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June 17, 2026

Office of the Clerk
U.S. Court of Appeals for the First Circuit
U.S. Courthouse
1 Courthouse Way, Suite 2500
Boston, MA 02210

Re: Complaint of Judicial Misconduct—Judge Mary S. McElroy

To Whom It May Concern:

This complaint addresses potential judicial misconduct by Judge Mary S. McElroy due to unprofessional, emotional, and inaccurate excoriations she made against Department of Justice (DOJ) lawyers as a result of a power struggle with another court. These damaging statements were followed by Judge McElroy’s vengeful referral of those lawyers to the District of Rhode Island’s disciplinary committee.

I. Who We Are

The Center to Advance Security in America (CASA) is a nonpartisan organization dedicated to improving the safety and security of the American people. CASA educates and informs the American people about the actions of their government and its officials that impact their safety; peace and security; democracy, civil rights, and civil liberties; and privacy.

II. Background

Starting in July 2025, the DOJ issued a number of subpoenas to the Rhode Island Hospital (RIH) seeking information on sexual or hormone therapies provided to minor children.¹ The return date for compliance with the subpoenas was August 7, 2025.²

Prior to the August 7, 2025 compliance deadline, RIH returned only one six-page document.³ The DOJ then communicated to RIH that it was willing to receive documents beyond the formal, still-mandatory compliance deadline of August 7, 2025.⁴ RIH sent an

¹ *In re Administrative Subpoena to Rhode Island Hospital*, Case No. 1:26-mc-00007-MSM-AEM, Memorandum and Order, (D.R.I. May 14, 2026), https://storage.courtlistener.com/recap/gov.uscourts.rih.62049/gov.uscourts.rih.62049.44.0_1.pdf.

² *Id.* at 5.

³ *Id.*

⁴ *Id.*



email to DOJ in February 2026 regarding the scope of the subpoena, but RIH had continued not to make any productions pursuant to the July 2025 subpoena and did not communicate whether it was in fact in the process of doing so.⁵

DOJ and RIH sent each other a number of other communications between February 2026 and April 2026 regarding the scope of the subpoena and scheduling times to discuss the subpoena further, but importantly, these communications did not include anything by RIH stating that it *was* in the process of further document production.⁶

As a result, on April 30, 2026—ten months past the date of service of the subpoena—the DOJ filed a petition for the enforcement of an administrative subpoena in the Northern District of Texas.⁷ As part of its petition, the DOJ represented to the Northern District of Texas that RIH had ceased communications *regarding its active production of documents* in February 2026.⁸

On May 4, 2026, RIH filed an Emergency Motion to Quash the July 2025 subpoena *in the District of Rhode Island* after its efforts in the Fifth Circuit Court of Appeals were unsuccessful.⁹ The case was assigned to Judge McElroy, and after a May 12, 2026, hearing on the matter, Judge McElroy issued her opinion on May 14, 2026.¹⁰

As part of Judge McElroy’s May 14, 2026, opinion, she excoriated DOJ lawyers for representing *to the Northern District of Texas* “that the communication with RIH had ceased as of February 4, 2026.”¹¹ However, not only was that representation made to a different court than McElroy’s, that was also not the representation DOJ made. DOJ informed the Northern District of Texas that the communications from RIH that had ceased as of February 4, 2026, were specific communications by RIH that it was in the process of actively producing documents.¹² The communications that Judge McElroy points to between February 2026 and April 2026 are regarding scheduling times to meet—not RIH stating it is actively complying with a federal subpoena and producing documents.¹³

Based on Judge McElroy’s blinded—and perhaps biased—reading of the record, she accused the DOJ lawyers of “[dis]honorable conduct,” stated they were “unworthy of [] trust,” alleged they were executing their duties with “an improper purpose in bad faith,” fabricated that the DOJ was lying to the court to curry “its political positions,”

⁵ *Id.* at 3.

⁶ *Id.* at 3–4.

⁷ *In the Matter of Administrative Subpoena*, Case No. 4:26-mc-00006-O, Petition for Enforcement of Administrative Subpoena, (N.D. Tex. Apr. 30, 2026), <https://clearinghouse.net/doc/170512/>.

⁸ Memorandum and Order, 5.

⁹ *Id.* at 2.

¹⁰ *Id.* at 3.

¹¹ *Id.* at 5.

