

United States Court of Appeals
District of Columbia Circuit
333 Constitution Ave., N.W.
Washington, DC 20001

Laurence H. Silberman
United States Senior Circuit Judge

February 17, 2022

Judicial Misconduct Complaint

Executive Committee of the Judicial Conference of the United States
Administrative Office of the United States Courts
One Columbus Circle, N.E.
Washington, D.C. 20544

Dear Members of the Executive Committee of the Judicial Conference of the United States:

I am appealing to the Executive Committee of the Judicial Conference of the United States the Committee on Codes of Conduct's opinion that Judge Emmet Sullivan's service on the D.C. Judicial Nomination Commission is ethical, and the D.C. Circuit Judicial Council's affirmance of Chief Judge Srinivasan's dismissal of my misconduct complaint based on that opinion.

As you know, I have previously appealed to the Judicial Conference to challenge the refusal of the Committee on Codes of Conduct to express an opinion on the question of whether a sitting federal judge can serve ethically on the Judicial Nomination Commission. Notwithstanding the chairman of the Executive Committee of the Judicial Conference's suggestion to the Committee on Codes of Conduct, the Committee still refused to give an opinion unless Judge Sullivan sought it. I thought that was inappropriate because this issue is "not personal, it's strictly [Article III] business." Since neither Judge Sullivan nor the Chief Judge of the District Court, Judge Beryl Howell, were inclined to seek an opinion, I felt obligated to file a misconduct charge against Judge Sullivan strictly as a means of inducing him to seek an opinion from the Committee on Codes of Conduct.

Although the rules governing misconduct charges authorize an appeal from a decision of the Judicial Council to the Committee on Judicial Conduct and Disability, such a route is anomalous in this case. It makes little sense for this issue to go to the Committee on Judicial Conduct and Disability when it has already been decided by the Committee on Codes of Conduct for two reasons. First, as I have indicated, I present a systemic separation of powers question and not really an individual complaint. And second, it seems inappropriate for one committee of

the Judicial Conference to review another committee of the same status. Indeed, a careful reading of Chief Judge Srinivasan's dismissal of my complaint, by recognizing my intention, implicitly suggests that it is an issue that should be reviewed directly by Judicial Conference. However, to comply with Rule 21(b) of the Rules governing Judicial-Conduct Proceedings, I have also filed an appeal with the Committee on Judicial Conduct and Disability.

Moreover, the issue I have raised concerning the propriety of a sitting federal judge serving on the Commission is particularly timely today. Congress is considering various proposals that would limit the activity of federal judges which may well—according to the Chief Justice—constitute improper encroachment into Article III. (John G. Roberts, Jr., *2021 Year-End Report on the Federal Judiciary* 1 (Dec. 31, 2021)). If Congress can sanction Article III judges performing tasks which should otherwise be thought unethical—which is my contention in this case—it could also ban behavior crucial to Article III independence.

I urge that this issue be directly taken up by the Judicial Conference. I have attached my appeal to the Committee on Judicial Conduct and Disability and other relevant materials.

Sincerely,



Laurence H. Silberman

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CC:

Members of the Judicial Conference
Judge Emmet Sullivan
District of Columbia Judicial Nomination Commission