

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-24-90134 and 03-24-90135

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

ORIGINAL PROCEEDINGS UNDER 28 U.S.C. § 351

MEMORANDUM OPINION

(Filed: January 31, 2025)

The present complaints are filed under the Judicial Conduct and Disability Act (“Act”), 28 U.S.C. §§ 351–364, against a United States District Judge (“Subject Judge”). The complaints were transferred to this Circuit for consideration in accordance with Rule 26 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. Because the complaints concern the same event, the matters have been consolidated and will be addressed together. For the reasons discussed below, the complaints will be dismissed.

Complainants (“Complainant I” and “Complainant II”) allege that the Subject Judge’s comments during an interview on a national news program constituted improper public comment on the merits of a pending matter in violation of Canon 3A(6) of the Code of Conduct for United States Judges. The criminal defendant in the pending matter was a political candidate at all times relevant to the complaints. Complainant I alleges that the Subject Judge engaged in judicial misconduct by “blatantly and corruptly engaging in

partisan political activity.” Complainant II further contends that the Subject Judge engaged in judicial misconduct by accusing the defendant of making “violent threats” against a presiding judge and the presiding judge’s family. According to Complainant II, the defendant “simply rais[ed] potential judicial bias by that judge presiding over [the] case.” Complainant II claims that the comments were “highly prejudicial,” would “taint[] four different jury pools,” damaged the public’s confidence in the judiciary’s impartiality, and penalized a “criminal defendant for lawfully exercising [a] constitutional right to criticize a pending criminal proceeding.”

Pursuant to Rule 11(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, an inquiry was conducted in these matters. I have reviewed the complaints and a recording and transcript of the news interview that is the subject of the complaints. Rule 11(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings; see also 28 U.S.C. § 352(a) (authorizing a chief judge to “review any transcripts or other relevant documents”). After careful consideration, I have determined that the present complaints are subject to dismissal.

Canon 3A(6) of the Code of Conduct for United States Judges provides that “[a] judge should not make public comment on the merits of a matter pending or impending in any court.” The recording and transcript make clear that the Subject Judge did not violate Canon 3A(6) because the Subject Judge did not comment on the merits of any criminal matter pending against the defendant. Rather, the Subject Judge commented on statements made on social media by the defendant about the presiding judge and a family

member of the presiding judge. Accordingly, the claims regarding a putative violation of Canon 3A(6) are subject to dismissal because “the allegations in the complaint lack any factual foundation” and “are conclusively refuted by objective evidence.” 28 U.S.C. § 352(b)(1)(B).

Complainants’ remaining claims are likewise subject to dismissal because the Subject Judge’s comments in the interview do not constitute judicial misconduct. Cognizable misconduct is “conduct prejudicial to the effective and expeditious administration of the business of the courts” and includes “engaging in partisan political activity or making inappropriately partisan statements.” Rule 4(a), 4(a)(1)(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings; see also 28 U.S.C. § 351(a). “The phrase ‘prejudicial to the effective and expeditious administration of the business of the courts’ is not subject to precise definition” Rule 4 cmt., Rules for Judicial-Conduct and Judicial-Disability Proceedings. The Code of Conduct for United States Judges sets forth “instructive” guidelines, but “ultimately the responsibility for determining what constitutes cognizable misconduct is determined by the Act and the [Rules for Judicial-Conduct and Judicial-Disability Proceedings], as interpreted and applied by judicial councils.” Id. Cognizable misconduct includes conduct occurring outside the performance of official duties “if the conduct is reasonably likely to have a prejudicial effect on the administration of the business of the courts, including a substantial and widespread lowering of public confidence in the courts among reasonable people.” Id. 4(a)(7).

Both Complainants mischaracterize the nature of the Subject Judge’s comments. When the Subject Judge’s comments are reviewed in the context of the interview as a whole, it is apparent that Complainants describe “conduct that, even if true, is not prejudicial to the effective and expeditious administration of the business of the courts.” Id. 11(c)(1)(A). As noted above, none of the Subject Judge’s remarks concerns the merits of the defendant’s criminal proceedings. Nor do they constitute “partisan political activity.” Rather, the Subject Judge spoke about the experience of receiving threats, reflected on the tragedy of colleagues whose family members had been killed, and encouraged circumspection with respect to public remarks that can have unintended consequences. The Subject Judge also emphasized the importance of the independence of judicial officers in maintaining the Rule of Law and ensuring that laws are applied equally to all who appear before a judge. These comments do not amount to judicial misconduct, and the complaints are therefore subject to dismissal. Id.; see also 28 U.S.C. § 352(b)(1)(A)(i) (authorizing dismissal of a complaint that is not in conformity with section 351(a)).

Based on the foregoing, the complaints will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i) and 28 U.S.C. § 352(b)(1)(B).

s/ Michael A. Chagares
Chief Judge

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ORDER

(Filed: January 31, 2025)

On the basis of the foregoing opinion entered on this date, it is ORDERED AND ADJUDGED that the written complaints brought pursuant to 28 U.S.C. § 351 are hereby dismissed.

This order constitutes a final order under 28 U.S.C. § 352(c). Complainants are notified in accordance with Rules 11(g)(3) and 18, Rules for Judicial-Conduct and Judicial-Disability Proceedings, of the right to appeal this decision by the following procedure:

Rule 18(a) Petition. A complainant or subject judge may petition the Judicial Council of the Third Circuit for review.

Rule 18(b) Time. A petition for review must be filed in the Office of the Circuit Executive within **42 days** after the date of the chief judge's order.

18(b) Form. The petition should be in letter form, addressed to the Circuit Executive, and in an envelope marked "Misconduct Petition" or "Disability Petition." The name of the subject judge must not be shown on the envelope. The letter should be typewritten or otherwise legible. It should begin with "I hereby petition the judicial council for review of . . ." and state the reasons why the

petition should be granted. It must be signed. There is no need to enclose a copy of the original complaint.

The full text of the Rules for Judicial-Conduct and Judicial-Disability Proceedings is available from the Office of the Circuit Executive and on the Court of Appeals' internet site, www.ca3.uscourts.gov.

s/ Michael A. Chagares
Chief Judge

Dated: January 31, 2025