

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

April 21, 2022

Re: Judicial Misconduct Complaint

Judicial Conference Committee on Judicial Conduct and Disability
Attn: Office of the General Counsel
One Columbus Circle, N.E.
Washington, D.C. 20544

Dear Members of the Judicial Conference Committee on Judicial Conduct and Disability:

I hereby withdraw my petition for review of the Judicial Council of the District of Columbia Circuit's divided decision regarding Judge Sullivan's service on the D.C. Judicial Nomination Commission. I do so in light of the Executive Committee of the Judicial Conference's recognition that the issue I brought to the D.C. Circuit Judicial Council is a "systemic" one—not really personal and one that the Judicial Conference has not yet addressed.

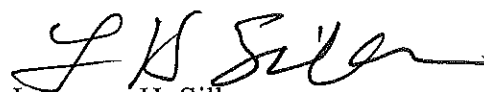
Accordingly, the Executive Committee referred that issue to the Committee on the Judicial Branch, with input from other Committees as appropriate. I am gratified by the Executive Committee's action. Although Judge Sullivan's service on the Judicial Nomination Commission is the immediate focus of the question, I have recognized that prior judges have also served on that Commission. Therefore, I have not criticized his decision to accept the appointment since the ethical concern that I have raised was not formally presented.

As you can see from my letters, I have always thought—as apparently does the Executive Committee—that the question I have raised needed to be resolved by the Judicial Conference. It is an important one: essentially the issue is whether Congress can authorize a federal judge to perform service which, absent that authorization, would be deemed unethical. The Committee on Codes of Conduct, which authorized Judge Sullivan's service on the Commission notwithstanding its prior opinions clearly indicating that such service would be unethical, was apparently concerned with the political consequences of defying Congress. But, as I have pointed out, the federal statute authorizing a federal judge to sit on the Commission can easily be accommodated without raising ethical concerns; a senior judge who stops hearing cases can

perform the statutory role. Indeed, I followed that path myself in 2005-2006 when I served as Co-Chairman of President George W. Bush's Intelligence (WMD) Commission.

I assume all of the material I have presented to your Committee, including Judge Katsas's dissent from the D.C. Circuit Judicial Council's decision, will be passed to the Committee on the Judicial Branch, but I will check with them to make sure that they receive all the relevant material.

Sincerely,



Laurence H. Silberman

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CC:

Honorable Claire V. Eagan
Honorable Rodney W. Sippel
Honorable Roslynn R. Mauskopf
Honorable William B. Traxler
Honorable Emmet G. Sullivan
Ms. Katie Simon