From: Cyrus Sanai
To: AO Code and Conduct Rules
Cc: [redacted]
Subject: Re: Responding to your email today re your request to testify on the proposed changes to the Code of Conduct for U.S. Judges and the Judicial Conduct and Disability Rules
Date: Tuesday, November 13, 2018 5:21:56 PM
Attachments: Comment Letter 3.pdf

Attached is the final letter of comments from myself and L. Ralph Mecham to the proposed changes.

SANAIS
Cyrus Sanai
433 North Camden Drive
#600
Beverly Hills, CA 90210
tel. 310-717-9840
fax: 310-279-5101
email: cyrus@sanaislaw.com

> On Nov 13, 2018, at 7:53 AM, Cyrus Sanai <cyrus@sanaislaw.com> wrote:
>
> Another witness just pointed out a typographical error which was easily correct. Please distribute this copy of the November 12, 2018 letter instead.
>
> <Comment Letter 2d v2.pdf>
>
> SANAIS
> Cyrus Sanai
> 433 North Camden Drive
> #600
> Beverly Hills, CA 90210
> tel. 310-717-9840
> fax: 310-279-5101
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>
> > On Nov 13, 2018, at 7:01 AM, Cyrus Sanai <cyrus@sanaislaw.com> wrote:
> >
> > Attached hereto is an additional comment letter. This letter is solely

on my own behalf, and addresses the issue and fact pattern brought up by the first witness, Judge O'Neill.

<Comment Letter 2d.pdf>

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On Oct 25, 2018, at 2:42 PM, Cyrus Sanai <cyrus@sanaislaw.com> wrote:

Due to a strange interaction of MS Word footnoting and pdf printing functions, the footnote on page 2 was cut off. I have to rewrite the sentence to match the pagination. PLEASE POST AND DISTRIBUTE THIS VERSION OF THE COMMENTS.

<Comment Letter Final.pdf>

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On Oct 25, 2018, at 12:46 PM, Cyrus Sanai <cyrus@sanaislaw.com> wrote:

Attached are my comments made on behalf of myself and L. Ralph Mecham, former Director of the Administrative Office of the United States Courts.
<Comment Letter 2.pdf>

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On Oct 25, 2018, at 12:45 PM, Cyrus Sanai <cyrus@sanaislaw.com> wrote:

Thank you.

I have two other issues that I need resolved.

First, I am no longer speaking just on behalf of myself. I am delivering joint comments on behalf of myself and L. Ralph Mecham, Mr. Duff's predecessor.

Second and much more time sensitive, I was put on last. I don't if that was a compliment or an insult, but I have a plane to catch. I need to be heard in the morning or immediately after lunch ends.

I sent this information to the

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On Oct 17, 2018, at 2:33 PM, Cyrus Sanai <cyrus@sanaislaw.com> wrote:

I just heard back. Thank you for your attention.

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From: Cyrus Sanai <cyrus@sanaislaw.com>
Date: October 17, 2018 at 1:14:31 PM EDT
To:
Subject: Fwd: I request the opportunity to testify on the proposed changes to the Code of Conduct for U.S. Judges and the Judicial Conduct and Disability Rules

Mr. Duff:

I am forwarding to you my request to testify on October 30 2018 regarding the proposed changes to the Judicial Code of Conduct and the Rules. I have sent repeated emails requesting confirmation of receipt of my request, with no response. My concern arises because of a note stating that requests to testify made prior to October 10, 2018 might not have been received. See the "Notice" box at http://www.uscourts.gov/rules-policies/judiciary-policies/proposed-changes-code-conduct-judges-judicial-conduct-disability-rules. Obviously if there were issues that arose initially, there is no guarantee they have been solved.

I have spent over an hour spread over three days trying to find out the person who is handling this hearing, but no one I speak to knows anything about it or will take responsibility for assisting me, other than a Eventually she named as the relevant contact point, but he is out of the office for an indeterminate period of time and has not returned my calls.

Since you formed the working group, testified about it, and have a public email address, I believe making the request to you should qualify. Please confirm receipt of this email and its forwarding to the relevant person so that I may cease my efforts contacting your staff.

Thank you for your assistance.

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Begin forwarded message:

From: Cy Borg <cyborgOO9@roadrunner.com>
Subject: Re: I request the opportunity to testify on the proposed changes to the Code of Conduct for U.S. Judges and the Judicial Conduct and Disability Rules
Date: October 12, 2018 at 12:24:08 PM PDT
To: CodeandConductRules@ao.uscourts.gov

I, Cyrus Sanai, request the opportunity to testify on the proposed changes to the Code of Conduct for U.S. Judges and the Judicial Conduct and Disability Rules on October 30, 2018.

I am commenting on my own behalf and a group of other persons who are not in a formal organization.

I will separately submit comments by the deadline.

Please confirm receipt of this request. I submitted my request prior to October 10, 2018. I requested confirmation and got none. I now see the note stating that such requests may not have been received.

Since I have to arrange bicoastal travel, please let me know when I would learn whether my request has been accepted.

Thank you for your time and attention.

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November 13, 2018

BY EMAIL

Honorable Ralph R. Erickson
Chair
Committee on Codes of Conduct

Honorable Anthony J. Scirica
Chair
Committee on Judicial Conduct and Disability
Judicial Conference of the United States

Re: Proposed Changes to Code of Conduct for U.S. Judges and Rules for Judicial-Conduct and Judicial-Disability Proceedings

Dear Judge Erickson and Judge Scirica:

The undersigned, Cyrus Sanai and L. Ralph Mecham,[1] are pleased to be submitting these comments on the Proposed Changes to Code of Conduct for U.S. Judges and Rules for Judicial-Conduct and Judicial-Disability Proceedings in support of testimony to be given in a room named after Mr. Mecham, the former head of the Administrative Office of the United States Courts. Mr. Mecham was awarded this and other honors in recognition of his deep and long-lasting dedication to both the federal courts and the cause of justice in general. This letter supersedes the letter of October 25, 2018.

Mr. Sanai became acquainted with Mr. Mecham in their coordinated pursuit to call to account the person whose conduct triggered the proposed rule changes being addressed on October 30, 2018: former Chief Judge of the Ninth Circuit Court of Appeals Alex Kozinski. In good faith, Mr. Mecham and Mr. Sanai jointly sought to end his sexual misconduct, focusing on his efforts to access and distribute pornography within the United States court system. The story is a long one, and Mr. Sanai has placed a summary at the end of this letter. It was originally the intention of Mr. Sanai and Mr. Mecham to present a fully annotated explanation of reasons that Judge Kozinski was able to freely sexually harass clerks, staff and even other judges for two decades. However, at the hearing on October 30, 2018, Judge Erickson made clear that the

[1] This letter was drafted by Mr. Sanai and reviewed by Mr. Mecham. To ensure that there is no doubt about who has knowledge of what facts, the undersigned are referred to in the third person. The signature page is a photograph sent by Mr. Mecham electronically.

Committees are utterly uninterested in further delving into the facts of Judge Kozinski's misconduct. Accordingly, those additional submissions are not being made.

To summarize, Mr. Mecham and Mr. Sanai were not the only people who observed Judge Kozinski's multiple varieties of misconduct, including groping women, making sexually harassing comments to men and women, requiring clerks to watch pornography in his presence, and propositioning judges and clerks from other chambers for sex.[2] Some of this conduct has been documented in articles in the *Washington Post, Slate,* and other publications, and others have recounted it in blog postings, or to Mr. Sanai personally. Everyone has admitted to knowing about Judge Kozinski's misconduct states that they feared for the consequences of revealing this information.

