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AFI Editorial:

Trish Harris, Deputy Bar Counsel of the DC Bar covers up for the Federal Circuit and USPTO; fails to report the judges' holdings of Facebook stock to the "appropriate authorities" as required by her ethical rules?

(Feb. 22, 2013)—Various reports have come in to AFI regarding the disciplinary complaints against the Federal Circuit judges in the *Leader v. Facebook* scandal that were filed at the Washington D.C. Bar Association. Remarkably, the Bar seems committed to only one response: "we decline to investigate." If "self-policing" is indeed a commitment of the legal community, that policing appears to be on holiday. How is it possible that the DC Bar will not investigate one of the most egregious examples of attorney and judicial misconduct in modern history? This is reminiscent of the SEC having "other priorities" when [SEC whistleblower Harry Markopolos](#) repeatedly warned his superiors about Ponzi schemer Bernie Madoff.



Graphic: HPUB

Shockingly, Elizabeth A. Herman, Deputy Bar Counsel, writes (that letter below):

"This office declines to investigate allegations of ethical misconduct on the part of sitting judges arising from the performance of their official duties."

Those complaints included exposing public evidence that Judge Alan D. Lourie and Judge Kimberly A. Moore had holdings in Facebook during the proceedings which they failed to disclose. Facebook went public during these proceedings.

The Code of Conduct for United States Judges **Canon 2** states "**A judge should avoid impropriety and the appearance of impropriety in all activities.**" Canon 3 says "**Canon 3 requires disqualification of a judge in any proceedings in which the judge has a financial interest, however small.**"

The Rules of Professional Conduct for attorneys requires them to report misconduct to the appropriate authorities when they learn of it (there are no exceptions to this rule based upon one's job title within the legal community):

"Maintaining The Integrity Of The Profession, Rule 8.3 Reporting Professional Misconduct

(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority."

Both Judges Lourie and Moore have multiple holdings disclosed in their required financial disclosures. All the judges refused to disclose the Facebook holdings of their family members, as they are required to do. Therefore, even if Ms. Harris "declines" to investigate sitting judges, she had a personal ethical obligation to refer this complaint to the "appropriate authority," which she did not do.

Indeed, the ethical misconduct clouds swirling around *Leader v. Facebook* grow more ominous with each new revelation. Ms. Harris' closing recommendation is laughable if not simply sad. She recommends that the complaints be forwarded to the king of the wrongdoers, the "Circuit Executive" of the Federal Circuit, which is none other than Jan Horbaly, Clerk of Court. Mr. Horbaly is the person who has been exposed as the likely orchestrator of the misconduct, and the one with the intimate relationship to the Facebook law firms, esp. Thomas Hungar of Gibson Dunn LLP.

Since this letter from Trish Harris was written, the cover-up at the USPTO occurred. Could it be that Ms. Harris did not want to see the corruption, or was "encouraged" not to see the corruption?

Here's the letter in response to receiving the disciplinary complaints from a West Coast reader.

From: Trish Harris <HarrisT@dcobc.org>

To: [REDACTED]

Sent: Monday, December 3, 2012 12:28 PM

Subject: OBC Decline Letter

[December 3, 2012](#)

CONFIDENTIAL

**Re: Kappos/Wilson 2012-U461
Moore/Wilson 2012-U462
Lourie/Wilson 2012-U463**

Dear [REDACTED]

This office has completed its review of the disciplinary complaints that you sent to the D.C. Bar against the Director of the United States Patent & Trademark Office (“USPTO”), David Kappos, Esquire, Federal Circuit Judge Kimberly A. Moore, and Federal Circuit Judge Alan D. Lourie. You state that Mr. Kappos and these judges colluded with each other in order to fix certain legal activity involving Facebook that occurred involving past patent filings. You state that the USPTO and the Federal Circuit are attempting to invalidate the “Leader Patent” at the USPTO. You also contend that these judges hold stock in Facebook, which they did not disclose.

As to your complaint against Mr. Kappos, you provide no proof or evidence that substantiates your allegations that an ethical Rule was violated. Absent any facts and evidence that Mr. Kappos engaged in an ethical violation, we decline to proceed with our inquiry regarding your complaint against him and have closed our file. However, if you believe that Mr. Kappos acted improperly, you may wish to file a complaint with the Office of Enrollment & Discipline of the United States Patent & Trademark Office at the following address:

United States Patent & Trademark Office
Office of Enrollment & Discipline
P.O. Box 1450
Alexandria, VA 22313
(571) 272-4097

This office declines to investigate allegations of ethical misconduct on the part of sitting judges arising from the performance of their official duties. You may wish to submit your complaint to the Circuit Executive for the United States Court of Appeals for the Federal Circuit at the following address:

Circuit Executive
United States Court of Appeals for the Federal Circuit
Attn: Judicial Misconduct Complaint
717 Madison Place, NW
Washington, DC 20439

Accordingly, we decline to proceed with our inquiry and have closed our files.

Sincerely,

Elizabeth A. Herman
Deputy Bar Counsel

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