JCP 08-17-90048

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT
- JUDICIAL COUNCIL
OF THE EIGHTH CIRCUIT

Richard Max Fleming, M.D., J.D.	)	
	)	
Complainant,	)	
	)	Petition Judicial Council for review of Chief
v.	)	
	)	Judge Lavenski R. Smith's order of Aug. 31, 2107
Richard G. Kopf	)	
Judicial Defendant.	)	& Motion to Submit Judge Richard G. Kopf
	)	
	)	Immediately to the House Judiciary Committee

Complainant has received Chief Justice Lavenski R. Smith's order of August 31, 2017 and pursuant to Rule 18, complainant Petitions the Judicial Council for review of the Order *and* to Petition the Judicial Counsel to initiate an investigation of Judge Richard G. Kopf and submit Judge Kopf to the House Judiciary Committee for investigation and initiation of Impeachment proceedings.

The Order of August 31, 2017 additionally failed to address the Motion submitted by complainant, dated 22 August 2017 and received by this Court pursuant to U.S.P.S. tracking on 24 August 2017 at 8:54 A.M. The Court received this motion one week before the Order, allowing more than adequate time for review, consideration and discussion in said order.

Accordingly, complainant now directs the attention of the Judicial Council to all documents filed by complainant including (1) the "Complaint of Judicial Misconduct" form, (2) the single page violation of Due Process and Equal Protection....U.S. Constitution, which detailed additional Misconduct by defendant filed with the Complaint, (3) the 8th Circuit Petition for Rehearing En Banc, also filed with the complaint (numbered documents 1-3 were

submitted to this Court with said case, docketed 4 May 2017) and (4) the Motion noted *supra* received by this Court on 24 August 2017 but not docketed by this Court until 30 August 2017 and not addressed by the Order.

The order/decision to dismiss is based upon "An allegation that calls into question the correctness of a judge's ruling...without more, is merits-related." The material provided in the above documents, as well as that noted *infra*, clearly prove that Judge Richard G. Kopf violated his Judicial Code of Ethics, *inter alia* when he held a sidebar conversation as to conspire with attorneys Hansen, Everett and Russell to "pull the wool over the juries eyes" stating "the jury doesn't need to know the whole truth" and to intentionally mislead the jury, expert witness and complainant **BY REPEATEDLY AND INTENTIONALLY PRESENTING FALSE EVIDENCE TO THE JURY AND EXPERT WITNESS** by repeatedly stating that Hansen's "plagiarized" data was actually "fabricated" data. *This is clearly a violation of Judicial Ethics, Public Corruption and an abuse of Judicial Authority*.

1. *Judge Kopf's actions violated Canon 1:* A Judge Should Uphold the Integrity and Independence of the Judiciary. Specifically, "A judge should maintain and enforce high standards of conduct and should personally observe those standards..." "The integrity and independence of judges depend in turn on their acting without fear or favor."

    a. Clearly Judge Kopf acted with favor when he protected public defender Hansen and acted in favor of the prosecutors buy intentionally and repeated allowing the attorneys to intentionally present false evidence, while hiding the substantive exculpatory evidence. Additionally, Judge Kopf intentionally introduced false evidence into the case by stating that

Hansen's data were "fake" when Judge Kopf in fact, knew from the side bar conversation that the data were actually "plagiarized."

2. *Judge Kopf violated Canon 2:* Judge Should Avoid Impropriety and the Appearance of Impropriety in all Activities.
    a. If Courtrooms, Judges and Lawyers are to represent only the truth in what they propagate in the Courtroom, then the actions so detailed *passim* are the epitome of impropriety for by the very definition, they are improper, incorrect, erroneous and indecorous.
3. *Judge Kopf violated Canon 3:* A Judge Should Perform the Duties of the Office Fairly, Impartially and Diligently.
    a. By intentionally excluding substantive exculpatory evidence and intentionally presenting false evidence to the jury and expert witness, Judge Kopf violated his adjudicative responsibilities.
4. *Finally Judge Kopf violated Canon 5:* A Judge Should Refrain from Political Activity.
    a. As detailed in the Kerr documentations provided to this Council within the stipulated documents (*supra*).