Mr. Mecham and Mr. Sanai took the risk of seeking to halt Judge Kozinski's misconduct, and failed. Mr. Mecham struggled to stop Kozinski from accessing porn from his chambers, and his reward was to be publicly attacked by Kozinsi in the pages of the Wall Street Journal. After Mr. Sanai was attacked by Kozinski in the press in 2005, he filed a judicial misconduct complaint regarding his conduct, including his use of his server, to illegally influence litigation Mr. Sanai was involved in. The Chief of the Ninth Circuit at that time, Judge Schroeder, sat on the complaint for a year and half to allow Judge Kozinski to shut down the server and allow its presence to disappear from search engines—she then ruled that Alex Kozinski had no private server!

The fundamental reason for this failure, as set forth in Mr. Mecham's judicial misconduct complaint made against Judge Kozinski in 2008, is that the Judicial Councils governing many of the Circuits are dominated by an "old boys" (and "old girls") system where judicial misconduct is given a free pass unless it is brought to the attention of the press, in which case the purpose of any investigation is to either whitewash the conduct or so limit the inquiry to avoid public exposure of even greater misconduct.

Perhaps more distressing, in the case of the Ninth Circuit, the Judicial Council itself validated Judge Kozinski's harassment of judicial staff who sought to reign in Judge Kozinski's use of pornography to sexually harass his clerks and others. In particular, the former Circuit Executive, Greg Walters, was fired by Judge Kozinski with the approval of the Judicial Council when Kozinski became chief judge, and Mr. Mecham was attacked in the press by Judge Kozinski with the tacit approval of the Judicial Council in 2001. The crimes of both were seeking to restrict Kozinski's access to pornography in his chambers.

When Judge Kozinksi's use of his private server was exposed by Mr. Sanai to the *Los Angeles Times* in 2005, a second complaint filed by Mr. Sanai regarding his misuse of the server was then pending before the Ninth Circuit Judicial Council for over a year; it was filed after his

[2] While Mr. Sanai has rumors of Judge Kozinski having sexual relationships with his own clerks, he has yet to find reliable evidence. However, Judge Kozinski on several occasions propositioned clerks who worked in other chambers for sex. That being said, Judge Kozinski played matchmaker between one of his clerks and his eldest son, which ultimately resulted in another example of misconduct discussed below.

prior complaint addressing it had been dismissed in part because, Judge Schroeder ruled, there was no private Alex Kozinski server.

After the *Los Angeles Times* article ran, Judge Kozinski pre-empted Mr. Sanai's filing a judicial misconduct complaint against Judge Kozinski by filing his own complaint against himself. Chief Justice Roberts ordered that complaint, and all other complaints on the same subject matter, to be transferred to the Third Circuit, where Judge Scirica would handle the matter. However, the Ninth Circuit Judicial Council defied Judge Roberts' order, stayed the later complaints filed by Mr. Mecham and Mr. Sanai, then dismissed them after Judge Scirica's investigating committee whitewashed Kozinski's misconduct.

And there can be no doubt that it was an intentional whitewash. Judge Scirica appointed as investigative counsel to the Third Circuit two law firms with extensive practice before the Ninth Circuit, Dechert and Morgan Lewis. These two firms would have violated their duties to their clients with cases in the Ninth Circuit had they aggressively investigated, let alone offended, Judge Kozinski. Mr. Sanai was invited to submit an affidavit recounting what he knew; this affidavit, which set forth the contents of my judicial misconduct complaint, was completely disregarded by Judge Scirica. Mr. Sanai directly wrote to Judge Scirica on June 3, 2009, after press reports indicated that the investigation was concluding. Mr. Sanai pointed that no one had interviewed him or Mr. Mecham or other percipient witnesses of Judge Kozinski's misconduct. Mr. Sanai was ignored.

Judge Scirica never obtained an actual forensic investigator, and did not, as Mr. Sanai told the Third Circuit Committee it must do, look at the network records showing access by Judge Kozinski's computer in his chambers to his pornography server. Judge Scirica's Committee interviewed no witnesses; it refused to talk to Mr. Sanai, and refused to talk to Judge Kozinski's staff, clerks in the Pasadena Courthouse, or anyone else who was primed and ready to reveal what what Judge Kozinski was doing. At the hearing, the only percipient witness that Judge Sirica wanted to hear from was Judge Kozinski. Thus in a judicial misconduct proceeding brought by Alex Kozinski against Alex Kozinski, the sole witness for the prosecution and defense was Alex Kozinski. Not surprisingly, Alex Kozinski was largely vindicated.

The above summary of the farce conducted by the Ninth and Third Circuit Judicial Council's regarding Alex Kozinski shows the fundamental problem with the proposed reforms. Like the Roman Catholic Church and Michigan State University, two other institutions where the job requirements include black robes, the sole concern for the administration of two Judicial Councils, when faced with rampant and obvious sexual misconduct, was to minimize and cover-up the problem. Those who sought to bring these issues to attention were denigrated, ignored, and retaliated against.

In Mr. Sanai's case, after his last complaint was dismissed, he was publicly reprimanded, and the Ninth Circuit's Cathy Catterson spent four years attempting to get Mr. Sanai disbarred. When a new California Bar Chief Trial Counsel finally agreed to bring the case against Mr. Sanai in 2014, the Judicial Council refused to release the file (which would have shown the

actual accusations Mr. Sanai made) and refused to allow anyone to testify. The position of Catterson, articulated in letters and verbal communications with the California Bar, was that Mr. Sanai should be disbarred based on the say-so of the Council, without the opportunity to see the evidence against Mr. Sanai or call witnesses to show that his judicial misconduct complaints were well grounded in fact and law. Mr. Sanai was exonerated at trial, with the State Bar Court judge finding that, to the extent he could determine the contents of my complaints, they were clearly meritorious, precisely the opposite conclusion made by the Ninth Circuit Judicial Council.

All of these facts are known to the Committees and the Working Group. Judge McKeown, a member of the Working Group, served on the Ninth Circuit Judicial Council from 2005 to 2010; she signed on to every order clearing Judge Kozinski; and she personally knew about Judge Kozinski's sexually-related misconduct, as she was informed by Mr. Sanai, face to face at a conference, and she was informed by other Ninth Circuit judges (including the late Judge Noonan) who were disgusted by Kozinski's behavior towards their clerks. As for the Third Circuit's investigation, Judge Scirica led it. He chose to hire attorneys who were conflicted in aggressively investigating Judge Kozinski. He chose to round-file Mr. Sanai's affidavit. He chose not have Mr. Sanai interviewed. He chose not to review the Ninth Circuit's network logs, which would have showed Kozinski accessing and distributing links to his server. He chose to have only Kozinski testify. He even chose to reject the direct filing of judicial misconduct complaints against Kozinski by Mr. Sanai and Mr. Mecham, and he further refused to look at Mr. Mecham's accusations on the merits. Every decision he made was with the clear object of avoiding a public confrontation with what everyone knew Judge Kozinski was doing: constant sexual harassment combined with robust punishment of anyone who obstructed his libido.

So what should be done?

