

OFFICE OF BAR COUNSEL

December 20, 2012

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CONFIDENTIAL

Lakshmi Arunachalam, Ph.D
222 Stanford Avenue
Menlo Park, CA 94025

Re: **Wallach/ Arunachalam 2012-U435**
Moore/ Arunachalam 2012-U436
Lourie/ Arunachalam 2012-U437
Radar/ Arunachalam 2012-U438
Horbaly/ Arunachalam 2012-U439

Dear Dr. Arunachalam:

Clerk of Court Jan Horbaly

This office is in receipt of your letter dated November 14, 2012, responding to our decision declining to initiate a formal investigation. You state that Bar Counsel should notify the appropriate authority since we now know of the violation.

This office only investigates and prosecutes allegations of ethical misconduct against attorneys who are licensed to practice law in the District of Columbia. We do not have jurisdiction over attorneys who are licensed in other states. Chief Judge Randall R. Rader and Circuit Judge Kimberly A. Moore are no longer members of the District of Columbia Bar, and we have no jurisdiction over judges. Circuit Judge Alan D. Lourie and Jane Horbaly, Circuit Executive and Clerk of the Court are not members of the D.C. Bar. Therefore, we do not have jurisdiction over your complaints filed against them.

The Circuit Executive for the United States Court of Appeals for the Federal Circuit has jurisdiction over your complaints. You should submit your complaints to the address we previously provided to you. The rules for filing a complaint against a federal circuit judge can be found at <http://www.ca9c.uscourts.gov/images/stories/judicial-reports/disability.pdf>.

Sincerely,

Elizabeth A. Herman
Deputy Bar Counsel

EAH:TH

Rules of Professional Conduct "requires that members of the profession initiate disciplinary investigation" when they have knowledge of a violation. The Rules also dictate that "A lawyer who knows that a judge has committed a violation . . . shall inform the appropriate authority." See Rules, Comment [1]

DC Bar says some attorneys accused of misconduct in DC manage their own discipline, and implies that they as fellow attorneys have no reporting duty once they learn of misconduct. They put the onus on non-lawyers to chase around the disciplinary maypole. Washington law-yers broken?



Lakshmi Arunachalam, Ph.D.

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Sent by Express Mail, Fax and Email

November 14, 2012

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Dear Mss. Herman & Branda:

Re: Disciplinary Complaints against Federal Circuit:

Judge Randall R. Rader (2012-U438),
Judge Alan D. Lourie (2012-U437),
Judge Kimberly A. Moore (2012-U436),
Judge Evan J. Wallach (2012-U435), and
Clerk of Court Jan Horbaly (2012-U430);

Re. Leader Tech v. Facebook, Case No. 2011-1366 (Fed. Cir.).

Response to your letter dated Nov. 1, 2012

I received your Nov. 1, 2012 letter on Friday, Nov. 9, 2012. I will take your comments and recommendations under advisement. My complaints are focused on *attorney* misconduct while on the bench, and not on opinions themselves; except as those opinions may be tainted by the misconduct. Respectfully, I believe your assessment is deficient. Official duties do not extend to undisclosed conflicts of interest from *attorneys* who swore an oath not to engage in such conduct long before they became judges. I believe your knowledge as attorneys of this misconduct now compels you to take action (instead of deferring it to others). The integrity of the American legal system is at stake. Pointing me as a layperson to other jurisdictions is not appropriate now that you are informed.

I respectfully wish to make several points for which I hope the DC Bar will take leadership. The **CODE OF CONDUCT FOR UNITED STATES JUDGES** and the **CODE OF CONDUCT FOR JUDICIAL EMPLOYEES** state unequivocally and repeatedly that judges and judicial employees:

“should avoid impropriety and the appearance of impropriety in all activities.”¹

¹ See “Canon 2: A **Judge** Should Avoid Impropriety And The Appearance Of Impropriety In All Activities.” Code of Conduct For United States Judges.” Accessed Nov. 12, 2012
<<http://www.uscourts.gov/RulesAndPolicies/CodesOfConduct/CodeConductUnitedStatesJudges.aspx>>;
“Canon 2: A **Judicial Employee** Should Avoid Impropriety And The Appearance Of Impropriety In All

In my opinion, the Federal Circuit Judges and Clerk of Court in *Leader v. Facebook* are doing everything they can to hide and excuse their misconduct. Every lawyer who has sworn an oath to “self-police” the ethics of the legal profession should be offended by these actions, not just me, a layperson.

