle Meade Country Club as evidenced by his letter submitted to the club’s Board in 1990, which was noted by the Committee in its decision. (Memorandum of Decision, pp.3-4).

Hence, regardless of whether there has been prior enforcement of Canon 2C, the language of Canon 2C is clear, membership in discriminatory organizations has been prohibited since 1983, and Judge Paine knew he was a member of a discriminatory organization. This is an objective finding, as the Code of Conduct’s prohibition on membership in a discriminatory organization “is a bright-line rule without a subjective component.” (Memorandum of Decision, p.14)

I submit it is immaterial that Canon 2C has not previously been enforced when, as in this case, there is clear evidence that Judge Paine violated the Code of Conduct, had knowledge that he was doing so, and there is no credible argument to the contrary.

3. Chilling Effect and Public Perception

After 3 ½ years of pursuing this complaint against Judge Paine, the Committee has issued a decision vindicating my assertion that membership in the Belle Meade Country Club by a federal judge is a violation of the Code of Conduct, based upon the club’s discriminatory practices. Yet that vindication rings hollow as the Committee also has determined that Judge Paine should face no discipline whatsoever for reasons that, as described above, are wholly unrelated to his past conduct in maintaining membership in a club that discriminates based on sex and gender.

This indicates that even when the judicial disciplinary process “works” and there is a finding of a violation of the Code of Conduct, there are *no consequences* for the judge who engaged in such misconduct. I submit that this serves to chill potential complainants, who will be less inclined to file meritorious complaints against federal judges when they see the outcome in this case after 3 ½ years of appeals. Further, I submit that the Committee’s decision not to impose disciplinary sanctions on Judge Paine will serve to reinforce the notion, held by many members of the public, that federal judges are “above the law” and the federal judiciary is unable to police itself. This conclusion is inescapable when, as in this case, a federal judge has violated the Code of Conduct – as determined by the Committee – but faces no discipline whatsoever.

Based on the foregoing I request that the Committee RECONSIDER its decision not to impose disciplinary sanctions on Judge Paine, or, alternatively, that the Judicial Conference conduct a discretionary REVIEW of the Committee’s decision for the same purpose.

Respectfully submitted,