First, the proposed changes to the rules need to be withdrawn and a new working group appointed. This new working group should be tasked, first and foremost, in a full investigation of Judge Kozinski's misconduct and how it and why it was allowed to ruin the lives of so many people in the judiciary and legal profession. You can't figure out how to protect a henhouse from further raids by a fox if you appoint the fox's skulk to the committee analyzing the problem. Instead, you need to have a committee with representation including the farmer, the hens, and the hunters who tried to stop the fox. Any such committee needs to have positions reserved for injured individuals such as Mr. Sanai, Mr. Mecham, and any of Judge Kozinski's clerks who wish to come forward.

Second, this investigation also must include a complete public disclosure of the entire files and internal deliberations of the Ninth Circuit and Third Circuit Judicial Councils' handling of the complaints made by Mr. Sanai, Mr. Mecham and Kozinski himself.

Third, the new working group needs to create a confidential mechanism for collecting, from clerks, judiciary staff, former judges, and others, the actual facts of Judge Kozinski's sexual

harassment, the witnesses thereto, and what informal attempts were made to bring Judge Kozinski to heel.

Fourth, this investigation should also require the committee to go through the files of Cathy Catterson, particularly her emails with Judge Kozinski, to identify other situations where the Ninth Circuit covered up the misconduct of Kozinski and others. Catterson, who is no longer employed by the Ninth Circuit, was Kozinski's enforcer. Kozinski consolidated the Circuit Executive and Clerk positions with her to ensure that there would be no source of administrative opposition to his misconduct. This decision was validated by Judge McKeown and the Judicial Council, who fully understood why Judge Kozinski replaced Greg Walters with her. Catterson's presence at the top of the Ninth Circuit's administrative ladder made the non-judicial misconduct procedures, through staff complaints, a nullity.

Fifth, the new working group should consider making recommendations to Congress to for amendments to the relevant statute, 28 U.S.C. §351 et seq., which should include, as suggested by Judge Kozinski, allowing private rights of action against judges who are injured by judicial misconduct of any kind and for refusals to recuse.

Without prejudice to these recommendations, the core problems with the proposed amendments are as follows:

I. Code of Judicial Conduct

Canon 3(b)(6).

This Canon requires that "A judge should take appropriate action upon learning of reliable evidence indicating the likelihood that a judge's conduct contravened this Code."

This is simply not sufficient to address the problem of the next Kozinski, and indeed is virtually meaningless. A judge who learns of misconduct should be required to make a formal misconduct complaint in all circumstances, period. During Judge Kozinski's tenure, many, many judges complained to Judge Schroeder, Judge McKeown and other Judicial Council members, informally, about Judge Kozinski's public behavior. These concerns were ignored or squashed. The core responsibility for taking "appropriate action" is with the Judicial Councils, which are administrative bodies. The duty for other judges should be to file judicial misconduct complaints. They can, if they wish, stage an intervention, or take the next Kozinski out behind the woodshed, but the obligation should be the filing of a judicial misconduct complaint, without exception.

But these concerns do not arise solely when the judge is a sexual predator. The case for general application of this rule was made, inadvertently, by the first witness at the October 30, 2018 hearing, the Hon. Lawrence J. O'Neill, Chief Judge, U.S. District Court, Eastern District of California.

Judge O'Neill presented "two very short scenarios both of which occurred….they are

indicative and illustrative of what I am trying to accomplish hear today in focus of local discretion, in other words leaving it intact" Hearing Video, October 30, 2018 at 16:00 et seq. Judge O'Neill left out the names of the persons involved.

In the first anecdote, a long-term law clerk for the Eastern District Court approached Judge O'Neill to complaint about "a lewd remark" aimed at her by a male District Court judge (called 'Judge So and So' by Judge O'Neill) who Judge O'Neill "had known for years". Hearing Video, October 30, 2018 at 17:15 et seq. Judge O'Neill then asked the clerk for one day to get to the bottom of this as a "favor." Judge O'Neill then spoke to the senior staff attorney for 'Judge So and So' who said of him: "He's losing his mind." Judge O'Neill, who had now "confirmed that there was something terribly wrong" then spoke to the 'Judge So and So's wife, who told Judge O'Neill that her husband was suffering from "dementia….Alzheimer's." So what were Judge O'Neill's concerns on hearing this?

> And I said we several things to deal with here. One is a serious, serious, complaint base don a comment that cannot be ignored. And secondly we have his long-term stellar spotless reputation to deal with too.

Hearing Video, October 30, 2018 at 20:00 et seq.

Judge O'Neill then visited the 'Judge So and So' at this home and after a "difficult conversation" convinced Judge So and So to resign without disclosing his disability; he died two years later of complications from Alzheimer's Syndrome. *Id.*

Judge O'Neill presented this case as an example of why judicial discretion must be preserved. In fact, it is, alongside with the example of Judge Kozinski, the story of why any discretion to report judicial misconduct and disability issues must be eliminated, and all judicial misconduct and disability issues must be reported in writing and where necessary disclosed in public.

By facilitating the secret resignation of a mentally impaired colleague, Judge O'Neill ensured the violation of the constitutional rights of all litigants before 'Judge So and So.' As the United States Supreme Court held, "Due process implies a tribunal both impartial and mentally competent to afford a hearing." *Jordan v. Massachusetts,* 225 U.S. 167, 176, 32 S.Ct. 651, 56 L.Ed. 1038 (1912). This rule applies to juries and judges. *See, e.g. Summerlin v. Stewart,* 267 F. 3d 926, 948 (9th Cir. 2001)(*aff'd* en banc on different grounds, 341 F.3d 1082); *but see diss.,* Kozinski, J., 267 F. 3d at 957 (concurring that a litigant is "entitled to a tribunal that is both impartial and mentally competent" but arguing that a party not to discovery to show lack of competence).

'Judge So and So' was, at the time Judge O'Neill was approached, in the throes of dementia or other mental disability that was obvious to everyone who dealt with him on a personal level. It was sufficiently advanced to cause a radical alteration in his personality. However, his disability was kept secret from the people who had a constitutional right to have all

decisions of his made while mentally unfit vacated and reheard.

By keeping the facts of 'Judge So and So's dementia a secret, Judge O'Neill ensured that the constitutional rights of the litigants before 'Judge So and So' were injured, perhaps irrevocably so.

The term "reliable evidence" should automatically include accusations of inappropriate conduct made by other judges, members of the staff, clerks, and attorneys, without exception.

The rule must be expanded to include an affirmative duty on a member of a Judicial Council to ensure full investigation of judicial misconduct complaints; to follow the orders of the Chief Justice to transfer complaints and not stay such complaints; and barring the sanctioning of parties who file judicial misconduct complaint that are FACIALLY valid. In particular, the rules must bar a member of the Judicial Council for sanctioning a complainant who makes the proper facial allegations of bias as a grounds to investigate merits-related complaints.

It should be noted that the above comment was separately and independently endorsed, in various permutations, by other witnesses, including the organization representing certain prior law clerks. It is obvious, given the history of Judge Kozinski, that anything other than an affirmative obligation to file a misconduct or disability complaint will allow the next Kozinski a free pass.

II. Rules for Judicial-Conduct and Judicial-Disability Proceedings
Rule 3.

One of the critical mechanisms used by Judge Kozinski to manipulate the system was that he filed (or "identified") a misconduct complaint against himself. Judge Roberts transferred that complaint to the Third Circuit with an order to transfer all related misconduct complaints as well. Judge McKeown and the Ninth Circuit Judicial Council violated Judge Roberts' order: the complaints filed by Mr. Sanai and Mr. Mecham were NOT transferred, but instead stayed.

