

In Re Judge Piersol  
Judicial Misconduct Complaint No. \_\_\_\_\_

This is a complaint of Judicial Misconduct against Chief United States District Judge Lawrence Piersol of the District of South Dakota for engaging “in conduct prejudicial to the effective and expeditious administration of the business of the courts,” per 28 U.S.C. Section 351. Specifically, Judge Piersol violated both the Code of Conduct for United States Judges and 28 U.S.C. §455(a) and (b)(1) when he did not recuse himself sua sponte - as required by law - from a widely publicized suit brought at the last minute on the eve of the 2004 elections by his long time friend, former South Dakota Senator Tom Daschle. In addition to blatantly reducing the Judiciary to a political lackey (thus further tarnishing its image in the minds of a growing number of Americans), his bad behavior is especially egregious as Chief Judge since he represents and sets the tone for all the judges in his District. He has lowered the bar for the Bar.

### Opening Statement

Canon 2 of the Code of Conduct (Appendix A-2) requires a judge to “avoid impropriety and the appearance of impropriety in all activities.” Further, in 2A, “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.” Judge Piersol, a former Democrat State Legislator, violated both of these requirements by not recusing himself from an obvious political ploy brought by his long time Democrat friend, (former) Senator Tom Daschle, who sued a political opponent on election eve. Canon 2B says, “A judge should not allow ... other relationships to influence judicial conduct or judgement.” The Commentary on 2B specifies “a judge should not use the judge’s judicial position to give advantage in litigation involving a friend...” (Appendix A-3)

That Judge “Larry” Piersol is a long time friend and confidant of former Senator Daschle is substantiated by former Senator Daschle’s own words. (Exhibit 1) At a speech given by the former Senator on July 20, 2003 before the National Convention of the Association of Trial Lawyers of America, the former Senator said,

I've always felt a special gratitude to ATLA and the attorneys it represents. First, I got my start in politics thanks to lawyers... **rather, one lawyer in particular**. In 1978, I won my first election to the House by 14 votes. Don't laugh, in South Dakota, that's 60 percent of the vote. Apparently undaunted by that landslide of support, my opponent sued to contest the election. I was fortunate to be represented by a great lawyer **and a dear friend, Larry Piersol**.

(See also Exhibit 2-3)

Even a politically friendly newspaper raised the specter of impropriety when it reported Judge Piersol had sat on a case involving - and ruled in favor of - the man who nominated him to the federal bench. (Exhibit 3) On its face, one cannot be nominated to the federal bench by a dear friend, sit on that dear friend’s suit and not give the appearance of impropriety, if not perpetrate impropriety itself.

Further, by not recusing himself, Judge Piersol violated Canon 3, C (1)(a), which plainly 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;

(See Appendix A-4) This is also a violation of 28 U.S.C. 455 (a) and (b)(1) which further codifies the Code of Conduct (see Appendix B),

(a) Any justice, judge, or magistrate judge of the United States *shall* disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a *personal bias* or prejudice concerning a party...

It's inconceivable that Judge Piersol does not have a personal bias or prejudice toward his long time friend of the same political party. It's also inconceivable his impartiality might not be reasonably be questioned.

Some attorneys on various blogs think Judge Piersol may have also violated 455 (b)(2)

(2) Where in private practice he served as lawyer in the matter in controversy

since the Judge, twenty years before, served as a lawyer in private practice in a similar matter of controversy to save his friend's election. (Exhibit 1 & 4-2) One wonders, had there not been live reporting from the courtroom and the corresponding public scrutiny, how far the Judge would have gone. (Exhibit 5) The story even made *The Drudge Report* that night, as reported to the judge by his clerk. (Implied from Exhibit 5. Sorry, no direct Exhibit. Saved a screen shot the night of the elections, but something went wrong in my computer.)

## **Background & Discussion**

I've provided the first page of the suit in question (Exhibit 6). Civ. 04-4177. Some attorneys have implied the suit should have been summarily dismissed for defect, since Mr. Thune, an individual named in the suit, is never mentioned in the Complaint. (Exhibit 7) They've said this is an absurd suit and the implication is that Judge Piersol overlooked this obvious defect when he denied a motion to dismiss.

Judge Piersol's willingness to help his friend from the Bench is not an isolated incident - although that would not minimize the violation of law if it were. A cursory Google search reveals that Judge Piersol was contacted as early as November 2002 when a Democrat lawyer primed the pump, writing to Judge Piersol regarding a future injunction if needed. (Exhibit 8-2) While perhaps a judge can be forgiven for erring under the press of time at a midnight hearing (?), two years notice is plenty of time to reject such a compromising offer. There is a de facto appearance of impropriety here, if not impropriety itself, since Judge Piersol was a former Democratic State legislator, now sitting on a case involving the ranking Democrat member of the U.S. Senate in a very contentious battle for control of Congress.

Worse, a week before the South Dakota election, Judge Piersol appeared on the Number 1 rated overnight radio talk show “Coast to Coast AM” (nee “Art Bell”), where he talked in glowing terms of his friend, Tom Daschle. (Limited excerpts in Exhibits 9-1, 10-1. He may have said made more incriminating statements... I don’t have access to the full transcript.) Thus, he knowingly violated the spirit of the law, if not the letter, by publicly endorsing a de facto candidate for public office by violating the Code of Conduct, Canon 7, A (2) which says (Appendix A-5)

A. A judge should not:

(2) make speeches for a political organization or candidate or *publicly endorse* or oppose a candidate for public office;

It’s not necessary to show a pattern and practice of gross impropriety in a Complaint of Judicial Misconduct, any more than it’s necessary to accept more than one bribe to be charged with bribery. But lest anyone think this is an isolated incident - an innocent indiscretion - it is not. This layman is not the only one to notice. Many lawyers, some quite prominent, have cried “fowl.” (Exhibits 4; 7; 8-1,2; 9-1,2 and 10-1,2) There is a pattern and practice of abuse here by Judge Piersol, which must be dealt with. Otherwise, there is nothing to restrain him from continuing down the path he has chosen and doing this again. The fact that live reports were broadcast that night from the courtroom, even making *The Drudge Report*, Judge Piersol’s actions have seriously damaged the integrity of the Judiciary and the public’s confidence therein. There is only one recourse that will demonstrate to the public the judiciary is serious about its honor and integrity.

## **Remedy**

Per 28 U.S.C. §351, as echoed in your Rule 14(f)(4), I ask for a public reprimand of Judge Piersol. This is the Biblical mandate for rebuking elders in the church.

Those [elders] who sin are to be rebuked publicly, so that the others may take warning.

I charge you, in the sight of God and Christ Jesus and the elect angels, to keep these instructions without *partiality*, and to do nothing out of *favoritism*. 1 Timothy 5:20

While it seems no one can be shamed anymore, this is the only remedy the law allows, short of impeachment. Judge Piersol has sinned against the country and needs to be rebuked publicly.

## **Timeliness**

There is no limitation on time for filing this Complaint. I point out that The Code of Conduct requires a judge to “initiate appropriate action when the judge becomes aware of reliable evidence indicating the likelihood of unprofessional conduct by a judge or lawyer.” (Canon 3B(3).) Judge Piersol’s transgression, being especially arrogant and especially brazen, was widely reported in the media, both print and Internet. Having waiting a respectful time for the 8th Circuit to act and not hearing of any corrective action reported in the media, it falls to this concerned citizen to seek a remedy as instructed by the D.C. Court of Appeals - “an internal disciplinary proceeding, begun with the filing of a complaint.” (United States v. Microsoft Corp., 253 F.3d 34, 113 (D.C. Cir. 2001))