In addition to the Code of Conduct, the **RULES OF PROFESSIONAL CONDUCT** say unequivocally that if lawyers “**know** of a violation” then they are duty bound to *report* to the “appropriate professional authority.” Nowhere do the Rules absolve an attorney from reporting misconduct simply because he or she was not involved in the infraction, or he or she works in a different jurisdiction, or because the attorney is a judge. **Knowing is the trigger.**

Layman are unfamiliar with the inner-workings of attorney “self-regulation.” Your instructions put the onus back on me to send out a new round of complaints to try and satisfy the rules as you present them—which did not cite the Rules of Professional Conduct. Who in the allegedly “self-regulating” legal profession will report and investigate? **If not the DC Bar, who? If not now, when?** Your recommendation is a Mobius strip with no end. Frankly, how nonsensical is an instruction to send the complaint to the very people and organizations that are misbehaving? No, it is the DC Bar that now has knowledge of this misconduct and needs to figure out how to report this misconduct to the appropriate authority.

Respectfully, I did my part; now it is time for you at the DC Bar to do yours. You are the licensed attorneys who swore to uphold the Rules of Professional Conduct that includes the “self-regulation” provisions and to “inform the appropriate authorities” once you “know that another lawyer has committed a violation.” My complaint contained ample information proving misconduct, and possible misconduct.

The **DC BAR’S RULES OF PROFESSIONAL CONDUCT RULE 8.3**, and associated rules, state in pertinent part:²

Cmt. [1] Self-regulation of the legal profession requires that **members of the profession initiate disciplinary investigation when they know of a violation** of the Rules of Professional Conduct.

(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 aspects, **shall inform the appropriate professional authority**

(b) A lawyer who **know 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** (emphasis added).

My second point is that the public record in my opinion proves that, at minimum, the judges and the clerk of court have engaged in egregious misconduct by not disclosing and

Activities.” Code of Conduct For Judicial Employees. Accessed Nov. 12, 2012
<<http://www.uscourts.gov/rulesandpolicies/codesofconduct/codeconductjudicialempleyees.aspx>>.

² **Rule 8.3—Reporting Professional Misconduct.** DC Bar. Accessed Nov. 12, 2012
<http://www.dcbar.org/for_lawyers/ethics/legal_ethics/rules_of_professional_conduct/amended_rules/rule_eight/rule08_03.cfm>.

then trying to cover up their holdings in Facebook as well as two other companies in Facebook's so-called "ecosystem," namely Groupon and Zynga.

Judge Kimberly A. Moore³ holds multiple investments in **Fidelity Contrafund**⁴ which has multiple well-publicized holdings in Facebook, Zynga and Groupon. In addition, she very likely has other investments with holdings in Facebook. See "Fidelity's Contrafund snaps up stakes in Facebook at \$63 billion valuation." *Silicon Valley Business Journal*, Jun. 2, 2011⁵ and "Fidelity's Danoff Bets on Facebook, Zynga." *Bloomberg*, Jun. 1, 2011.⁶

Judge Alan D. Lourie⁷ holds multiple investments in **T. Rowe Price Funds**⁸ which have multiple well-publicized holdings in Facebook that totaled over five percent (5%) of Facebook prior to the IPO requiring detailed disclosure in the Facebook S-1. See "Facebook IPO: T. Rowe Price shares worth up to \$637M." *Baltimore Business Journal*. May 9, 2012.⁹

Judge Alan D. Lourie and Judge Kimberly A. Moore stood to benefit financially from decisions favorable to Facebook; their trustworthiness was sacrificed.

Judges have a responsibility to manage their personal investing and ensure that such appearances of impropriety are avoided. No person on the street can possibly believe that these judges were oblivious to their holdings in Facebook—the largest tech IPO in history;

³ **Kimberly A. Moore, Fidelity Contrafund**, Financial Disclosure Report, Form AO10, 2010. Judicial Watch <<http://www.scribd.com/doc/74590732/Kimberly-A-Moore-Financial-Disclosure-Report-for-2010>>; See also "At least Judge Kimberly A. Moore Has Undisclosed Fiduciary Conflicts of Interest." Renewed Motion of Lakshmi Arunachalam, PhD, Jul. 27, 2012. pp. 13-16 <<http://www.scribd.com/doc/101191619/Renewed-Motion-for-Leave-To-File-Amicus-Curiae-Lakshmi-Arunachalam-Ph-D-Brief-Jul-27-2010-Leader-v-Facebook-CLERK-S-COPY-WITH-EXHIBITS#page=22>>.