Pursuant to the order, Chief Justice Smith defends his order by stating that the allegations "lack sufficient evidence to raise an inference that misconduct has occurred." Complainant believes more than adequate evidence was provide but now accordingly, will provide further specific information and audio recording information to address any "lack of evidence" questions or concerns that might exist. Additionally C.J. Smith states: "With regard to the supplemental complaint's (although I believe he meant complainant's) allegations, none

concern "[c]ognizable misconduct." Pursuant to J.C.U.S. Rule 3(h), complainant submits they do in fact "violat(e)... mandatory standards of judicial conduct. Complainant will now address each of the items/statutes and rules raised by Chief Justice Smith. Should this Council require additional information, material, evidence, audio recordings, complainant will be more than happy to provide such material.

28 U.S.C. § 352(b)(1)(A)(ii)

The U.S. Code which C.J. Smith uses to justify his dismissing of this case, is:

> (b)Action by Chief Judge Following Review.—After expeditiously reviewing a complaint under subsection (a), the chief judge, by written order stating his or her reasons, may—
> (1) dismiss the complaint—
> (A) if the chief judge finds the complaint to be—
> (ii) directly related to the merits of a decision or procedural ruling;

However, **the evidence shows that the Judge and attorneys conspired to hide substantive exculpatory evidence from the jury and expert witness and then actually presented false evidence to the jury and expert witness.** This is not a discussion of the merits of a decision or procedural ruling **but a blatant falsification of the record**, and violation of the law and Judicial Ethics, which had a witness done, they would have been found guilty of perjury and criminal proceedings would have ensued.

The Judge and attorneys are not immune to criminal violation of the law. To rule this is an issue of merits of a decision or procedural ruling is to state that Judges have the right to violate Constitutional guarantees of Justice as established by the U.S. Constitution and amendments under the pretense of 28 U.S.C. § 352(b)(1)(A)(ii) and to violate the law.

J.C.U.S. Rule 11(c)(1)(B)

Discussed *passim* as this case is not related to the merits of a decision or procedural ruling unless this Court now holds that it is within the Judicial power of a Federal Judge to conspire to hide substantive exculpatory evidence, intentionally present false evidence to the Jury and Expert witnesses and that he may assault defendants seeking legal remedies (*passim*), in other words, to commit crimes without being held legally accountable.

J.C.U.S. Rule 3(h)(3)(A)

As this rule limits what this Court and this Judicial Council, may consider in a Judicial Misconduct investigation, this is NOT " an allegation that calls into question the correctness of a judge's ruling,..." Conspiracy to hide substantive exculpatory evidence, the intentional presentation of false evidence in a trial to the jury and expert witness, assault of defendant and violation of Judicial Cannons 1,2,3 and 5 have NOTHING to do with the correctness of a Judges ruling. These actions are clear violations of Judicial Misconduct and the Judge must be held criminally accountable for his actions. There are no statutes, Court rulings or Constitutional rights protecting Federal Judges who break the law. The fact that he clerked for this Court earlier in his life does not provide him with immunity.

28 U.S.C. § 351 (a), (d)(1)

Complainant recognizes that attorneys Hansen, Everett and Russell are not Federal Judges; however, Judge Richard G. Kopf conspired with these attorneys and they conspired with him and Judge Kopf has blocked any and all investigations of these attorneys or of himself. Judge Kopf has assaulted complainant in his efforts to address these issues both in Courts of

Law and through the applicable Bar Associations and investigative agencies responsible for such investigations.

J.C.U.S. Rule 4

See 28 U.S.C. § 351 *supra*.

