

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

August 2, 2022

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

To the Chair and Members of the Executive Committee of the Judicial Conference:

I am in receipt, as are you, of a rather puzzling letter from Judge Sippel, the Chairman of the Committee on the Judicial Branch. The Committee indicated that the prior correspondence and related documentation regarding my judicial misconduct complaint was “informative and helpful.” Yet, its letter did not even cursorily engage with the extensive analysis in those materials. It determined tersely—without explanation or elaboration—that the D.C. Home Rule Act, “requiring that a D.C. federal judge serve as a member of the Judicial Nomination Commission does not implicate separation of powers or entangle the serving judge in a political function such that it harms the reputation of the branch. In addition, the Committee concluded the Home Rule Act does not seem to otherwise damage the reputation of the branch or enmesh the judiciary in local politics.”

The only “explanation” is that the Committee noted that “the statute had been operating without any concerns raised by any members of the judiciary . . . prior to when [I] raised this issue in August 2020.” I cannot imagine why that is relevant. It certainly does not bear on the merits of my position. Indeed, it is not the first time that I alone have raised a legal issue affecting the federal judiciary. I initiated—against the wishes of the Federal Judges Association—the lawsuit by which federal judges gained substantial backpay and a significant pay increase adjusted by cost of living. I recruited the senior judges who were the nominal plaintiffs in the action. I engaged counsel, Chris Landau (Kirkland & Ellis), and I spent four years working on that litigation which ended successfully. In sum, that I was the first to formally raise the issue can’t possibly detract from the merits.

In any event, other judges have registered their agreement with my view. A former Chief Judge of the D.C. District Court shared my concerns. There was also an unwritten dissent from the Codes of Conduct Committee’s decision. Most importantly, Judge Katsas of the D.C.

Circuit—joined by two other circuit judges on the merits—wrote a powerful dissent from the decision of the D.C. Circuit Judicial Council. Indeed, the only *judges* that have written on the subject, besides myself, have shared my position (the opinion written by the Codes of Conduct Committee is so inarticulate and self-contradictory that it could not have been written by an Article III judge—it almost certainly was written by staff lawyers at the Administrative Office).

In that regard, I note that a copy of the Committee's terse rejection of my position was sent to Judge Mauskopf. I suspect her involvement is unfortunate for me. Her predecessor, Jim Duff, had indicated sympathy for my views.

In sum, I have raised a serious question—no one doubts that—regarding judicial ethics and separation of powers. I believe the judiciary is entitled to a thoughtful analysis from the Judicial Conference. For the Conference to follow the advice of the Judicial Branch Committee would be an injudicious attempt to sweep under the rug a politically sensitive legal question.

Sincerely,



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cc: Hon. Rodney W. Sippel
Hon. Roslynn R. Mauskopf