This procedural abuse needs to have multiple rules put in place to stop repetition as follows:

1. No judge should be permitted to file a complaint against himself.

2. If a judge or judicial officer files a complaint, and another person with percipient knowledge of the matter files a complaint, the other person's complaint shall be deemed the lead complaint.

3. A judge sitting on a judicial council has an absolute ethical duty to transfer all related complaints to another Circuit when ordered by the Chief Justice.

Rule 4.

The existence of this Rule is how Judge Kozinski sexually harassed people for decades.

Rule 4 excludes from the definition of "cognizable misconduct" any allegation that calls into question the correctness of a judge's ruling. This portion of Rule 4 is based on 28 U.S.C. § 352(b)(1)(A)(ii), in excluding from the definition of misconduct allegations "[d]irectly related to the merits of a decision or procedural ruling."

The Commentary to the Rules make explicit that cognizable misconduct does not include cover-ups, obstruction of justice, falsification of evidence, or retaliation against complainants if it is conducted by the Chief Judge or the Judicial Council. "Thus, a complaint challenging the correctness of a chief judge's determination to dismiss a prior misconduct complaint would be properly dismissed as merits-related — in other words, as challenging the substance of the judge's administrative determination to dismiss the complaint — even though it does not concern the judge's rulings in Article III litigation." Commentary to Rule 4.

This interpretation of 28 U.S.C. §352(b)(1)(A)(ii) is manifestly wrong. The point of the exclusion of merits-related conduct was to prevent the judicial misconduct proceedings from becoming a secondary method for appeal of civil or criminal case rulings. However, nothing in the logic or language of the statutes applies this exclusion to judicial misconduct proceedings, which are fundamentally an "administrative determination" which in certain cases are followed up by the political proceedings of impeachment.

Indeed, the position that the "administrative determination" is merits-related and thus not judicial misconduct is exactly the reason some believed that the rule changes need to be made. Abusive behavior against clerks which arises in the context of preparing opinions is a "merits-related" conduct as much as an administrative decision to dismiss a complaint of judicial misconduct. Neither arise from a core function of the federal judiciary; judicial discipline complaints are an additional administrative tool to manage the judiciary. They are not Article III powers. Congress could, if it wished, assign judicial discipline to an independent agency run by the House of Representatives, which frankly would be more consistent with the Framers' scheme. The concerns for preventing the judicial misconduct system from becoming a parallel appellate procedure do not exist when the judicial misconduct system is not adversarial, but rather inquisitorial.

The imposition of Rule 4 has had disastrous consequences. Under Rule 4, Judge McKeown was free to ignore evidence of judicial misconduct presented to the Judicial Council, affirm a finding by Judge Schroeder that Alex Kozinski never had a server which he was misusing, intentionally violate an order to transfer the complaints filed by myself and Mr. Mecham to the Third Circuit, and assign disposition of those complaint to Judge Kozinski's best friend, the late Judge Reinhardt. It has enforced a culture of silence enforced by retaliation not directly by accused judges, but by their colleagues on Judicial Councils. Ironically enough, the person who explained the inexorable incentive on federal judges to put the interests of their colleagues over the interests of justice was Judge Kozinski, who wrote that:

> Passing judgment on our colleagues is a grave responsibility entrusted to us only recently. In the late 1970s, Congress became concerned that Article III judges were, effectively, beyond discipline because the impeachment process is so cumbersome that it's seldom used. See 126 Cong. Rec. S28091 (daily ed. Sept. 30, 1980) (statement of Sen. DeConcini). At the same time, Congress was aware of the adverse effects on judicial independence if federal judges could be disciplined by another branch of government using means short of impeachment. *See* S.Rep. No. 96-362, at 6 (1979), reprinted in 1980 U.S.C.C.A.N. 4315, 4320. The compromise reached was to authorize federal judges to discipline each other. See 126 Cong. Rec. S28091. We are unique among American judges in that we have no public members — lawyers or lay people — on our disciplinary boards. *See* American Judicature Society, Appendix C: Commission Membership, at http://www.ajs.org/ethics/pdfs/Commission% 20membership.pdf (revised Aug. 2003) (listing disciplinary procedures for all state judges). Rather, judicial discipline is the responsibility of the circuit judicial councils — bodies comprised entirely of Article III judges. See Judicial Councils Reform and Judicial Conduct and Disability Act of 1980, Pub.L. No. 96-458, 94 Stat.2035 (1980).
>
> **Disciplining our colleagues is a delicate and uncomfortable task, not merely because those accused of misconduct are often men and women we know and admire. It is also uncomfortable because we tend to empathize with the accused, whose conduct might not be all that different from what we have done — or been tempted to do — in a moment of weakness or thoughtlessness. And, of course, there is the nettlesome prospect of having to confront judges we've condemned when we see them at a judicial conference, committee meeting, judicial education program or some such event.**
>
> Pleasant or not, it's a responsibility we accept when we become members of the Judicial Council, and we must discharge it fully and fairly, without favor or rancor. If we don't live up to this responsibility, we may find that Congress — which does keep an eye on these matters, *see, e.g.,* Operations of Fed. Judicial Misconduct Statutes: Hearing Before the Subcomm. on Courts, the Internet, and Intellectual Prop. of the House Comm. on the Judiciary, 107th Cong. (2001); Report of the Nat'l Comm'n on Judicial Discipline and Removal (1993) — will have given the job to somebody else, materially weakening the independence of the federal judiciary.
>
> Finally, I find the district judge's slippery statement of contrition risible. As the majority notes, we wrote the district judge and offered to close the matter without further action, provided he acknowledge his "improper conduct" and "pledge not to repeat it."

In Re Complaint of Judicial Misconduct (Real), 425 F.3d 1179, 1183-4. (9th Cir. 2005) (Kozinski, J., diss., bold emphasis added).

Judge McKeown was a member of the Judicial Council at the time this dissent was written; it was directed at both Judge Schroeder and her in particular, because he quoted

McKeown's own words in his dissent attacking the decision she supported:

> All of the foundations of judging — such as respect for the text of the law and precedent — reinforce the message of impartiality." M. Margaret McKeown, Don't Shoot the Canons: Maintaining the Appearance of Propriety Standard, 7 J.App. Prac. & Process 45, 53 (2005). When a judge acts in accordance with the rules of procedure, when he gives reasons for his orders, when he allows both sides equal and open access to him, when he follows the law, he ensures not merely that justice is done, but that it appears to have been done. When, on the other hand, a federal judge exercises the vast powers entrusted to him by Congress based on secret communications with one party, when he fails to give the opposing side an opportunity to speak, when he refuses to give reasons for his actions, when he does not cite legal authority, when he stubbornly and laconically sticks to his guns despite repeated requests for reconsideration or an explanation, he inevitably gives rise to the suspicion that he acted for personal and improper reasons rather than according to the rule of law.

Id. at 1197.

It is deeply ironic that Judge Kozinski wrote this magisterial criticism of the handling of this misconduct complaint by Judge McKeown, then Chief Judge Schroeder and the other members of the Council at the very time he was abusing clerks and committing judicial conduct against Mr. Sanai and countless other people. But it should not be surprising. Judge Kozinski fully understood the fatal weaknesses in the judicial misconduct regime, and he relied upon them to turn the federal courts into his sexual harassment playground.