28 U.S.C. § 352(b)(1)(A)(iii)

C.J. Smith states that under 28 U.S.C. § 352(b)(1)(A)(iii) he may dismiss the case under:

> (iii) frivolous, lacking sufficient evidence to raise an inference that misconduct has occurred, or containing allegations which are incapable of being established through investigation;

as "complainant's **bare speculative allegation** (emphasis added) that the district judge conspired with defense counsel and government counsel, such allegation "**lack[s] sufficient evidence to raise an inference** (emphasis added) that misconduct has occurred."

Since this statute stipulates that this follows an "expeditious" review by the Chief Justice, it is clear that it is not the result of a thorough review of the materials submitted. Therefore, complainant is compelled to provide the following detailed evidence, which is "more than sufficient evidence to demonstrate conspiracy, misconduct, the hiding of substantive exculpatory evidence, assault **AND the intentional, knowing and malicious presentation of false evidence to the jury and expert witness.** This evidence also details Judge Kopf's blocking of investigations of himself and the attorneys involved as detailed verbatim in case 16-9473 before the SCOTUS:

a. It is a violation of petitioners Due process and Equal Protection rights for the Judge and attorneys in the original trial to hide from witness and jury substantive exculpatory evidence.

The SCOTUS must find that the Judge and attorneys involved in the original case intentionally hid exculpatory evidence from Dr. Fleming, the expert witness Dr. Alicia Carriquiry and the jury who subsequently concluded that the expert witness's testimony was "worthless" given the inability of the expert witness to understand that the public defenders "fake" data was in fact "not fake" but "fabricated" and therefore could not have been detected by a test made to detect "fake" data, anymore than cancer can be detected by testing for diabetes. The Judge, prosecuting attorneys and public defender thereby violated their Professional Code of Ethics *inter alia* M.R. 1.1 and Rules 1.3, 3.3, 3.7 and 8.3 and denied Dr. Fleming Due Process and Equal Protection under the Law and denied him a fair trial. The SCOTUS must submit the names of the Judges and attorneys involved in this case from inception through the present to the applicable administrative agencies and Courts including but not limited to the U.S. Senate Judiciary Committee.

All attorneys, including Judges, prosecuting attorneys and public defenders have a Professional Code of Conduct, which they must abide by or be penalized for violating. Attorneys who fail to notify the applicable agencies and Courts are themselves in violation of that Professional Code and can be disciplined for violating their Ethical Code of Conduct. It is a denial of petitioner's Due Process and Equal Protection rights and ICCPR treaty rights and remedies for this substantive exculpatory evidence to have been hidden from petitioner, the expert witness dependent upon this evidence and the jury.

It is a violation of a Fundamental Constitutional right by both State and Local Governments as applied and incorporated against the State through the Due Process and Equal Protection Clause of the 14th Amendment and of the Federal Government itself.

> The Due Process Clause states that "[n]o State shall ... deprive any person of life, liberty, or property, without due process of law." U.S.

Const. Amendment XIV.

This Court has held that prosecuting attorneys must disclose substantive exculpatory evidence and failure to do so represents denial of Due Process.

> "...the suppression by the prosecution of evidence favorable to an accused... **violates due process** where the evidence is material either to guilt or to punishment, ..." *Brady v. Maryland*, 373 U.S. 83 (1963) (emphasis added)

Such "Brady material" or evidence the prosecutor is required to disclose under this rule, includes any evidence favorable to the accused *including evidence going to the credibility of a witness*.

> "When the 'reliability of a given **witness** may well be determinative of guilt or innocence,' nondisclosure of **evidence affecting credibility** falls within th[e] general rule [of *Brady*]" *U.S. v. Bagley*, 473 U.S. 667 (1985) (emphasis added)

During a side bar discussion and agreement between Judge Richard Kopf, public defender Michael Hansen and prosecuting attorneys Alan L. Everett and Steven A. Russell, the four men conspired to hide substantive exculpatory evidence from Dr. Fleming, expert witness Dr. Alicia Carriquiry and the Jury.

