

JUDGE CEBULL'S SMART RESPONSE TO HIS INCREDIBLY STUPID ACT



I was going to delve deeper into the Cebull insult of Obama case after Friday's events, but I now have something else I need to get to, so this is a shorter take. As you will recall, the

intertoobz blew up at the end of last week, starting late Wednesday, with the story of Judge Richard Cebull, Chief Judge of Montana's US District Court, and his email distributed slur on Barack Obama. The incident was first reported by a local paper, the Great Falls Tribune, but quickly hit the national wires.

I am not going to reprint the email, but it is fairly disgusting and very inappropriate (you can see it in the original form here). Numerous outraged individuals and organizations immediately called for Cebull's resignation. David Dayen has a rundown on some of the loudest, as well as of Cebull's "explanation/apology", which has not been accepted to well by those calling for Cebull's head. And, while Cebull's statement is indeed less than exculpating, it is pretty much all he could say under the circumstances. Unlike Rush Limbaugh, at least Cebull had the guts to own up to the full weight of his act, even if concurrently inferring "heck I thought it was private".

You can quibble about whether the "joke" was directly racist, or only indirectly racist in overtone, and I can see both sides of that argument; however, there is no denying that it was in unconscionably bad taste and completely inappropriate for a federal judge to be trafficking in. That's a given. I am, at this

point, far more interested in Cebull's response which, all things considered, I find pretty crafty.

Cebull immediately admitted his full involvement, did so publicly to the press, and took the affirmative step of immediately filing his own formal judicial complaint – against himself – over the matter, and asked for an inquiry by the judicial council of the 9th Circuit. He also immediately issued a formal written apology to President Obama:

Dear Mr. President:

I sincerely and profusely apologize to you and your family for the email I forwarded. I accept full responsibility; I have no one to blame but myself.

I can assure you that such action on my part will never happen again. I have requested that the Judicial Council of the Ninth Circuit review this matter.

Honestly, I don't know what else I can do. Please forgive me and, again, my most sincere apology.

Richard F. Cebull

It is brief and to the point and, frankly, there is not much more he can do to erase the stain he left. Which is where it gets interesting. As you can see by clicking on the link to Cebull's self initiated complaint (there are others that will be later joined, but his was immediately self filed, that will count large), it is submitted to the Chief Judge of the Ninth Circuit, Alex Kozinski. Not only do judges in a circuit tend to stand up for one another, Kozinski himself has had a fairly analogous issue in his past. Kozinski also self reported and apologized, had an independent judicial council evaluate it, and was cleared for further uninterrupted duty. This was key language in the Kozinski finding:

The Judge explained and admitted his error; apologized for it, recognizing

its impact on the judiciary; and committed to changing his conduct to avoid any recurrence of the error. The offending material has been removed and will be destroyed. The Judge's 35 acknowledgment of responsibility combined with the corrective actions he has already completed or has committed to pursue and his apology, along with our admonishment, made public in this opinion, properly "remed[y] the problems raised by the complaint." Rule 11(d)(2). Accordingly, this proceeding is properly concluded. We find that "all of the purposes of the judicial misconduct provisions are fully served" by this result.

That is exactly the path and result Cebull is playing for, and he has a guide as good as gold to lead him down that path. Here is the kicker, Alex Kozinski is the gatekeeper for this determination as to Cebull!

Here are the rules regarding judicial misconduct as adopted by the 9th Circuit. As you can discern from Rule 5:

When a chief judge has information constituting reasonable grounds for inquiry into whether a covered judge has engaged in misconduct or has a disability, the chief judge may conduct an inquiry, as he or she deems appropriate, into the accuracy of the information even if no related complaint has been filed. A chief judge who finds probable cause to believe that misconduct has occurred or that a disability exists may seek an informal resolution that he or she finds satisfactory. If no informal resolution is achieved or is feasible, the chief judge may identify a complaint and, by written order stating the reasons, begin the review provided in Rule 11. If the evidence of misconduct is clear and

convincing and no informal resolution is achieved or is feasible, the chief judge must identify a complaint.

So, under Rule 5, if Kozinski, as the Chief Judge, "identifies" a complaint, it then is considered within the ambit of Rule 11. And what is in Rule 11? Well, Rule 11(a)(2) specifically provides that the chief judge may, at that point, consider the matter:

concluded on the ground that voluntary corrective action has been taken

It is very possible that is exactly what occurs, and is clearly what Judge Cebull is playing for. But, even if Kozinski refers the matter to a "special committee" pursuant to Rule 11 (a)(4), this resolution is still very available. It is also very likely. Cebull gets bonus brownie points for filing the initial complaint against himself, immediately issues a full written mea culpa to Obama and, at the same time takes full responsibility and announces all of it to the press and public.

It is hard to see how Kozinski and the 9th do not find a little sympathy under those facts, and Cebull is betting on it. It is a good bet. And a smart play. I have no brief whatsoever for Judge Richard Cebull, none, but, nevertheless, this is the likely conclusion coming.