

FILED
ELEVENTH CIRCUIT
JUDICIAL COUNCIL

AUG 12 2024

CIRCUIT EXECUTIVE

CONFIDENTIAL

Before the Judicial Council of the
Eleventh Judicial Circuit

Judicial Complaint Nos. 11-24-90106 and 11-24-90107

ORDER

Before: WILSON, JORDAN, and LUCK, Circuit Judges;
WALKER and BEAVERSTOCK, Chief District Judges.

Pursuant to 11th Cir. JCDR 18.3, this Judicial Council Review Panel has considered the materials described in JCDR 18(c)(2), including petitioner's complaint, the order of Chief United States Circuit Judge William H. Pryor Jr., and the petition for review filed by petitioner. No judge on this panel has requested that this matter be placed on the agenda of a meeting of the Judicial Council.

The Judicial Council Review Panel hereby AFFIRMS the disposition of this matter by Chief Judge Pryor. The petition for review is DENIED.

Done this 12th day of August, 2024.

FOR THE JUDICIAL COUNCIL:



United States Circuit Judge

JUN 18 2024

David J. Smith
Clerk

CONFIDENTIAL

Before the Chief Judge of the
Eleventh Judicial Circuit

Judicial Complaint Nos. 11-24-90106 and 11-24-90107

ORDER

An individual has filed a Complaint against a United States circuit judge and a United States district judge under the Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§ 351–364, and the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States.

Complaint

The Complaint stems from a letter from multiple federal judges, including the Subject Judges, addressed to the president of a university and copied to the dean of the university's law school. The letter, which Complainant attached, states:

Since the October 7 terrorist attacks by Hamas, [] University has become ground zero for the explosion of student disruptions, anti-semitism, and hatred for diverse viewpoints on campuses across the Nation. Disruptors have threatened violence, committed

assaults, and destroyed property. As judges who hire law clerks every year to serve in the federal judiciary, we have lost confidence in [the university] as an institution of higher education. [The university] has instead become an incubator of bigotry. As a result, [the university] has disqualified itself from educating the future leaders of our country.

The letter sets out the following three steps the university would take if it was “serious about reclaiming its once-distinguished reputation”: (1) “Serious consequences for students and faculty who have participated in campus disruptions and violated established rules concerning the use of university facilities and public spaces and threats against fellow members of the university community”; (2) “Neutrality and nondiscrimination in the protection of freedom of speech and the enforcement of rules of campus conduct”; and (3) “Viewpoint diversity on the faculty and across the administration—including the admissions office.”

In discussing item 1, the letter states that universities should identify students who violate established rules or threaten others, and that, “If not, employers are forced to assume the risk that anyone they hire from [the university] may be one of these disruptive and hateful students.” In discussing item 2, the letter states, “It has become clear that [the university] applies double standards when it comes to free speech and student misconduct. If [the university] had been faced with a campus uprising of religious conservatives upset because they view abortion as a tragic genocide, we have no doubt that the university’s response would have been profoundly

different. By favoring certain viewpoints over others based on their popularity and acceptance in certain circles, [the university] has failed as a legitimate, never mind elite, institution of higher education.” As to item 3, the letter states, “Recent events demonstrate that ideological homogeneity throughout the entire institution [] has destroyed its ability to train future leaders of a pluralistic and intellectually diverse country. Both professors and administrators are on the front lines of the campus disruptions, encouraging the virulent spread of antisemitism and bigotry.”

The letter then states, “Considering recent events, and absent extraordinary change, we will not hire anyone who joins the [] University community—whether as undergraduates or law students—beginning with the entering class of 2024.” Finally, the letter states the objective of the boycott is to restore academic freedom at the university.

Complainant states, “If [the Subject Judges] are willing to openly and collectively punish a university and its students and graduates, a reasonable person has every reason to believe [the Subject Judges] will skew their judicial rulings in a similar manner.” Complainant continues, “[The Subject Judges] have attributed their perceived misconduct by a few protesters to an entire institution and explicitly stated that they will punish an entire community in order to cause it to change course. It is no stretch of the imagination to conceive they presently are and will in the future attempt to discern the political views of the parties and counsel before them and discriminate and retaliate against them.”

Complainant alleges the Subject Judges used their office to obtain special treatment for friends; engaged in partisan political activity or made inappropriate partisan statements; engaged in abusive behavior “in that their statements demonstrate that they presently are and will be treating litigants, attorneys, judicial employees, or others in a demonstrably egregious and hostile manner”; “used the ‘[] University Community’ as a proxy to discriminate against various races, religions, and national origins that may share in the views of their targeted community”; and engaged in conduct outside the performance of official duties that was 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.

