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# Congress of the United States
## House of Representatives

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March 6, 2012

The Honorable Lamar Smith
Chairman
House Judiciary Committee
2138 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Smith:

We write to request that the House Judiciary Committee hold a hearing regarding the recent action of United States District Judge Richard Cebull, Chief Judge of the District of Montana in forwarding what, at best, was an inappropriate e-mail from his court e-mail account. The purpose of the hearing would be to allow the Committee to consider the full ramifications of Judge Cebull's conduct on the integrity of the federal judiciary and to consider whether further action by the Committee is warranted, including further investigation or possible legislative action.

Last week, the *Great Falls Tribune* reported that Judge Cebull forwarded an e-mail on February 20, 2012 at 3:42 p.m. from his official court e-mail account. This e-mail, entitled "A MOM'S MEMORY," stated as follows according to the *Tribune*, beginning with Judge Cebull's own words and then moving on to the forwarded message:

> Normally I don't send or forward a lot of these, but even by my standards, it was a bit touching. I want all of my friends to feel what I felt when I read this. Hope it touches your heart like it did mine.
>
> 'A little boy said to his mother; 'Mommy, how come I'm black and you're white?'' the email joke reads. 'His mother replied, 'Don't even go there Barack! From what I can remember about that party, you're lucky you don't bark!''

Judge Cebull has admitted to sending this e-mail to six acquaintances and to his personal e-mail account.

At a minimum, forwarding this e-mail illustrates poor judgment and of conduct that was unbecoming of a federal judge. More troubling, however, is the possibility that public disclosure of the judge's conduct may not only undermine the public's view of his personal credibility and impartiality as a judge, but also the integrity of the United States District Court for the District of Montana and of the federal judiciary. The Committee has an obligation to consider the ramifications of the public disclosure of Judge Cebull's conduct, particularly as long as he remains on the bench.

Judge Cebull's conduct may implicate several Canons of the Judicial Code of Conduct. For example, Canon 1 of the Code states that:

> An independent and honorable judiciary is indispensable to justice in our society. 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. The provisions of this Code should be construed and applied to further that objective.

Similarly, Canon 2A states 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." Moreover, the commentary to Canon 2A makes clear that:

> An appearance of impropriety occurs when reasonable minds, with knowledge of all the relevant circumstances disclosed by a reasonable inquiry, would conclude that the judge's honesty, integrity, impartiality, temperament, or fitness to serve as a judge is impaired. Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. This prohibition applies to both professional and personal conduct. A judge must expect to be the subject of constant public scrutiny and accept freely and willingly restrictions that might be viewed as burdensome by the ordinary citizen.

Finally, Canon 2C prohibits federal judges from being members of "any organization that practices invidious discrimination on the basis of race . . . ." The commentary to Canon 2C explains that a judge's membership in such an organization "gives rise to perceptions that the judge's impartiality is impaired." While Judge Cebull's conduct in this instance does not involve his membership in an organization, the same interest that undergirds Canon 2C in avoiding the appearance of impaired impartiality based on a judge's association with invidious race discrimination is implicated in this case.

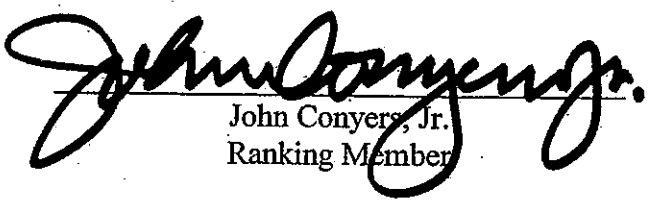
Judge Cebull has sent a letter of apology to the President for forwarding the offensive

"joke," together with his facetious commentary. Moreover, he has filed a complaint against himself before the Judicial Council of the Ninth Circuit to investigate his conduct.

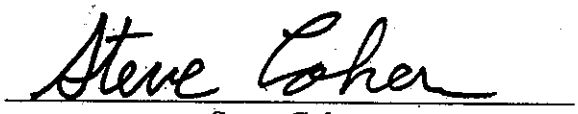
Nonetheless, the Committee has a duty to investigate the potential consequences of Judge Cebull's conduct independent of whatever it is that the Ninth Circuit concludes. Therefore, we urge you to schedule a hearing on this matter promptly.

Thank you for your consideration.

Sincerely,



John Conyers, Jr.
Ranking Member



Steve Cohen
Ranking Member
Subcommittee on Courts, Commercial and Administrative Law

cc: The Honorable Howard Coble, Chairman, Subcommittee on Courts, Commercial and Administrative Law