> Judge Kopf stated at side bar that "the Jury didn't need to know the whole truth" if "the wool" was "pulled over their eyes." (*USA v Fleming*; 4:07cr03005, docket 117 @ 1:18:00-1:29:00, 1:24:40; 1:26:00, 1:43:30 & 118)

Judge Kopf would later admit he intentionally would not let Hansen testify and continued to refer to Hansen's "plagiarized" data and "fake" data thereby hiding substantive exculpatory evidence from Dr. Fleming, the expert witness dependent upon it and the jury.

> "At a bench conference ... I ruled that the government could use the "fake" data and Kaiser's analysis during cross-examination and I also ruled that Hansen would not be allowed to testify." *Fleming v. U.S.*, 755 F.Supp.2d 1019 (D.Neb. 2010)

Judge Kopf would not allow a mistrial and he would not allow Mr. Hansen to be placed on the witness stand to testify that the "fake" data as titled by Mr. Hansen was actually Mr. Hansen's "plagiarized" data, which he plagiarized from Dr. Fleming's real data. Dr. Carriquiry's expert analysis of the Fleming data was that it was real.

> "...there is simply no data-driven evidence that the Fleming data set is other than would be expected under a legitimate study." P. 25 Professor Carriquiry Statistical Examination
>
> "...the data are innocent..." *USA v Fleming*, 4:07cr03005

However, Dr. Carriquiry could not explain why the data entitled "fake" data was not detected by her test for "fake" data. Dr. Gordon Harrington showed the Hansen data was "plagiarized" from Fleming data back in May of 2008. He told Hansen this in an email. Hansen refused to have Prof. Harrington testify at trial. Dr. Carriquiry was unaware of this and had developed her test specifically to test whether Dr. Fleming's data were "fake" data, not whether it was "plagiarized" data and she did not know that Hansen's data wasn't "fake" but instead was "fabricated" from Dr. Fleming's. This was clearly substantive exculpatory evidence Dr. Carriquiry required to explain why her test didn't detect the "Hansen fake data."

It was also an intentional misleading of the expert witness and the jury to call Hansen's data "fake" when it was in fact "fabricated." This resulted in Dr. Carriquiry loosing credibility in the eyes of the jury (*infra*) who then considered her testimony "worthless," while denying Dr. Fleming his Civil rights including his Due Process and Equal Protection rights.

INVESTIGATIVE
MEMORANDUM

to: Michael J. Hansen
from: Tim Domgard
subject: Richard Fleming
date: April 28, 2009

Katherine Stewart, a juror in the Fleming trial was contacted on 4-27-09. After I confirmed my identity and the purpose for the contact, Stewart provided the following information. (Please note: Katherine Stewart was one of the 12 jurors in the trial.)

Stewart advised the jury first started talking about counts 1-10 and could not agree on what the verdict would be concerning those counts. Therefore, the jury started looking at the research or the soy study counts.

Stewart advised that the statistician seemed like she had some valuable information to support the doctor. However, on cross-examination it came out that she could not really determine if the fake data was real or not and therefore she described the statistician as "worthless".

The oral record (*USA v Fleming*; 4:07cr03005, docket 117 & 118, *supra*) of the side bar discussion, clearly demonstrates that Judge Kopf was upset with public defender Hansen and was not going to allow a mistrial or for Hansen to be placed on the witness stand. In an effort by Hansen to avoid further consequences, Mr. Hansen agreed to a stipulation that he not disclose that the "fake" data was his "plagiarized" data or that it came from him, thereby further violating the Rules of Civil Procedure and case law.