Complainant states, “Initially, investigators should determine whether any outside organizations or foreign governments orchestrated the judges’ letter to [the] University,” and that, “[g]iven the geographical diversity of the judges, it is highly likely that the very same partisan and political organizations that lobbied for their appointment to the bench prompted them to submit the letter at issue.” He asserts that evidence that the Subject Judges “collaborated in these extrajudicial activities during their working hours would serve as proof of crime.”

Next, Complainant contends that letter’s assertion that the university applies double standards is a “fabrication” because the authors only provided only a hypothetical scenario in support of the assertion. Complainant states the Subject Judges “have

effectively disqualified themselves” from hearing any cases in which a litigant or attorney had publicly taken a position on the Israeli-Palestinian conflict, as a reasonable person would believe the Subject Judges would be biased against those supporting Palestinians and biased in favor of those supporting Israelis. Complainant also states that the Subject Judges have disqualified themselves from cases involving members of the university community, as well as graduates from any other university where protests have occurred.

In conclusion, Complainant states that the Subject Judges “represent a threat to the Constitution and must be removed from judicial office. Their conduct has made it apparent that they are politicians and possibly foreign agents masquerading as federal judges. The judges’ resort to collective punishment is an affront to this nation’s core principles of individuality and individual rights.” He asserts the Subject Judges are “anti-American,” that their “unprecedented an explicit declaration of partiality has eroded the public’s trust in the independence of the judiciary,” and that their conduct “violated fundamental standards for judicial conduct and requires their removal from office.”

Complainant attached documents to his Complaint, including a newspaper editorial written by one of the judges whose name was on the letter (not one of the Subject Judges). Complainant asserts the judge who authored the editorial stated that he and the other judges, including the Subject Judges, were justified in using tools at their disposal “to impose their will and their partisan views

on an entire community based upon unsupported and baseless allegations of ‘anti-American and antisemitic radicalism.’”

Discussion

Judicial-Conduct Rule 4(a)(7) states, “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.”

Canon 2A of the Code of Conduct for United States Judges states, “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.” Canon 2B states in part, “A judge should neither lend the prestige of the judicial office to advance the private interests of the judge or others nor convey or permit others to convey the impression that they are in a special position to influence the judge.”

Canon 4 of the Code of Conduct for United States Judges provides that “[a] judge may engage in extrajudicial activities, including law-related pursuits and civic, charitable, educational, religious, social, financial, fiduciary, and governmental activities, and may speak, write, lecture, and teach on both law-related and non-legal subjects.” However, a judge should not participate in extrajudicial activities that, among other things, “detract from the dignity of the judge’s office,” “reflect adversely on the judge’s impartiality,” or “lead to frequent disqualification.” *Id.*

The commentary to Canon 4 provides that “[c]omplete separation of a judge from extrajudicial activities is neither possible nor wise; a judge should not become isolated from the society in which the judge lives.” It makes clear that “judges may also engage in a wide range of non-law-related activities.” Canon 5 provides that judges must refrain from political activity, but it uses the term “political” to mean activities related to the election of candidates for public office and supporting organizations. The commentary provides, “The term ‘political organization’ refers to a political party, a group affiliated with a political party or candidate for public office, or an entity whose principal purpose is to advocate for or against political candidates or parties in connection with elections for public office.” Subject to limited exceptions provided by the Code, federal judges—like other persons—enjoy the freedom of speech and the press guaranteed by the First Amendment to the Constitution of the United States.

Canon 3B(3) of the Code of Conduct for United States Judges states, “A judge should exercise the power of appointment fairly and only on the basis of merit, avoiding unnecessary appointments, nepotism, and favoritism.” The commentary to Canon 3B(3) states that “A judge’s appointees include . . . personnel such as law clerks”

The Complaint fails to present a basis for a finding of misconduct. Federal judges routinely hire law clerks and must consider applicants’ educational backgrounds in determining whether an applicant is qualified for, and will succeed in, the job. As part of that

consideration, judges are permitted to make reasonable conclusions regarding the value and quality of a school's educational program.

Complainant's claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judges used their office to obtain special treatment for friends, engaged in partisan political activity or made inappropriate partisan statements, treated or will treat individuals in a demonstrably egregious and hostile manner, discriminated against individuals, violated the Code of Conduct for United States Judges, or otherwise engaged in misconduct. Judicial-Conduct Rule 11(c)(1)(D). For that reason, this Complaint is **DISMISSED**.

/s/ William H. Pryor Jr.
Chief Judge