

NOV 22 2019

THE JUDICIAL COUNCIL OF THE FIFTH CIRCUIT
FIFTH CIRCUIT
LYLE W. CAWCE, CLERK

Before: OWEN, Chief Judge, JONES, SMITH, HAYNES, GRAVES,
HIGGINSON, WILLETT, HO, DUNCAN, BARBIER, DICK,
FOOTE, BROWN, OZERDEN, GODBEY, ROSENTHAL,
GILSTRAP, and MARTINEZ

COMPLAINT NO. 05-13-90044

MEMORANDUM OF REASONS

Complainant, a nonprofit organization, through its then-Director, an attorney, filed a complaint of judicial misconduct against the subject United States District Judge under Rule 6, Rules for Judicial-Conduct and Judicial-Disability Proceedings ("Rules"). Complainant alleged that the judge made "racially intolerant comments, in three separate cases," and thereby engaged in a "demonstrated pattern and practice of bias and prejudice against alleged victims of discrimination." Then-Chief Judge Carl E. Stewart referred the complaint to a Special Committee for investigation and recommendations to the Judicial Council pursuant to Rules 11(a)(4) and (f).

The Special Committee conducted an investigation consisting of review of the complaint, the judge's response, the complete transcripts of hearings in the three lawsuits, available audio recordings of hearings, and reports of interviews with two attorneys by court representatives. After investigation, the Special Committee submitted its report to the Judicial Council. In two of the cases in question, the Special Committee found reason for concern over statements made by the judge reflecting a lack of sensitivity to the racial connotation of certain evidence, and the possible perception of racial overtones in some of the judge's off-the-cuff remarks. Additionally, the Special Committee felt that the judge's initial response demonstrated insensitivity to

the seriousness of the complaint. The Committee delegated two of its members to meet with the judge in person and convey its concerns. During this meeting, the judge was cordial and respectful, listened to and acknowledged the issues raised by the complaint, was apologetic for his conduct, and expressed a sincere determination to modify his behavior.

The judge submitted a supplemental written response to the Special Committee, in which he pledged to “take these complaints to heart: I am committed to being more careful in the future. He acknowledged that his past comments could have been seen as racially insensitive, and promised to “take care in the future to ensure that my words cannot be interpreted in any reasonable way as racially biased.” He concluded: “No one will experience bias in my court. I am committed to watching my tone and substance in the future so no one will feel that way either[.]” The Special Committee found the judge’s contrition and representations to be sincere.

Based on the judge’s pledge to avoid future comments and actions that could be perceived as racially insensitive or biased, the Special Committee recommended that the Judicial Council conclude the proceeding under Rule 20(b)(1)(B) because appropriate corrective action has been taken. The Judicial Council accepts this recommendation. An order concluding the proceeding pursuant to Rule 20(b)(1)(B) has been entered simultaneously herewith.

For the Council:

Date: November 18, 2019

Timothy A. Owen
Chief United States Circuit Judge