> "Rule 244(h), Rules of Civil Procedure, ... there have been "errors of law occurring in the proceedings, or mistakes of fact by the court" . ... **failed to effectuate substantial justice** between the parties. (Emphasis added) Schmitt v. Jenkins Truck Lines, Inc., 170 N.W.2d 63 2 (Iowa). Thompson v. Rozeboom, 272 N.W.2d 444, 446-47 (Iowa 1978) (emphasis added)

As a consequence Dr. Fleming, the expert witness Dr. Carriquiry and the Jury were intentionally provided with false obfuscating evidence instead of the substantive exculpatory evidence, which would have allowed Dr. Carriquiry to correctly address the results of her statistical analysis of Dr. Fleming's data and Hansen's "plagiarized" data and thereby maintain her credibility as an expert witness and Dr. Fleming's actual innocence. The public defenders refusal to clarify the record and accept responsibility for his actions, as well as Judge Kopf's and

prosecuting attorneys Everett and Russell, denied Dr. Fleming his Due Process and Equal Protection rights and violated their duties as Judge and officers of the Court.

> "The duty of the lawyer, subject to his role as an 'officer of the court,' is to further the interests of his clients by all lawful means...." *In re Griffiths*, 413 U.S. 717 (1973)

These actions not only denied Dr. Fleming his Civil and Due Process rights but they will substantially eviscerate the public confidence in the legal profession and justice system.

> "[t]he courts not only demand [lawyers'] loyalty, confidence and respect, but also require them to function in a manner which will foster public confidence in the profession and, consequently, the judicial system." *In re Griffiths*, 413 U.S. 717 (1973)

While this Court has held that "harmless" exclusion of evidence does not affect the parties, the hiding of this substantive exculpatory evidence from Dr. Fleming, Dr. Carriquiry and the jury was anything but harmless as shown by the juror statement (*supra*), providing no immunity for those culpable.

> "which do not affect the substantial rights of the parties" *U.S. v. Hasting*, 461 U.S. 499, 506 (1983).

By hiding the substantive exculpatory evidence from expert witness Dr. Carriquiry, she spent her time trying to answer why her test couldn't detect the "fake" data, instead of being able to address differences between "plagiarized" and "fake" data relevant to the case. In reality, Dr. Carriquiry's test correctly identified Hansen's data as not being "fake" because it wasn't "fake," it was "plagiarized;" thereby hiding substantive exculpatory evidence from witness and jury proving her test statistically proved Dr. Fleming's actual innocence.

By hiding substantive exculpatory evidence and by misrepresenting facts to the witness and jury, Judge Kopf, public defender Michael Hansen and prosecutors Alan L. Everett and Steven A. Russell are in clear violation of 42 C.F.R. § 1103.27(b)-(d). As a result of hiding this

substantive exculpatory evidence from Dr. Carriquiry, her credibility was lost and the Jury comments subsequently showed they considered her expert testimony "worthless" (*supra*) - this was anything but harmless and anything but Due Process or Equal Protection.

The absolute denial of Due Process and Equal Protection both by the original Court and by the IMBE (*passim*) in their investigation of the originating case, in what they admit was a "subpar" investigation and the successive hiding of this (*infra*) defies the conscious and denies Due Process and remedies.

Petitioner asks the SCOTUS to find that Due Process and Equal Protection has been denied Dr. Fleming and to reverse the IBME discipline and the findings original case, which precipitated the IBMEs involvement through Kathy Palmer and to submit those in question to the appropriate agencies, disciplinary counsels and Courts of Law.

i. It is a further violation of Professional Ethics for attorneys and judges to hide substantive exculpatory evidence and to interfere with the investigation of their actions.

The SCOTUS must find that Judges and attorneys who have interfered with efforts to investigate Judges and attorneys who have hidden substantive exculpatory evidence, must not only be reported to the applicable agencies and Courts, but must find these Judges and attorneys guilty of obstruction of justice and hold them criminally guilty. They are not immune under the color of office for such offenses.

Judges and attorneys who intentionally block efforts to investigate professional ethics violations and the hiding of substantive exculpatory evidence from defendants, expert witnesses dependant upon that exculpatory evidence and the jury, are criminally guilty of obstruction of justice and violating their professional code of ethics and must subsequently be found guilty of doing so and sentenced accordingly.