Judge Kozinski's dissent demonstrates the problem with Rule 4. Ultimately the target of the complaint was publicly reprimanded, and that reprimand was reversed by the Judicial Conference based on Rule 4. Even the kind of absolute judicial abuse of power, committed consciously and lawlessly, which Judge Kozinski described, would not be considered "cognizable misconduct."

Rule 4 must be amended to provide that administrative decisions, including the administrative decisions of judicial misconduct proceedings, are not immune under 28 U.S.C. §352(b)(1)(A)(ii) and Rule 4. Accordingly, the decision of a Chief Judge to dismiss a valid complaint where there is credible evidence of misconduct MUST BE DEEMED JUDICIAL MISCONDUCT. Likewise, the following actions by a Chief Judge, member of a Judicial Council or member of a Judicial Council investigating committee, must be explicitly identified as judicial misconduct:

1. Serving on an investigating committee or investigating a complaint when one is a personal friend of the Judge.

2. Assigning to an investigating committee or the investigation of a complaint a personal friend of the Judge.

3. Refusing to transfer a related complaint to a different Judicial Council as directed by the Chief Justice.

4. Engaging investigative council from law firms with an active practice in front of the target judge's court.

5. Refusing to interview percipient witnesses.

6. Refusing to call percipient witnesses to testify.

7. Retaliating against a complaint who makes a valid

8. Seeking to disbar an attorney without providing the relevant bar association prosecutors full access to the file and making available all witnesses requested by the accused.

9. Refusing to recuse when required by the law.

10. Retaliating against, or facilitating the retaliation against, any complainant by act of the Judicial Council.

11. Failing to rule upon a misconduct complaint within 90 days of filing.

12. Directly or indirectly communicating to a law firm or legal employer that retention of such person would injure that firm's position within the judiciary.

13. Failing to rectify, or fully compensate for, the consequences of past retaliation by the judge or Judicial Council.

Numbers 12 and 13 are not only of interest to myself, but also other third parties affected by Judge Kozinski's retaliation. A notable example of this is Judge Kozinski's former clerk and daughter-in-law, Leslie Hakala. Ms. Hakala was married to Judge Kozinski's eldest son Yale, and she was a long-time employee of the SEC in Los Angeles. Approximately three years ago she obtained a coveted partnership at K&L Gates; approximately two years ago her marriage fell apart, and she filed for divorce from Yale Kozinski. The divorce was extremely bitter, as Ms. Hakala was the breadwinner. When the *Washington Post* articles came out last November, her counsel sought to subpoena Judge Kozinski to obtain information about his treatment of Ms. Hakala in the context of the legal battles. The younger Kozinski acceded to Ms. Hakala's position and the divorce was settled. After Hakala played the #metoo card and the divorce was finalized, several judges with personal relationship with attorneys at K&L Gates, including Judge Kozinski's close friend, the late Stephen Reinhardt, independently told K&L Gates partners that Ms. Hakala's continued presence at the firm would injure its representation of its clients in federal court. Ms. Hakala was then fired, and she his struggling on her own as an attorney with a Biglaw practice—securities law enforcement defense—but no firm to practice at, and a blackball by Judge Kozinski's remaining friends in the federal judiciary.

Without reform of Rule 4, there can be no protection or effective judicial discipline system. And if any judge seriously believes that 28 U.S.C. § 352(b)(1)(A)(ii) is a barrier to alteration of Rule 4, the new working group should simply ask Congress to change it. Congress will not object if the Judiciary asks for it.

Attached as an Appendix hereto is a summary of the history of the handling of the judicial misconduct complaints Mr. Sanai made alongside Mr. Mecham, and the retaliatory conduct we both suffered. As stated above, while it was the intention of Mr. Sanai to prepare a fully annotated version, Judge Erickson stated that the Committees are not interested in the facts of any particular acts of past misconduct or disability. The proposed changes do nothing to stop a repetition of the complicit protection of future sexual harassers, because the members of the Judicial Councils responsible for policing judicial misconduct suffer no consequences from obstructing justice. Accordingly, the proposed changes are a complete failure; and they are failure because a member of the working group, Judge McKeown, and the Chair of the Committee on Misconduct, Judge Scirica, were key members of the "old boys [and girls] club" Mr. Mecham called out who enabled Judge Kozinski's misconduct, protected him from the consequences of his misconduct, and retaliated against the persons who used the judicial misconduct complaint system in good faith to attempt to stop his misconduct. It is obvious that from 2005 to 2010, Judge McKeown and Judge Scirica failed to protect the public; they should not be allowed to further frustrate the effective enforcement of judicial misconduct procedures. A new committee needs to be formed with the remit to fully investigate Judge Kozinski's misconduct and the judges and administrators who enabled it. The existing rules should be changed.

Very truly yours,

SANAIS

By

Cyrus Sanai

[3]

[3] This is a photograph of Mr. Mecham's actual signature to the letter, made on November 13, 2018. Unfortunately there were technical problem in transmitting a legible copy of the entire signature page by the deadline for filing.

APPENDIX
SUMMARY DISCUSSION OF JUDICIAL COMPLAINTS AGAINST ALEX KOZINSKI

I. Judge Kozinski's Sexual Deviancy and his Combat with Walters and Meachem

The Ninth Circuit was aware as early as 1998 that it had a significant and ever growing problem involving employees of the federal judiciary using government-owned computers to download pornography. One judge, Alex Kozinski, fought to preserve the freedom of the judiciary to use taxpayer-funded money to visit "www.zoosex.com". As far back as 1998 he questioned the proposed solution: implementation of an Internet monitoring program. The United Judicial Judicial Conference took responsibility for this program and implemented a monitoring system that showed significant and increasing downloading of music and video files, some of which the late Judge Edwin Nelson believed included child pornography.

In 2001 the monitoring system was disabled unilaterally in San Francisco. Who did this is a matter of dispute. Former Director of the Administrative office of the United States Court, L. Ralph Mecham, accuses Judge Kozinski of taking this action personally and that this constituted criminal activity, while the late Judge Nelson ascribed it to the Ninth Circuit's executive committee acting unilaterally, while Judge Sidney Thomas claimed in an article that the entire Ninth Circuit Judicial Council unanimously approved the action. Whichever the case, Judge Kozinski was the moving force behind this action. Mr. Mecham's direct knowledge of this issue strongly suggests that the Ninth Circuit acted to shield Judge Kozinski from his misconduct. Even if the Ninth Circuit's Judicial Council or Executive Committee did approve what Judge Kozinski did, it is undisputed that the 11th Circuit and 10th Circuit had no idea this was being done; more important, if the motivation of the action was to allow de facto unfettered access to pornography by crippling the monitoring system, then the action was wrongful no matter how many judges approved it.

Judge Kozinski, apparently losing the internal battle on this issue, published an article in the Wall Street Journal on September 2001 directly attacking Mr. Mecham by name. In that article Judge Kozinski represented to the world the following:

> The policy Judge Nelson[4] seeks to defend as benign and innocuous would radically transform how the federal courts operate. At the heart of the policy is a warning--very much like that given to federal prisoners--that every employee must surrender privacy as a condition of using common office equipment. Like prisoners, judicial employees must acknowledge that, by using this equipment, their "consent to monitoring and recording is implied with or without cause." Judicial opinions, memoranda to colleagues, phone calls to your proctologist,

[4] This is the same Judge Nelson who authored a letter attacking Judge Kozinski's position.