⁴ **Fidelity Contrafund**. Form N-Q, Mar. 31, 2012. U.S. S.E.C. <<http://www.sec.gov/Archives/edgar/data/24238/000003540212000012/main.htm>>;

⁵ *Silicon Valley Business Journal* <<http://www.bizjournals.com/sanjose/news/2011/06/02/fidelitys-contrafund-snaps-up-stakes.html>>.

⁶ *Bloomberg* <<http://www.bloomberg.com/news/2011-06-01/fidelity-s-danoff-bets-on-facebook-zynga.html>>.

⁷ **Alan D. Lourie, T. Rowe Price Funds**, Financial Disclosure Report, Form AO10, 2010. Judicial Watch <<http://www.scribd.com/doc/74588712/Alan-D-Lourie-Financial-Disclosure-Report-for-2010>>; See also "Financial Conflicts of Interest; Abuse of Discretion." Request for Relief, pp. 8-11, Sep. 1, 2012 <<http://www.scribd.com/doc/104546197/Motion-For-Relief-From-Judgment-And-Order-Pursuant-To-Rules-60-a-And-60-b-For-Newly-Discovered-Evidence-Mistake-Fraud-Surprise-Misrepresentation#page=13>> ("**Judge Lourie had multiple holdings in T.Rowe Price which is a well-publicized holder of more than five percent (5%) of Facebook**")(emphasis added); Donna Kline. "Hijinks At The High Court." *Donna Kline Now!* Jul. 27, 2012 <<http://donnaklinenow.com/investigation/hijinks-at-the-high-court>> ("The conflicts of interest in this court are legion").

⁸ **T. Rowe Price Funds**, Facebook S-1, p. 145 (6,033,630 shares of Class A common stock held of record by 80 funds and accounts advised or sub-advised by T. Rowe Price Associates, Inc.; and (ii) 12,158,743 shares of Class B common stock held of record by 76 funds and accounts advised or sub-advised by T. Rowe Price Associates, Inc") <<http://www.scribd.com/doc/94039044/Facebook-Amended-S-1-No-8#page=151>>; Judge Lourie's T. Rowe Price disclosed holdings are: T. Rowe Price Cap Appreciation Fund (IRA), T. Rowe Price Short Term Bond Fund (IRA), TR Price High Yield Fd (IRA), TR Price New Horizon Fd (IRA), and TR Price DNMA Fund. Alan D. Lourie, Financial Disclosure Report, *supra*.

⁹ *Baltimore Business Journal* <<http://www.bizjournals.com/baltimore/news/2012/05/09/facebook-ipo-t-rowe-prices-holdings.html>>.

especially when Fidelity and T.Rowe Price holdings in Facebook were so widely reported prior to the Facebook IPO. In addition, the court **totally ignored and refused to docket** my Motion to Compel the Members of the Federal Circuit to Disclose Conflicts of Interest filed on Sep. 5, 2012.¹⁰

In addition, according to the information you provided, **Clerk of Court Jan Horbaly is not licensed to practice law in the District of Columbia**. I have been able to verify that the D.C. Court of Appeals requires its clerk of court to be a licensed attorney. It is inconceivable that the Federal Circuit would require less. It is therefore nonsensical for me to file a disciplinary complaint against Mr. Horbaly in Ohio where he is licensed,¹¹ as you have recommended, since he is not practicing law in Ohio and the Ohio Supreme Court has no jurisdiction over him in this matter. Your recommendation appears to be a wild goose chase. Mr. Horbaly signs most of the Federal Circuit decisions and seems to operate as a *de facto* Federal Circuit judge with wide-ranging powers, some say bordering on dictatorial. Is he not practicing law in Washington D.C. without a license? And if you intend to claim that he is not subject to the Rules of Professional Conduct because he is acting in some sort of bifurcated existential existence, he is at least subject to the Codes of Conduct for judges and judicial employees in any event. In addition, Mr. Horbaly is an *ex officio* member of The Federal Circuit Bar Association that filed the shocking request to absolve the judges of these conflicts—a request that contains numerous **false statements** which I readily proved in my response.¹²

Federal Circuit conduct exhibits obvious bias against the inventor, Leader Technologies; The Federal Circuit Bar Association is practically staffed by Facebook law firms, Federal Circuit staff, and major Facebook shareholders, like Microsoft.¹³

The information I have provided to you previously and herein provides substantial evidence of judicial and lawyer misconduct and a strong “appearance of impropriety” pursuant to Rule 8.4 and the Codes of Conduct for judges and clerk. Many of the documents I provided you previously can also be obtained from the *Information History* link below. I trust you are as alarmed as I am at the very strong indication of undue influence upon the judges and the clerk of the Federal Circuit, among other things.