As the result of the side bar agreement (*supra*), Judge Kopf would not allow (1) a mistrial, (2) withdraw of defense counsel or (3) for defense counsel to be placed on the witness stand to provide substantive exculpatory evidence, which in and of itself would have been produced a Professional Ethics Violation **(Rule 3.7)** for Hansen. Judge Kopf intentionally and maliciously blocked efforts by Dr. Fleming to prove this hiding of substantive exculpatory evidence and his raising legal questions of Ineffective Assistance of Counsel. In fact, ***the Judge actually threatened Dr. Fleming*** that should he continue trying to prove these ethics grievances he would be punished. *Fleming v. U.S.*, 4:10-cv-3217 (2010):

> I now warn Dr. Fleming that the filing of any additional ethics grievances against Mr. Hansen with the Nebraska Counsel for Discipline or with this Court or otherwise will subject Dr. Fleming to substantial sanctions. Those sanctions may include, but are not limited to, holding Dr. Fleming in contempt of court or revoking or modifying his probation. The continued abuse of the legal process will not be tolerated.

Having been intentionally blocked from obtaining Due Process through the Courts ***by the very Judge who was part of the side bar agreement*** (*passim*), Dr. Fleming's legal efforts to address both Ineffective Assistance of Counsel and the side bar agreement to hide substantive exculpatory evidence in *Fleming v. U.S.*, 755 F.Supp.2d 1019 (D.Neb. 2010), *supra* **and** in *Fleming v. U.S.*, 4:10-cv-3217 (2010), were blocked. The language of Judge Kopf made it crystal clear that Judge Kopf would imprison Dr. Fleming if Dr. Fleming tried to obtain Due Process through the Courts. Judge Kopf also made it abundantly clear that his Court had "adopted its own ethical standards" and he was not going to adopt those of the "State of Nebraska" nor allow an investigation by the others.

> "This court has adopted its own ethical standards, and we have specifically declined to adopt other codes of professional responsibility such as those promulgated by the State of Nebraska." *Fleming v. U.S.*, 4:10-cv-3217 (2010)

When Dr. Fleming filed requests for investigation with the appropriate agencies, including *inter alia* Mr. Dennis Carlson (State of NE Counsel for Discipline) and Mr. Corey R. Steel (Judicial Qualifications Commission), Judge Kopf blocked these efforts as well, effectively hiding any evidence of the sidebar agreement and any other questions regarding ineffective assistance of counsel or the hiding of substantive exculpatory evidence, attorney misconduct, prosecuting attorney misconduct or judicial misconduct. Respondents and the Courts have failed to address these issues, depriving petitioner his Constitutional Rights and remedies.

> "... claims of ineffective assistance of counsel ... "an evidentiary hearing on the merits is ordinarily required." *Foster v. State*, 395 N.W.2d 637, 638 (Iowa 1986); see also *Watson v. State*, 294 N.W.2d 555, 556 (Iowa 1980); *State v. Smith*, 282 N.W.2d 138, 143 (Iowa 1979). "Such a hearing affords the parties an opportunity to adversarily develop all of the relevant circumstances attending counsel's performance, including those circumstances and considerations which may be pertinent but are not a part of the criminal record." *Watson*, 294 N.W.2d at 556. Manning's claims, even if the district court deems them improbable, **require that he be allowed to present whatever proof he may have to support those claims.** See id. at 557. (emphasis added) *Manning v. State*, 654 N.W.2d 555, 562 (Iowa 2002)

Judge Kopf has also restricted Dr. Fleming's access to Court documents, which prove Dr. Fleming had submitted requests for Ethics Evaluations of Judge Kopf, public defender Hansen and Prosecuting Attorneys Everett and Russell. These documents include *inter alia* documents (see exhibit #202) presented to Kopf's Court and allowed the destruction of Court exhibits (see exhibit #204) without notification of Dr. Fleming (*USA v Fleming*; 4:07cr03005).

Clearly Judge Kopf feels immune from investigation of Ethics Violations by the State of Nebraska and feels confident that he can block any investigation of those involved in the side bar agreement. He apparently also feels confident that this Court will not engage in an investigation of him or discipline or find him criminally or civilly responsible for his actions.