> faxes to your bank, e-mails to your law clerks, prescriptions you fill online--you must agree that bureaucrats are entitled to monitor and record them all.
>
> This is not how the federal judiciary conducts its business. For us, confidentiality is inviolable. No one else--not even a higher court--has access to internal case communications, drafts or votes. Like most judges, I had assumed that keeping case deliberations confidential was a bedrock principle of our judicial system. But under the proposed policy, every federal judge will have to agree that court communications can be monitored and recorded, if some court administrator thinks he has a good enough reason for doing so.
> Another one of our bedrock principles has been trust in our employees. I take pride in saying that we have the finest work force of any organization in the country; our employees show loyalty and dedication seldom seen in private enterprise, much less in a government agency. It is with their help--and only because of their help--that we are able to keep abreast of crushing caseloads that at times threaten to overwhelm us. But loyalty and dedication wilt in the face of mistrust. The proposed policy tells our 30,000 dedicated employees that we trust them so little that we must monitor all their communications just to make sure they are not wasting their work day cruising the Internet.
>
> How did we get to the point of even considering such a draconian policy? Is there evidence that judicial employees massively abuse Internet access? Judge Nelson's memo suggests there is, but if you read the fine print you will see that this is not the case.
>
> Even accepting the dubious worst-case statistics, only about 3% to 7% of Internet traffic is non-work related.

Judge Kozinski's representations were dishonest in several respects. First, and perhaps most important, it has never been the case that federal judicial deliberations have "inviolable" confidentiality; the confidentiality is, under the law, far more violable than, say, the attorney-client privilege. Indeed, this is precisely the contention he forced into his clerk's brain to stop them from complaining about his sexual harassment of them.

Second, Judge Kozinski represented to the world that there was no problem involving use of the Internet by employees of the judiciary. That is simply a lie, as made clear by the 1998 Memorandum of Greg Walters memorandum and the 2002 letter of Judge Nelson.

Kozinski's retaliation against Mecham through the press was not his only method of striking back. When Kozinski became the Chief Judge, he fired Greg Walters, the person who attempted to dam the flood of pornography into the Ninth Circuit, and replaced him with the then-sitting clerk of the Ninth Circuit, Cathy Catterson. Catterson had pledged her loyalty to Kozinski, so she was allowed to keep her other job as well. Catterson became Kozinski's enforcer inside and

outside the Ninth Circuit, ensuring that no one in the judiciary's staff would raise any complaints about Kozinski's bizarre antics.

While Kozinski succeeded in keeping free access to pornography, his battle with the judicial administration had educated him about the realities of Internet network technology. The systems then being installed in the federal judiciary kept detailed records (for purposes of network security and tracing hackers) of every website accessed by any computer on the Ninth Circuit's network and the computer accessing it. While Kozinski disabled the centralized monitoring from Washington D.C., the logs could be accessed at any time. This left Kozinski's habitual porn-surfing at risk of constant exposure. He therefore hit on the plan of transferring his favored pornography and other material he liked to distribute to a personal server on the alex.kozinski.com server on the kozinski.com domain that he had purchased.

Kozinski placed on this server material that he wished to distribute or view in chambers. Rather than sending copies of documents, audio files, or audio-visual files, he could simply send a link by email. If someone was viewing a pornographic video on his server within the court (including Judge Kozinski himself), the network log would show access to a file on alex.kozinski.com, and not accessing a file on www.zoosex.com or any of the other sites that it amused Kozinski to view and to make his clerks view.

"Kozinski Strikes Back" at Me.

I submitted an opinion piece to *The Recorder* of San Francisco concerning the ongoing controversy over citation of unpublished opinions. In this opinion piece, I argued that the critics of the Ninth Circuit's policy regarding publication had a legitimate argument concerning the dedication of the Circuit to consistent precedent. This issue was about to be decided by the Judicial Conference, then-proposed (and now adopted) Federal Rule of Appellate Procedure 32.1. Judge Kozinski's testimony to Congress on this subject was cited by me as representing the view of those opposing citation of unpublished opinions. I also urged the Court to grant more rehearings en banc to settle perceived or actual conflicts in Ninth Circuit authority, starting with the conflicts surrounding the Court's *Rooker-Feldman* precedent.

It was while researching Judge Kozinski's views on the subject of citation of unpublished appellate dispositions that I first came across alex.kozinski.com, specifically the directory alex.kozinski.com/articles/. There were numerous links discoverable by Google to articles in this directory, some of which had clearly been supplied by Judge Kozinski himself.

Four days after my was published, the Judicial Conference decided the issue in favor of permitting citations. Judge Kozinski was quoted condemning this move by the Judicial Conference, and expressing his hope that the Supreme Court would reject it.[5]

[5] Tony Mauro, *Cites to Unpublished Opinions Ok'd,* Legal Times, September 21, 2005

Two days later, Judge Kozinski published his response to Complainant's article in *The Recorder,* which stated, *inter alia,* that he had recused himself from then pending cases involving my family in which I was a litigant.[6] Judge Kozinski laid out a response to the arguments in the pending petition and a novel analysis of the Ninth Circuit's past precedent concerning the *Rooker-Feldman* doctrine.

Judge Kozinski's article did not address the primary subject of my article, which is the citation policy of the Ninth Circuit. It ignored my discussion of the debate between the majority and dissent over what constitutes binding precedent in the Ninth Circuit.[7] It did not dispute my contention that as a practical matter, the Ninth Circuit's recent *Rooker-Feldman* authority operated to erase the injunctive remedy against biased or corrupt state court judges and tribunals authorized by the United States Supreme Court.[8] Instead, Judge Kozinski focused the first part of his article solely on refuting my contentions that there is a severe conflict in the Ninth Circuit's authority concerning the *Rooker-Feldman* doctrine. He began the second part of his article as follows:

> Despite his colorful language, Mr. Sanai's article raises no legitimate question about whether the Ninth Circuit has been derelict in following circuit or Supreme Court precedent. But the article does raise serious issues of a different sort. Mr. Sanai's article urges us to "grant en banc rehearing of the next decision, published or unpublished, which asks the court to resolve the split among *H.C., Napolitano* and *Mothershed*." A petition for en banc rehearing raising this very issue crossed my desk just as Mr. Sanai's article appeared in print. The name of the case? *Sanai v. Sanai.* A mere coincidence of names? Not hardly. The petition, signed by Mr. Sanai, cites the same cases and makes the same arguments as his article — including the reference to "Catch-22."

Kozinski Strikes Back, supra.

Judge Kozinski placed case-related documents on his personal website, www.alex.kozinski.com, and had the web version of his article link to the .pdf file of the selection of these documents on his website.

