

**FILED**

June 24, 2024

Lyle W. Cayce  
Clerk

# Judicial Council for the Fifth Circuit

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Complaint Numbers: 05-24-90083 through 05-24-90090

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## MEMORANDUM

Complainant, a state prisoner, has filed a complaint against a United States Circuit Judge and seven United States District Judges.

The subject judges<sup>1</sup> signed a letter addressed to the president of a university, criticizing the university for its asserted inaction with respect to protests following the Hamas attacks on Israel on October 7, 2023. In the letter, the judges state that on the university’s campus “[d]isruptors have threatened violence, committed assaults, and destroyed property”; the university has become “an incubator of bigotry”; and “professors and administrators are on the front lines of the campus disruptions, encouraging the virulent spread of antisemitism and bigotry.” The judges state that they have lost confidence in the university as an institution of higher education, and that they will not hire law clerks with undergraduate or law degrees from the university starting with the entering class of 2024.

The judges assert the university should impose “[s]erious consequences for students and faculty who have participated in campus disruptions and violated” university rules concerning use of facilities and public spaces and threats against fellow members of the university community. The letter further asserts that the university “should also

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<sup>1</sup> The letter was also signed by judges from other circuits and districts.

identify students” who engage in “unlawfully trespassing on and occupying public spaces” so that “future employers can avoid hiring them.” Otherwise, the letter concludes, “employers are forced to assume the risk anyone they hire from [the university] may be one of these disruptive and hateful students.”

The letter suggests the university should provide “[n]eutrality and nondiscrimination in the protection of freedom of speech and the enforcement of rules of campus conduct,” asserting that “[f]reedom of speech protects protest, not trespass, and certainly not acts or threats of violence or terrorism.” The judges assert “[i]t has become clear that [the university] applies double standards when it comes to free speech and student misconduct” and charge the university with “favoring certain viewpoints over others based on their popularity and acceptance in certain circles.” The judges express their view that “[s]ignificant and dramatic change in the composition of its faculty and administration is required to restore confidence in [the university].”

Complainant complains that “[i]f the Judges are willing to openly and collectively punish a university and its students and graduates, a reasonable person has every reason to believe the Judges will skew their judicial rulings” and “discriminate and retaliate” against parties and counsel who have differing political views and will be biased against any current or former member of the university’s community, whether appearing before them as an attorney or party. He further alleges that it is “highly likely” the judges engaged in a conspiracy with political organizations to issue the letter, possibly during work hours, which he claims would be evidence that the judges committed a crime. Complainant asks that the judges be “removed from federal office,” and asserts that they “are politicians and possibly foreign agents masquerading as federal judges.”

Quoting various sections of Rule 4(a), Rules for Judicial-Conduct and Judicial-Disability proceedings, Complainant specifically contends that the judges:

(1) are “using their office to obtain special treatment for friends” [Rule 4(a)(1)(A)];

(2) are “engaging in partisan political activity and making inappropriate partisan statements” [Rule4(a)(1)(D)];

(3) are committing “abusive behavior” because they “are and will be treating litigants, attorneys, judicial employees, or others in a demonstrably egregious and hostile manner” [Rule 4(a)(2)(B)];

(4) are discriminating “against various races, religions, and national origins that may share in the views of their targeted community” [Rule 4(a)(3)]; and

(5) have likely caused “a substantial and widespread lowering of public confidence in the courts among reasonable people” [Rule 4(a)(7)].

Complainant maintains the judges “have effectively disqualified themselves from hearing any cases in which a litigant or their counsel has publicly taken a position on the Israeli-Palestinian conflict,” and a “reasonable person has every reason to believe the Judges would be biased against those supporting Palestinians and would favor those supporting Israelis.”

While Complainant does not cite the Code of Conduct for United States Judges (“the Code”), I have also analyzed the judges’ letter in accordance with the Code’s relevant provisions, including Canon 2(A) (“A judge should [act] in a manner that promotes public confidence in the integrity and impartiality of the judiciary.”) and Canon 4 (“A judge should not participate in extrajudicial activities that . . . reflect adversely on the judge’s impartiality . . .”).

First, the judges' letter does not demonstrate, and Complainant has offered no evidence, that the judges provided "special treatment for friends" under Rule 4(a)(1)(A); engaged in "abusive behavior" under Rule 4(a)(2)(B), a section that addresses judges' direct conduct toward litigants, attorneys, judicial employees, or others; or conspired with political organizations in issuing the letter. These aspects of the complaint are therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii) as "lacking sufficient evidence to raise an inference that misconduct has occurred."