> "... **the Supreme Court** ... now causing more harm (division) to our democracy than good ...," Kopf wrote. "**As the kids say, it is time for the Court to stfu.**" (Federal Judge Tells Supreme Court to 'STFU', ABC World News 7 July 2014) (emphasis added)

Even when it is clear that Judge Kopf has violated his Professional Ethics, no actions are taken as demonstrated by his involvement in the last Presidential election where he violated his Judicial Ethics (Canon 5: "A Judge Should Refrain from Political Activity") by calling Senator Ted Cruz "unsuited to become President." Readable in either the Washington Post or Judge Kopf's blog, which he ceased writing after Chief Justice Laurie Smith Camp had a meeting with those working in the Courts, where the clear consensus what that Judge Kopf "had become an embarrassment to our Court", he appears to have no fear of nor has he been disciplined for such violations. The only person to stand up to Judge Kopf and raise questions regarding violations of Judicial Ethics is Orin Kerr of George Washington University Law School. A full review of that exchange shows Judge Kopf did not go gently into that goodnight and continued to deny allegations of ethics violations until the last post, where he conceded he had violated Canon 5. Again, no action has been taken.

This Court needs to address the persistent ethical violations made by Judge Kopf and to recognize that Dr. Fleming's attempt to obtain Due Process and Equal Protection through administrative agencies, the Courts and Counsel's for Discipline of attorneys and Judges has been blocked from beginning to now. When Dr. Fleming attempted to seek the Due Process denied him and to address these violations of Professional Ethics (*supra*), the very Judge who was involved in the side bar agreement and the hiding of substantive exculpatory evidence blocked him again. The IBME and their counsel have failed to investigate or report these violations as required by their Professional Code of Ethics and the subsequent Courts and

attorneys at law have failed to either report these violations or to provide Dr. Fleming his Due Process and Equal Protection rights and remedies under the Iowa Constitution, the U.S. Constitution, administrative law and the ICCPR treaty. They are each additionally culpable for violation of their own Professional Ethics independently and collectively as detailed *passim*.

ii. It is a violation of Professional Ethics for subsequent judges and attorneys to not report such violations.

The SCOTUS must find that attorneys, including Judges who are made aware that there is a question of Professional Ethics violations, must report those violations to the applicable administrative and Court authorities or be in violation of their Professional Ethics themselves.

It is a violation of Professional Ethics for an attorney or Judge who has been notified of a reportable violation of Ethics by another attorney or Judge, to not report such violations to the appropriate agency and/or Court.

The clear consensus including the review of cases in the press, or the reading of any review of discipline for attorneys who violate the rules of disclosure of exculpatory evidence ("Prosecutor's Duty to Disclose Exculpatory Evidence" Lisa M Kurcias, Fordham Law Review, vol 69, Issue 3, Article 13, 2000), or consideration of "The Congressional Oversight of Judges and Justices" Congressional Research Service (by Elizabeth B. Bazan, Legislative Atty.) shows Judges and Attorneys have very little to worry about either disciplinary wise or legally, when they violate their Ethical and Legal obligations.

In addition to the Professional Code of Ethics, the Office of the U.S. Attorneys has established "Standards of Conduct" (1-4.000), Protections of Government Integrity (9-85.000) and statutory requirements for attorneys to report professional misconduct while statutes in Nebraska is § 3-508.3 and Iowa § 622.10, Professional Rule 8.3 makes it very clear that conduct

by either a Judge or attorney which raises substantial questions, "shall" be reported to the appropriate professional authority.

