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Complaints against Federal Judge Mark E. Fuller for Misconduct.

Judge Mark E. Fuller has engaged in conduct that is prejudicial to the effective and expeditious administration of the business of the courts, has undermined public confidence in the integrity and impartiality of the judiciary, has created a strong appearance of impropriety, and has used of the power of his office to seek a financial advantage in state court actions he was a party to, among other important breaches of the Judicial Code of Conduct. Part of this complaint arises out of the information that came to light after Fuller was arrested on August 10, 2014, in Atlanta, GA for Battery Substantial Physical Harm - Family Violence (1st Offense) a Misdemeanor.ⁱ The victim was his wife, Kelli Gregg Fuller, Fuller's former Courtroom Deputy. From this incident, several facts have come to light:

1. Fuller has had sexual relationships with at least two of his office personnel.ⁱⁱ
2. Fuller traveled extensively with his now wife, when she was his Courtroom Deputy, to out-of-state destinations multiple times, for “business” purposes, while he was married to his former wife.
3. Fuller misrepresented material facts about what had happened on August 10, 2014, between him and his wife, to the police,ⁱⁱⁱ which is a criminal offense under OCGA § 16-10-20 and punishable by imprisonment for not less than one nor more than five years.^{iv}
4. Fuller’s office personnel have had sexual relationships with members of law enforcement who were witnesses in Fuller’s court. Details of these relationships were sealed after a hearing in front of Judge Myron Thompson in the case against Milton McGregor.^v This needs to be examined.
5. During Fuller’s divorce proceedings in 2012, his former wife made claims of spousal abuse, receipt of psychological care or counseling, and addiction to prescription drugs^{vi}, any of which would render Fuller from being fit to be a

Federal Judge. Then Fuller used his position as a Federal Judge to have his divorce proceedings sealed so that none of the allegations would be made public.^{vii} This was over his wife's objection on the basis that Fuller was "... attempting to shield himself from the public scrutiny thereof."^{viii} These documents should be reviewed to see if Fuller's judgment was impaired while he was in court.

Fuller's actions, both publically and within the Federal and State court systems, fail to uphold the integrity of the judiciary. Canon 1 of the Code of Conduct for the United States Judges states in part "...A judge should maintain and enforce high standards of conduct and should personally observe those standards, so that the integrity and independence of the judiciary may be preserved."

Fuller has been charged with beating his wife. He also allegedly lied to police about how his wife suffered wounds to her mouth and forehead and had hair pulled out of her head. The transcript of the 911 call is very disturbing...**a woman's voice can be heard loudly repeating: "Help me, please. Please help me. He's beating on me." The initial dispatcher tells the ambulance dispatcher: "She says that she's in a domestic fight and *I can hear him hitting her now.*"**

According to the police report, the judge was on the bed when they entered the room, which smelled of alcohol. There was broken glass and hair on the floor. Blood was discovered in the bathroom. Kelli Fuller told police that her husband became violent after she accused him of having an affair with a law clerk in his Montgomery office. She said he pulled her hair, threw her to the ground and dragged her, kicked her, and struck her several times in the face. Fuller said his wife became violent as she confronted him with allegations of cheating. Fuller said he was watching television when his wife threw a drink glass at him. He said that he grabbed her hair and threw her to the ground to defend himself. Fuller had no visible injuries. To avoid prosecution, Fuller agreed to a drug and alcohol abuse evaluation and to attend rehab for domestic

violence for a period of six months.

Fuller used his position as a Federal District Judge to seal his divorce case in 2012, when it came to light there were accusations of spousal abuse, receipt of psychological care or counseling, and addiction to prescription drugs. This abuse of power allowed him to have a better negotiating position in the resolution of the divorce case, directly benefitting him financially as well as keeping his standing in the community.

Canon 2(a) of the Code of Conduct for United States Judges provides that “a Judge should avoid impropriety and the appearance of impropriety in all activities.” And Canon 2(a) provides that “A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” Canon 2(b) of the Code of Conduct for United States Judges states, “A judge should not allow family, social, political, financial, or other relationships to influence judicial conduct or judgment. A judge should neither lend the prestige of the judicial office to advance the private interests of the judge.”

Another part of this complaint pertains to why Fuller should have voluntarily recused himself in the Siegelman trial.