Canon 3(A)(6)[9] of the Code of Conduct for United States Judges then in effect stated that "a judge should avoid public comment on the merits of a pending or impending action." The

[6] Alex Kozinski, *Kozinski Strikes Back,* The Recorder, September 23, 2005.
[7] *See Barapind v. Enomoto,* 400 F.3d 740, 751 fn. 8 (9th Cir. 2005)(en banc)
[8] *Compare Gibson v. Berryhill*, 411 U.S. 564 (1973) *with Flangas v. State Bar of Nevada,* 655 F.2d 946 (9th Cir. 1981).
[9] The D.C. Circuit had the opportunity to address Canon 3(A)(6) when it chastised District Court Judge Jackson in the Microsoft antitrust trial. That court noted:

> While some of the Code's Canons frequently generate questions about their application, others are straightforward and easily understood. Canon 3A(6) is an example of the latter. In forbidding federal judges to comment publicly "on the

official comment further states that "[t]he admonition against public comment about the merits of a pending or impending action continues until completion of the appellate process. If the public comment involves a case from the judge's own court, particular care should be taken that the comment does not denigrate public confidence in the integrity and impartiality of the judiciary."

Judge Kozinski's move from impartial judge to public advocate of my opponent's legal position while a petition for rehearing en banc is pending has no precedent in federal legal history. Though Judge Kozinski has recused himself from voting on the petition for rehearing en banc that I filed*,* it is clear that he was not refraining from taking an active, public and vocal role to influence the outcome of the petition or the ultimate disposition of the case, formulating new interpretations of the Ninth Circuit's case law that have never seen the light of day and which I had no opportunity to address. Any reasonable person would find that his actions "denigrate public confidence in the integrity and impartiality of the judiciary", by setting a precedent whereby a sitting judge may recuse himself and then adopt the role of public advocate for one side concerning a pending petition for rehearing en banc arising from interlocutory appeals.

I filed a judicial misconduct complaint against Judge Kozinski in October of 2005. The order concerning the complaint was issued on December 19, 2006, more than 14 months later. It terminated the complaint on the grounds (a) that corrective action had been taken as to Judge Kozinski's publication in the Recorder, and (b) there was no evidence of any website controlled by Judge Kozinski which held such materials.

Both determination were false. Judge Kozinski has never "apologized" to me at all. There is no evidence of any such apology ever being made by Judge Kozinski in any fashion.

> merits of a pending or impending action," Canon 3A(6) applies to cases pending before any court, state or federal, trial or appellate. *See* Jeffrey M. Shaman et al., Judicial Conduct and Ethics § 10.34, at 353 (3d ed. 2000). As "impending" indicates, the prohibition begins even before a case enters the court system, when there is reason to believe a case may be filed. Cf. E. Wayne Thode, Reporter's Notes to Code of Judicial Conduct 54 (1973). An action remains "pending" until "completion of the appellate process." Code of Conduct Canon 3A(6) cmt.; Comm. on Codes of Conduct, Adv. Op. No. 55 (1998).
>
> ....
> It is no excuse that the Judge may have intended to "educate" the public about the case or to rebut "public misperceptions" purportedly caused by the parties. [Citation.] If those were his intentions, he could have addressed the factual and legal issues as he saw them — and thought the public should see them — in his Findings of Fact, Conclusions of Law, Final Judgment, or in a written opinion. Or he could have held his tongue until all appeals were concluded.

U.S. v. Microsoft Corp., 253 F.3d 34, 113 (D.C. Cir. 2001).

More important, Judge Schroeder's finding that there was no website containing posting by Alex Kozinski was, as we know, completely untrue. She delayed the resolution of the complaint with Judge Kozinski to convince him to disconnect the server and because *The Recorder* and law.com site makes its web-based articles available for a period of one year, then erases them. Accordingly, the Kozinski article and the link to the .pdf files he had published were no longer accessible on the law.com in December of 2006.

But while the links disappeared, I had .pdf copies of the original online article and some of the documents which had been linked, and I had submitted those with petition to review Judge Schroeder's order, which was denied by the Judicial Council with its form order.

Sometime in 2007, Judge Kozinski concluded that it was safe to reactivate the alex.kozinski.com website. He therefore brought the site back on-line and began distributing links to the portion of the site which includes his articles, including a .pdf scan of the paper version of the "Kozinski Strikes Back" article. The act of distributing links to other sites results in search engines such as Google locating and indexing alex.kozinski.com. Google indexed the portion of alex.kozinski.com containing a hyperlink to the "Kozinski Strikes Back" article.

I filed a second judicial misconduct complaint in November of 2007 regarding Judge Kozinski's redistribution of "Kozinski Strikes Back". Judge Kozinski, now chief judge, assigned the matter to Judge Schroeder, who, true to form, sat on it.

The more I thought about the treatment of Judge Kozinski's alex.kozinski.com site, the more puzzled I became. Why did Judge Schroeder pretend the site did not exist? Why did Judge Kozinski take the site down, then put it back up? Why did Judge Kozinski believe that he could redistribute the "Kozinski Strikes Back" article with impunity?

On the night before 2007's Christmas Eve, after putting my children to sleep with tales of the excitement of the next day, I decided to find out what Judge Kozinski might be distributing via alex.kozinski.com website. On December 23, 2007 and December 26, 2007 I discovered the stuff index containing Kozinski's distributed porn, mp3's and other documents, and I downloaded as much as I could before Judge Kozinski shut the site down. I checked the site on January 10, 2008 and downloaded one music file.

Realizing that I had found the reason Judge Kozinski and the Ninth Circuit Judicial Council refused to acknowledge the existence of the alex.kozinski.com site, I first sought to have the story published under my own name. I passed the information to John Roemer of the Daily Journal. His editor, David Huston, killed the story, and may have tipped above Kozinski. Terry Carter of the ABA Journal began working on it. When I read the article about Judge Kozinski presiding over an obscenity trial, I tipped the Los Angeles Times. The Los Angeles Times reporter Scott Glover independently accessed the site and apparently found files and documents

that had been placed in the directory after I had done my downloading and thus saw documents that I never saw. Judge Kozinski recused himself from the Ira Isaacs trial.

More important, Judge Kozinski filed a judicial misconduct complaint against himself. This stratagem put Judge Kozinski in effective control over the prosecution of the misconduct complaint for purpose of appeals. The Ninth Circuit entered an order in respect of the complaint initiated by Judge Kozinski against himself that "[a]ny pending complaints, or new complaints that may be filed, relating to this matter are included in this request for transfer" to a different Circuit, which Justice Roberts selected as the Third Circuit. However, when I filed my own complaint directly with the Third Circuit, it was rejected, and when I filed a complaint with the Ninth Circuit, instead of transferring it, it was stayed, in direct violation of Court's own order.

At this time Mr. Mecham, who I had contacted when I learned about Kozinski's prior misconduct, filed his own parallel misconduct complaints with the Third Circuit and then Ninth Circuit.

The Third Circuit's investigation of Judge Kozinski, led by its Chief Judge Sirica, was a joke. No competent computer expert was officially hired to investigate the server. The persons who had viewed the contents, myself and Scott Glover, were never called as witnesses. The two law firms selected to do the legwork on the investigation, Morgan Lewis and Dechert, were the two Philadelphia-based firms that had offices in California and regularly litigated before the Ninth Circuit, and thus would have a conflict of interest if Kozinski were offended by aggressive investigation. The only witness called was Kozinski himself. Though I submitted an affidavit to the Third Circuit investigators, not a single question was ever put to me, and evidence I presented to show that the server was used to distribute pornography within the Ninth Circuit was ignored.