> (a) A lawyer who knows that another ***lawyer*** has committed a violation of the Rules of Professional Conduct ... ***shall*** inform the appropriate professional authority.
>
> (b) A lawyer who knows that a ***judge*** has committed a violation of applicable rules of judicial conduct ... ***shall*** inform the appropriate authority. Rules of Professional Conduct: Rule 8.3--Reporting Professional Misconduct. (emphasis added)

Notwithstanding the failure of the system to address these Ethical violations and denial of Due Process and Equal Protection and ICCPR Treaty rights and remedies Dr. Fleming petitions this Court under its Ethical and Statutory Obligations to report and address the ethical violations of those who have violated their ethical and statutory obligations through the hiding of substantive exculpatory evidence, obstruction of justice and those who have violated their ethical obligations and statutory obligations by failing to report such concerns to the appropriate agencies and courts whose responsibility it is to address such matters.

Given this detailed evidence from SCOTUS case # 16-9473, the Judicial Council is encouraged to verify the facts and matters of law, including the audio recordings, conspiracy to hide substantive exculpatory evidence and the actual presentation of false evidence by the Judge and attorneys involved.

J.C.U.S. Rule 11(c)(1)(D)

Accordingly, Chief Justice Smith's dismissal under this rule

> JCUS Rule 11(c)(1)(D) "is based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred..."

This is itself without merit, as the detailed evidence laid out *supra* and in the previously

submitted Court documents provides more than adequate evidence including written and oral documentation of the conspiracy, assault, hiding of substantive exculpatory evidence and the intentional, knowing and malicious presentation of false evidence, for this Judicial Council to conclude violations of Judicial Cannons and Misconduct by Judge Richard G. Kopf and more than adequate reasons to submit Judge Kopf to the House Judiciary committee for investigation and initiation of impeachment proceedings..

J.C.U.S. Rule 3(h)

If a conspiracy to hide substantive exculpatory evidence, assault, and the intentional, knowing and malicious presentation of false evidence to the jury and expert witness by *inter alia* a Federal Judge does not constitute "Cognizable misconduct" then it needs to be specifically written into your rules because if this is not the very definition of "Cognizable misconduct" then nothing is and if nothing is, then these "Rules" have no substantive or procedural meaning.

PETITION FOR JUDICIAL COUNCIL ACTION FINDING
FOR JUDICIAL MISCONDUCT OF JUDGE RICHARD G. KOPF AND FOR THE IMMEDIATE
SUBMISSION OF JUDGE RICHARD G. KOPF TO THE HOUSE JUDICIARY COMMITTEE
FOR INVESTIGATION AND INITIATION OF IMPEACHMENT PROCEDDINGS

If the conspiratory hiding of substantive exculpatory evidence and the intentional, knowing and malicious introduction of false evidence to the jury and expert witness, violations of Judicial Cannons 1,2,3 and 5, and assault are not considered sufficient Judicial Misconduct to produce action by this Judicial Council, then there are undoubtedly no actions taken by a Federal Judge, which may be held accountable by the American people.

Complainant calls for this Judicial Council to find that Judge Richard G. Kopf has in fact

violated Judicial Cannons 1, 2, 3 and 5, has demonstrated beyond a shadow of a doubt "Judicial Misconduct, " should be held criminally accountable for assault and the intentional, knowing and malicious presentation of false evidence in a Court of law and should be removed from the Federal Judiciary with his name submitted directly and immediately to the House Judiciary Committee for investigation and initiation of impeachment proceedings.

Respectfully submitted,

Dated: 31 August 2017

Richard Max Fleming, M.D., J.D.

Richard Max Fleming, M.D., J.D.(Pro se)
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United States Court of Appeals
For The Eighth Circuit
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Michael E. Gans
Clerk of Court

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September 11, 2017

Mr. Richard Max Fleming
Suite 422
4055 Lankershim Boulevard
Studio City, CA 91604

Re: JCP No. 08-17-90048 Complaint of Richard Fleming

Dear Mr. Fleming:

I wish to acknowledge receipt of the petition for review which you have filed in the above-referenced complaint. Your petition for review has been forwarded to the Judicial Council for review and appropriate action. You will be promptly notified of any action taken by the Judicial Council in response to your petition for review.

Sincerely,

Michael E. Gans
Clerk of Court

/dmh