¹⁰ *Amicus Curiae* Lakshmi Arunachalam, PhD, Motion to Compel Disclosure
<<http://www.scribd.com/doc/104894533/Motion-to-Compel-Each-Member-Of-The-Federal-Circuit-To-Disclose-Conflicts-Of-Interest-in-Leader-v-Facebook-by-Amicus-Curiae-Lakshmi-Arunachalam-PhD>>.

¹¹ Jan Horbaly. Reg. No. 0029405, The Supreme Court of Ohio
<http://www.supremecourt.ohio.gov/AttySvc/AttyReg/Public_ArtorneyDetails.asp?ID=0029405>.

¹² Response to Request of Federal Circuit Bar Association's Request for Reissue Re. Leader v. Facebook, Case No. 2011-1366 (Fed. Cir.) by Lakshmi Arunachalam, Ph.D., Sep. 17, 2012
<<http://www.scribd.com/doc/106156081/Response-to-Request-of-Federal-Circuit-Bar-Association-s-Request-for-Reissue-Re-Leader-v-Facebook-Case-No-2011-1366-Fed-Cir-by-Lakshmi-Arunach>>.

¹³ *Id.*

All true inventors have a stake in the outcome of *Leader v. Facebook*. An injustice here will set back innovation in the United States, maybe for decades, if not forever.

Therefore, I believe it is incumbent on the attorneys at the DC Bar who have been briefed by the evidence of misconduct and potential misconduct that I have provided previously, and who read this letter, to “inform the appropriate authority” yourselves pursuant to the Rules since they now “know of a violation.”

It is your solemn public duty.

Respectfully yours,



Lakshmi Arunachalam, Ph.D.

Information History: See library of reports and briefings summarizing the misconduct at <http://www.scribd.com/amer4innov>

Enclosure: DC Bar Response, Nov. 1, 2012

cc. House Committee on the Judiciary

- Lamar Smith, Chairman
- John Conyers, Ranking Member
- Darrell Issa
- Steve Chabot
- Jim Jordan
- Howard Berman

Senate Committee on the Judiciary

- Patrick Leahy, Chairman
- Chuck Grassley, Ranking Member
- Dianne Feinstein
- Al Franken
- Mike Lee
- Tom Coburn

**Mr. William Suter, Clerk of Court,
Supreme Court of the United States**

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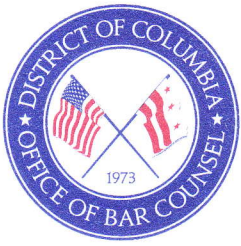
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Americans For Innovation and Against Intellectual Property Theft

<http://www.scribd.com/amer4innov>
<http://americans4innovation.blogspot.com>



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**Re: Wallach/ Arunachalam 2012-U435
Moore/ Arunachalam 2012-U436
Lourie/ Arunachalam 2012-U437
Radar/ Arunachalam 2012-U438
Horbaly/ Arunachalam 2012-U439**

Dear Dr. Arunachalam:

We have received your complaints against the following judges of the United States Court of Appeals for the Federal Circuit: Circuit Judge Evan J. Wallach, Circuit Judge Kimberly A. Moore, Circuit Judge Alan D. Lourie, Chief Judge Randall R. Radar. We also received your complaint against Jan Horbaly, Circuit Executive and Clerk of Court of the United States Court of Appeals for the Federal Circuit.

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

Lakshmi Arunachalam, Ph.D

Undocketed No. 2012-U435; 2012-U436; 2012-U437; 2012-U438; 2012-U439

Page 2

As to your complaint against Mr. Horbaly, a review of our membership records indicates that Mr. Horbaly is not a member of the District of Columbia Bar. Therefore, we have no jurisdiction over your complaint against Mr. Horbaly. It appears that Mr. Horbaly is licensed to practice law in the state of Ohio. You may wish to submit your complaint to the Office of Disciplinary Counsel of the Supreme Court of Ohio at the following address:

Office of Disciplinary Counsel
Supreme Court of Ohio
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215-7411

We thank you for bringing your concerns to our attention.

Sincerely,



Elizabeth A. Herman
Deputy Bar Counsel

EAH:TH