¹² *Id.*

¹³ *Id.* at 3–4.



then referred the DOJ attorneys to the court’s disciplinary committee in a one-sentence text order.¹⁴

III. Ethics Standards

- Canon 1 states “A Judge Should Uphold the Integrity and Independence of the Judiciary.”¹⁵
- Canon 2 states “A Judge Should Avoid Impropriety and the Appearance of Impropriety in All Activities.”¹⁶
 - Canon 2(A) states “A judge should...act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.”¹⁷
 - Canon 2(B) states “A judge should not allow family, social, political, financial, or other relationships to influence judicial conduct or judgment.”¹⁸
- Canon 3 states “A Judge Should Perform the Duties of the Office Fairly, Impartially and Diligently.”¹⁹
 - Canon 3(A)(1) states “A judge...should not be swayed by partisan interests.”

IV. Analysis

This complaint is not about the merits of Judge McElroy’s decision on the RIH subpoena—that issue is properly for the appeals court. Instead, we are sharply concerned with, and appalled by, the sheer rage over a political subject in front of her resulting in a power struggle with a different court that Judge McElroy took out on DOJ attorneys.

Each of the canons above, and their several subparts, was likely violated by Judge McElroy’s vitriolic excoriation of DOJ attorneys in the RIH subpoena case.

¹⁴ *Id.* at 1, 18, 23; Eric W. (@EWess92), “Lawfare is bad enough when it’s encouraged by rogue attorneys. But here, the Chief Judge of the Northern District of Texas has repeatedly explained why the District of Rhode Island needs to step back. (And been affirmed on appeal.) This is a gross escalation by Judge McElroy,” X, June 5, 2026, 1:32 PM, <https://x.com/ewess92/status/2062950621695578571?s=12>.

¹⁵ “Judicial Conference of the United States, *Code of Conduct for United States Judges*,” March 2019, <https://www.uscourts.gov/administration-policies/judiciary-policies/ethics-policies/code-conduct-united-states-judges#b>.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*



Canon 1 requires that a judge uphold the integrity and independence of the judiciary. It is difficult to picture a federal judge as independent when she issues an opinion that provides facts that undercut her own argument for why her unwarranted disdain for the attorneys in front of her is justified. That is, of course, unless she was letting the political nature of the litigation cloud her judgment. Judge McElroy states the cause of her internally inconsistent order: a deep animus toward an “unworthy of [] trust” DOJ because of its “political positions” causing its official, legal actions to be “improper” and “in bad faith.”

There is an appropriate time and a place for inflamed rhetoric to persuade others of one’s position. However, on the federal bench, concerning a DOJ subpoena, and in the public docket, is not the appropriate time or place for such conduct. It is conduct—not just words—because again, Judge McElroy took the extraordinary step of referring the DOJ attorneys to the court’s disciplinary committee in a one-sentence text order after handing down her May 14, 2026, opinion. Judge McElroy’s actions go beyond the bounds of acceptable condemnation by a judge and cross into partisan vengefulness. As such, Judge McElroy’s conduct is sufficient for discipline according to the Code of Conduct.

Canon 2 requires that a judge avoid even the *appearance* of impropriety—even if actual impropriety could be segregated. More specifically, Canon 2 lists occasions when the appearance of a relationship impinges a judge’s ability to adjudicate a case—including when public confidence is hampered. Given the above spewing of politically motivated animus, it is hard to imagine that someone with different political ideas than Judge McElroy would be confident in her ability to properly try a case where those views are implicated. Truthfully, that may be the point. RIH fled to the District of Rhode Island after its efforts in the Northern District of Texas and Fifth Circuit Court of Appeals were unsuccessful. Surely, that’s not an accident. Almost certainly, RIH elected that forum because it was counting on favorable political backing from a federal judge. That is exactly what it got, and exactly what makes Judge McElroy’s behaviors in the RIH subpoena case sufficient for discipline according to the Code of Conduct.

Canon 3 requires a judge to rule with fairness and impartiality. These qualities are presumed by the Canon to be adversely impacted when a judge could be swayed by “partisan interests” or when the interests of his spouse could “reasonably” call into question the judge’s fairness or impartiality. Again, the Code of Conduct is not narrowly constrained to actual, proven beyond a reasonable doubt, prejudice or compromise. All that is required is a “reasonable” concern. Judge McElroy’s order is admittedly based on her negative perceptions of the DOJ lawyers’ “political positions,” and that type of link is *explicitly* contemplated by Canon 3(A)(1) as presumptively compromising fairness and impartiality. This is sufficient for discipline according to the Code of Conduct.



V. Conclusion

For each of the reasons stated herein, Judge McElroy should be investigated and, if found to have violated any of the above Canons, disciplined by the First Circuit Court of Appeals.

Thank you for your attention to this matter.

Respectfully,

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