With regard to Rule 4(a)(1)(D) (prohibiting judges from "engaging in political activity or making inappropriate partisan statements") and Rule 4(a)(3) (prohibiting judges from discriminating "on the basis of race, color, sex, gender, gender identity, pregnancy, sexual orientation, religion, national origin, age, or disability"), Complainant mischaracterizes the contents of the letter. While the subject of the protestors' cause has been viewed as highly political, the judges' reasoning behind their boycott is not. The judges do not express any views on the protestors' or any member of the university's political views, race, color, religion, or national origin. Rather, the judges express disapproval of unlawful and rule-breaking conduct in which some of the protestors reportedly engaged and of the university's response to the disruptions on campus, which the judges believe demonstrate the lack of diverse ideological backgrounds and "double standards when it comes to free speech and student misconduct."

Judges do not violate ethical rules or standards when they exercise discretion in refusing to hire law clerks who may have engaged in unlawful conduct or violation of a university's rules. Likewise, the judges (regardless of whether they are correct in their assumptions) have discretion to refuse to hire law clerks who graduated from a university that does not foster what the judges believe to be important aspects of higher education, such as viewpoint diversity and tolerance of differing viewpoints. The judges have not engaged in misconduct in the form of political partisanship or discrimination on the

basis of race, national origin, or religion, and this aspect of the complaint is therefore also subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii) as “lacking sufficient evidence to raise an inference that misconduct has occurred.”

As to Rule 4(a)(7) (prohibiting conduct that 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”) and the Code’s rules regarding impartiality, Complainant’s claims also fail. Complainant alleges that anyone who is currently or formerly affiliated with the university will fear that the judges will be biased against them. However, a refusal to hire a law clerk from a particular university whose students reportedly engaged in unlawful activity or violent acts, without more,<sup>2</sup> is not evidence that the judge cannot remain impartial towards attorneys or parties who graduated from that university. Judges have many qualifications they use to determine whether a potential law clerk meets their standards for hiring. Judges may have a requirement that their potential law clerks graduate from a “top-ten” law school, which categorically excludes a large swath of candidates based solely on the judge’s assessment of the relative quality of the education provided by law schools not in the “top ten.” Many judges require background checks, and a criminal record of any kind would be disqualifying. A not uncommon requirement for some judges is that clerkship applicants’ grades place them within a certain percentile of their class. But such hiring qualifications do not mean the judge is necessarily biased against attorneys or litigants appearing before them who do not meet the specified metrics. Complainant’s conclusory allegation that the judges who are the subject of his complaint are generally biased against graduates of the university because they have categorically chosen not to hire them as law clerks, without more, does not

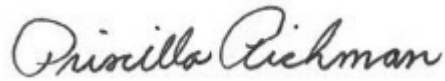
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<sup>2</sup> Complainant does not allege that the judges failed to recuse in any specific case involving the university or were biased against a particular party or attorney appearing before them.

support a finding of misconduct. This aspect of the complaint is therefore also subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii) as “lacking sufficient evidence to raise an inference that misconduct has occurred.”

The subject judges have chosen to boycott the hiring of future graduates of the university as a means to implement their hiring discretion. While reasonable jurists may disagree about the effectiveness of their method and whether it is justified, the judges have not engaged in misconduct.

An order dismissing the complaint is entered simultaneously herewith.



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Priscilla Richman

Chief United States Circuit Judge

June 21, 2024

**FILED**

August 2, 2024

Lyle W. Cayce  
Clerk

**Before the Judicial Council  
of the Fifth Circuit**

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Complaint Numbers: 05-24-90083 through 05-24-90090

United States [REDACTED]  
United States [REDACTED]  
[REDACTED]  
United States [REDACTED]  
[REDACTED]  
United States [REDACTED]  
[REDACTED]  
United States [REDACTED]  
[REDACTED]

Under the Judicial Improvements Act of 2002, 28 U.S.C. §§ 351-364.

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**ORDER**

An Appellate Review Panel of the Judicial Council for the Fifth Circuit has reviewed the above-captioned petition for review, and all the members of the Panel have voted to affirm the order of Chief Judge Priscilla Richman, filed June 24, 2024, dismissing the Complaint of [REDACTED] against United States [REDACTED]

and  
[REDACTED]



the Judicial Improvements Act of 2002.

The Order is therefore **AFFIRMED**.

8/2/2024  
Date

Jennifer W. Elrod  
Jennifer W. Elrod  
United States Circuit Judge  
For the Judicial Council of the Fifth Circuit