Judge Kozinski was effectively reprimanded by the Third Circuit. Had the Third Circuit performed an even marginally competent investigation, it would have interviewed his clerks; his clerk in 2007, Heidi Bond, was forced to watch pornography by Kozinski and would likely have revealed what she knew. But rather than make the obvious inquiry into why Judge Kozinski was placing pornography and other materials on his server, the Third Circuit only listened to him and found his explanation, including his statement that he never showed these materials to anyone else, "credible." Bond has stated that she separately ask advice from Judge Scirica about how to complain about Judge Kozinski, and Scirica said he could not tell her what to do.

"Liberal Lion" Stephen Reinhardt Initiates Punishment Against Me

Soon after the Third Circuit issued its ruling, my complaint, against Kozinski and other judges involved in the matters he wrote about, was handed to Kozinski's best friend on the Ninth Circuit, so-called "Liberal Lion" Stephen Reinhardt. Reinhardt found that every matter I raised (including internal distribution of pornography within the Ninth Circuit) had been thoroughly investigated and that Judge Kozinski had been found innocent. He also found that I should be

sanctioned, and an order to show cause demanding that I explain why I should not be sanctioned for, among other things, revealing the contents of my complaint, was issued by the Judicial Counsel. I was reprimanded and the Judicial Council instructed Catterson to seek my disbarment in 2010.

The California State Bar reviewed the California State Bar complaint, and explained to Catterson in a letter I was given in 2014 that unless it released a copy of the judicial misconduct complaint I filed and provided other information, it could not prove a case against me. This did not discourage Catterson from continuing to pressure the Bar. Jayne Kim,[10] the then-newly appointed Chief Trial Counsel of the California State Bar Association, overruled prior Chief Trial Counsels and instigated proceeding against me as requested by the Ninth Circuit Judicial Council and regarding another case where Judge Kozinski had teamed up with a judge I reversed, disqualified, and whose nomination to the Court of Appeal I opposed sought to punish me. The Judicial Council refused to provide any records concerning my complaints against federal judges and refused to allow anyone from the federal courts to testify. When I sought to subpoena Catterson, the actual complainant, Kozinski, and other judges to defend myself, they refused to show up.

After presentation of the Chief Trial Counsel's case in 2014, in 2015 the California State Bar Court dismissed the charge, finding that to the extent that it could determine the contents of a misconduct complaint filed by me against Kozinski and others, it was justified.[11] The State Bar Court judge later wrote that:

> Given the State Bar's inability to provide this court with a copy of the actual complaints filed by Respondent against the federal judges, this court - as accurately predicted by the State Bar in May 2011 -eventually dismissed that count at trial due to the State Bar's failure to provide clear and convincing evidence that those complaints were frivolous. The evidence was not sufficient even to enable this court to identify all of the judges against whom complaints had been filed.

Catterson's non-stop pressure on the State Bar, to prosecute a case that the Ninth Circuit refused to supply documents necessary to win the case, was the epitome of bad faith harassment. It was conducted by the members of the Judicial Council to ensure that no outsider would ever make complaints against Judge Kozinski, and served as a stark warning to anyone within the Court

[10] Kim subsequently was subject of a no-confidence vote by her trial counsel underlings and was accused of misconduct by the man who recruited her, former state legislator and former executive director of the State Bar Joseph Dunn. Dunn was fired, and he lost an arbitration. D. Walters, "Joe Dunn loses arbitration over his firing by State Bar", Sacramento Bee, March 20-21, 2017. Kim resigned in 2016.

[11] At the end of the State Bar Prosecutor's case I won on all but one charge, and the remaining charge has been stayed for three years because it will require state court judges to testify. I have never been allowed to put on a defense.

about the lengths that the Council would go to in order to punish anyone who embarrassed Kozinski.

Kozinski's Luck Runs out with #MeToo

During my ordeal with Judge Kozinski, I learned that it is impossible to have legal beat reporters initiate investigative work against judges, and that many editors will kill stories involving the judiciary because of the desire to keep access. No one has exploited this more assiduously than Kozinski. My efforts to expose him at the Daily Journal and Slate were killed by David Houston and Dalia Lithwick, respectively. Lithwick subsequently gave a partial mea culpa, admitting that her reluctance to expose Kozinski was due in part because she feared being cut-off from lucrative speaking engagements.[12]

Kozinski's luck ran out when a national security reporter for the Washington Post, Matt Zapotosky, hunted down clerks and judges who reported on the open secret of Kozinski's sexual harassment of clerks and even other judges. After defending himself to another friendly reporter, Maura Dolan of the Los Angeles Times, a second group stepped forward and Zapowsky published even more damaging revelations, so Kozinski resigned. The exposure of this open secret led Justice Roberts to establish the working group.

During this time period I was contacted by more than half a dozen clerks, former clerks, employees and former employees of the federal judiciary. Half of Zapowsky's sources refused to identify themselves because of fear of retaliation, and there are other people who want to come forward with stories about Judges Kozinski, Reinhardt, Kavanaugh and possibly others. However, they are rightly terrified of doing so because of the punishment meted out by the Ninth Circuit Judicial Council against Walters, Mecham and myself, and the whitewashing of Kozinksi's misconduct by Judge Scirica and the Third Circuit Judicial Council.

The need to address this problem now was highlighted by Zapotosky's most recent article published on July 24, 2018, "Judge who quit over harassment allegations reemerges, dismaying those who accused him." The Washington Post article discusses the efforts to rehabilitate Kozinski by his friends in the press such as David Houston, and the concerns his reemergence have raised in those trying to reform the judicial workplace. The article stated that:

> "I worry that it signals to women that our profession doesn't actually care about harassment," said Emily Murphy, a law professor who was among the first to describe her experience with Kozinski on the record. "**And it substantiates a concern that several of us had after he resigned — that in the absence of an investigation or formal process, it would be easier to downplay his conduct and rehabilitate him from something we never got to the bottom of**."

[12] D. Lithwick, "He Made Us All Victims and Accomplices, Slate, Dec. 13, 2017

> The timing of Kozinski's reemergence is notable, coming just as Kennedy retired and Trump nominated Kavanaugh to replace him. In recent weeks, opposition researchers and journalists have been exploring Kozinski and Kavanaugh's relationship, trying to determine whether Kavanaugh knew of his former boss's conduct. Kavanaugh clerked for Kozinski in the early 1990s, and the two men both vetted candidates for Kennedy clerkships. One of Kozinski's sons worked as a clerk for Kavanaugh last summer.

Judge Kozinski displayed his continuing power in a matter involving his eldest son, Yale. Yale married Leslie Hakala, one of Kozinski's former clerks, and she was a long-time employee of the SEC in Los Angeles. Approximately three years ago she obtained a coveted partnership at K&L Gates; approximately two years ago her marriage fell apart, and she filed for divorce from Yale Kozinski. The divorce was extremely bitter, as Ms. Hakala was the breadwinner. When the *Washington Post* articles came out last November, her counsel sought to subpoena Judge Kozinski to obtain information about his treatment of Ms. Hakala in the context of the legal battles. The younger Kozinski acceded to Ms. Hakala's position and the divorce was settled. After Hakala played the #metoo card and the divorce was finalized, several judges with personal relationship with attorneys at K&L Gates, including Judge Kozinski's close friend, the late Stephen Reinhardt, independently told K&L Gates partners that Ms. Hakala's continued presence at the firm would injure its representation of its clients in federal court. Ms. Hakala was then fired, and she his struggling on her own as an attorney with a Biglaw practice—securities law enforcement defense—but no firm to practice at, and a blackball by Judge Kozinski's remaining friends in the federal judiciary.