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May 19, 2014

Judicial Council, U.S. Court of Appeals for the Fifth Circuit
600 S. Maestri Place
New Orleans, Louisiana 70130

Re: Complaint of Misconduct against U.S. District Judge Frank Montalvo
(W.D. Tex.); Docket Number 05-15-90059

Members of the Judicial Council:

Pursuant to Rule 18 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, I petition for review of the April 16, 2014 Order issued by Chief Judge Carl E. Stewart. Judge Stewart's Order is largely unresponsive to the complaint, effectively erecting a straw man and knocking it down while ignoring the heart of the complaint.

It is undisputed that Judge Montalvo engaged in *ex parte* communications with LaToshia Boxley, and that he later used those communications as evidence against me and my client (without affording us an opportunity to respond). Short of bribery, it is hard to imagine a more straightforward violation of the Code of Conduct.

The Order tries to get around this by suggesting that the *ex parte* communications "relate directly to the merits of the judge's decisions" and are therefore subject to dismissal under 28 U.S.C. §352(b)(1)(A)(ii). If that is true, then the Court has just created an exception to Canon 3(A)(4) that swallows it whole. All a judge needs to do is claim that he relied on *ex parte* communications as evidence and suddenly Canon 3(A)(4) is no longer enforceable because the unlawful communications "relate directly to the merits of the judge's decisions." This, of course, defeats the entire purpose of Canon 3(A)(4), which is to *prevent* a judge's decisions from being influenced by *ex parte* communications.

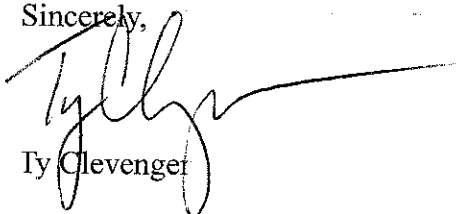
Meanwhile, the Order would lead one to believe that I accused Judge Montalvo of (1) "sealing documents in order to cover something up and to save himself from embarrassment"; (2) issuing a subsequent order as "an attempt to retroactively justify his unlawful activities"; and (3) harboring "personal bias against my client and me as a result of [the] *ex parte* communications." In reality, I wrote that Judge Montalvo's actions created the *appearance* that all of the foregoing had occurred. The distinction is significant, because Judicial Canon 2A deals with the *appearance* of impropriety and is not limited to actual evidence of impropriety. *See* Canon 2A Comment.

Finally, I never suggested that judicial misconduct proceedings were a substitute for the normal appellate review process, nor did I ask Judge Stewart to grant a new trial or reverse Judge Montalvo's decision. Instead, I asked Judge Kathleen Cardone to vacate the injunction issued by Judge Montalvo because, among other things, he lacked jurisdiction in the first instance. *See* Document 162, Case No. 3:12-cv-00418-KC (W.D. Tex.). On May 5, 2014, Judge Cardone granted the motion to vacate. *See* Document 164, Case No. 3:12-cv-00418-KC (W.D. Tex.); *see also* "El Paso judge's order to remove video from Internet vacated," May 6, 2013, *The El Paso Times*, http://www.elpasotimes.com/News/ci_25707131/El-Paso-judges-order-to-remove.

Judge Montalvo plainly violated the Code of Conduct, and his actions have brought disrepute upon the federal judiciary. Media organizations are watching, and that means the public is watching. *See, e.g.*, "Appeals court dismisses complaint against El Paso federal judge," April 21, 2014, *The El Paso Times*, http://www.elpasotimes.com/News/ci_25608623/Appeals-court-dismisses-complaint-against-El. If Judge Montalvo's misconduct is swept under the rug, that will only bring further disrepute upon the federal judiciary.

Thank you for your attention to these matters.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ty Clevenger', with a long horizontal flourish extending to the right.

Ty Clevenger

cc: Adriana Chavez, Reporter
The El Paso Times
Jeremy Heallen, Reporter
Law360
Angela Morris, Reporter
Texas Lawyer