In addition to Canon 2(a) which provides that “a Judge should avoid impropriety and the appearance of impropriety in all activities,” Canon 3(c)(1) *Disqualification* states, “A judge shall disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to instances in which: (a) the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding.” Under federal law, a federal judge “*shall* disqualify himself in any proceeding in which his impartiality *might reasonably be questioned*.”^{ix}

Prior to being appointed Federal Judge, Fuller was an Alabama State District Attorney. Fuller's appointment left his DA position vacant, and Siegelman, as Governor at the time, appointed his replacement. He chose Circuit Judge Gary McAiley, who said that "questionable [financial] practices at the district attorney's office led him to apply for the appointment."^x He told Siegelman that, under Fuller, "terrible things had come to exist" in the DA's office and "if allowed to continue, public trust will be destroyed. . . ."^{xi} Siegelman appointed McAiley. Upon assuming office, McAiley investigated Fuller. Audits proved McAiley's concerns, but Fuller claimed that the allegations—which escalated into a legal controversy resolved in favor of McAiley and against Fuller—were "*politically motivated*."^{xii} Because Fuller admitted he thought the embarrassing proceedings were "politically motivated," obviously referring to Siegelman, Judge Fuller should have disqualified himself from the Siegelman case. Federal Judge Fuller had even testified in the above proceedings.

Fuller was on the Alabama GOP Executive Committee, which opposed Siegelman when he ran for Lt. Governor in 1994 and in 1998 when Siegelman ran against incumbent Republican Governor Fob James. The committee on which Fuller was a member viewed Siegelman as an obstacle and strongly opposed Siegelman's "Educational Lottery" referendum.^{xiii} A contribution to that **referendum was at the heart of Siegelman's alleged bribery charge** over which Fuller presided during Siegelman's re-election campaign. The Siegelman trial **ensured his defeat and quashed any new lottery referendum** proposed by Siegelman. With this obvious bias, how could a judge fairly rule on this case? Judge Fuller should have clearly disqualified himself from the Siegelman case.

At sentencing, Judge Fuller had Siegelman taken from the courtroom in handcuffs and leg manacles and sent immediately to prison, *to the astonishment of the public and legal community*. Grant Woods, former Attorney General (R-

AZ), on *60 Minutes* commented, “***That tells you that this was personal***”... “You would not do that to a former governor.”^{xiv} Siegelman was taken to Atlanta’s maximum security prison and placed in solitary confinement. Siegelman was not classified as a flight risk or a danger to society.

It was not up to Siegelman to file a motion to force Fuller to be disqualified; it is the burden placed on a judge by Title 28 of the United States Code, Section 455. Fuller violated 28 USC 455(a) which requires that judges “shall disqualify himself in any proceeding in which his impartiality might be questioned.” In addition, Fuller violated section 455(b) which declares that a judge “shall also disqualify himself... where he has a personal bias or prejudice concerning a party.”

These facts show that Judge Fuller has not avoided the appearance of impropriety but has many instances where his actions were improper, not just by the high standards required of a Federal Judge, but improper both by the standards of the average person, and community. Therefore, after your examination of the facts presented in this complaint, it is requested that you recommend to Congress that Judge Fuller be impeached.

ⁱ See internet log of the Fulton County, GA Jail, showing arrest on August 10, 2014.

ⁱⁱ Bob Martin, *Fuller’s ethic’s called into question in suit*, The Montgomery Independent, May 16, 2012

ⁱⁱⁱ Brian Lyman, *Judge Mark Fuller cases reassigned after arrest*, Montgomery Advertiser, August 13, 2014

^{iv} § 16-10-20 - A person who knowingly and willfully falsifies, conceals, or covers up ... be punished by a fine of not more than \$1,000.00 or by imprisonment for not less than one nor more than five years, or both. OCGA § 16-10-20

^v U.S. v. McGregor et.al. 2:10cr186-MHT

^{vi} See Interrogatories and Third Party Subpoena Duces Tecum, DR 2012-900235 Circuit Court of Montgomery County, Ala

^{vii} See Judge Fuller’s *Motion to Seal File*, DR 2012-900235 Circuit Court of Montgomery County, Ala.

^{viii} See *Objection to Complete Sealing of the File*, DR 2012-900235 Circuit Court of Montgomery County, Ala.

^{ix} 28 U.S.C. § 455 (emphasis added).

^x Kim Lewis, *McAliley earns DA appointment from Gov. Siegelman*, The Southeast Sun, Dec. 25, 2002.

^{xi} Kim Lewis, *Circuit Judge McAliley applies for position as district attorney*, The Southeast Sun, Dec. 11, 2002 (citing *Letter from Gary McAliley, Circuit Judge, to Don Siegelman, Governor* (Dec. 10, 2002)).

^{xii} WTVY News 4, *New District Attorney Named*, (Dec. 23, 2002).

^{xiii} Alabama Republican Party, *By Laws of the Alabama Republican Executive Committee* (last amended Feb. 25, 2012); *60 Minutes: The Prosecution of Siegelman* (CBS television broadcast Feb. 24, 2008) (“This was a Republican state and he was the one Democrat they could never get rid of.”)

^{xiv} *60 Minutes*, *supra* note 17.