

FILED

April 22, 2025

Lyle W. Cayce
Clerk

Judicial Council for the Fifth Circuit

Complaint Number: 05-24-90030

IN RE COMPLAINT OF JUDICIAL MISCONDUCT UNDER THE JUDICIAL IMPROVEMENTS ACT OF 2002.

Before ELROD, *Chief Judge*, and HAYNES, JONES, SMITH, HIGGINSON, HO, DUNCAN, ENGELHARDT, DOUGLAS, and RAMIREZ, *Circuit Judges*, and AFRICK, JACKSON, DOUGHTY, MILLS, JOHNSON, O'CONNOR, CRANE, MAZZANT, and MOSES, *District Judges*.

ORDER AND MEMORANDUM OF REASONS

Complainant, a former law clerk to a magistrate judge, filed a judicial misconduct complaint alleging the magistrate judge unnecessarily delayed issuance of rulings in two cases and routinely engaged in intemperate conduct towards law clerks, court staff, and attorneys appearing before him. A specially appointed committee ("the Committee") investigated these allegations, many of which were unsubstantiated by, or were inconsistent with, witness testimony and oral argument recordings of relevant hearings. As is further explained below, the Committee recommended: (1) dismissal of the allegations regarding delays in issuing particular rulings because, even if true, the claimed conduct is not prejudicial to the effective and expeditious administration of the business of the courts and/or because the facts have not been established, and (2) conclusion of the aspect of the complaint related to allegations of intemperate conduct because, even if true, the judge's corrective action acknowledges and remedies the problems of intemperate

conduct raised by the complaint and is proportional to the allegations in the complaint. We ADOPT these recommendations.

Complainant's allegations of intemperate conduct are summarized as follows:

- Prior to Complainant's clerkship with the judge, one of the judge's law clerks told Complainant that the judge's "verbal attacks had reduced her to tears on several occasions."
- The judge made inappropriate personal criticisms of others and gossiped about employees and their spouses.
- The judge told Complainant that many of the judges in his district are "dumb."
- The judge "yelled," "flew into a rage," spoke in "a condescending, demeaning, and ridiculing tone," was "overly hostile," and "ridiculed and belittled" Complainant when he and the judge disagreed on how case matters should be handled and when the judge criticized Complainant's work product.
- Complainant requested that the judge not yell at him. In response, the judge indicated that he did not need to change his behavior and seemed angry that Complainant expressed his concerns.
- The judge "exploded in anger" at an attorney in his courtroom. The judge "raged at" the attorney and accused him of "throwing [the judge's courtroom deputy] under the bus." The judge later told Complainant that the attorney may not have acted maliciously and that the judge may have been angry for no reason.
- In a hearing, the judge "exploded in anger again" at another attorney when the attorney would not stipulate to facts he believed would prejudice his client in a pending state court matter. The judge spoke "rudely and disrespectfully" and forced the attorney to make an admission that he did not want to make. After the hearing, the judge "raged over the incident" in chambers, called the attorney an "asshole," and yelled so loudly that a law clerk

from a different chambers heard it and asked Complainant what happened. When the law clerk learned it was the judge, the clerk “was not surprised, having grown accustomed to [the judge’s] behavior.”

- Complainant observed the judge yelling at maintenance staff over the temperature in his office. Complainant observed a maintenance staff member looking upset and threatening to retire after leaving the judge’s office.
- The judge regularly yelled obscenities in chambers.
- The judge blamed law clerks for their “imagined failures.” The judge once scapegoated Complainant in a hearing on the record for a defendant’s failure to appear in court.
- Eventually, Complainant “could no longer endure [the judge’s] abuse” and resigned.

Then-Chief United States Circuit Judge Priscilla Richman, assisted by court staff, conducted a limited inquiry pursuant to Rule 11(b) of the Rules for Judicial Conduct and Disability Proceeding (“the Rules”). At the direction of then-Chief Judge Richman, court staff interviewed two of the judge’s law clerks who were referenced in the complaint. Then-Chief Judge Richman also invited the judge to respond, and the judge submitted a written response.

In December 2024, Chief United States Circuit Judge Jennifer Walker Elrod appointed a special committee, consisting of Chief Judge Elrod as presiding officer, United States Circuit Judge Leslie H. Southwick, and United States District Judge Sean D. Jordan, Eastern District of Texas. As part of the Committee’s investigation, Judge Jordan interviewed another judge who works in the same courthouse as the subject judge. At the direction of the Committee, court staff interviewed two attorneys who regularly appear

before the subject judge. The Committee also reviewed audio from a hearing referenced in the complaint.

The witnesses' testimony revealed that several of Complainant's allegations did not accurately reflect their views of the judge's temperament. The witnesses reported that the judge sometimes gets angry or frustrated, but they described varying degrees of anger and frustration, from "slightly raises his voice" to "yelling." The witnesses' subjective opinions about the propriety of the judge's expressions of frustration likewise varied, with most witnesses reporting that the judge's moments of frustration are not inappropriate or abusive.

Some allegations in the complaint were not corroborated by the Committee's investigation. For example, Complainant alleged that the judge "exploded in anger" at an attorney appearing before him in a hearing. However, the Committee reviewed the audio from the hearing and found that the judge's temperament, both in tone and substance, was appropriate and not abusive.

On January 15, 2025, Chief Judge Elrod and Judge Jordan met with the subject judge. The Committee members discussed their concerns about the objective appearance of the conduct in question and what degree of discourtesy transcends the expected zealous nature of litigation and moves into the sphere of cognizable misconduct.

The judge acknowledged the Committee's concerns, evidenced a clear understanding of why intemperate conduct could be problematic, and volunteered to take corrective measures, including: (1) recognizing the importance of the appearance as well as the substance of judicial temperament to the effective performance of the judicial function; (2) promising to avoid potentially intemperate conduct; (3) agreeing to complete three hours of workplace conduct training in consultation with the Circuit Director of Workplace Relations; and (4) agreeing that the Circuit Director of Workplace Relations will check in confidentially with the judge's law

clerks midway through the current clerks' terms and the next clerk's term. The judge has since completed the workplace conduct training courses selected by the Circuit Director of Workplace Relations.

We have now received the Committee's report pursuant to Rule 17, which includes the Committee's findings and recommendations for Council action.

The Committee found that Complainant's allegations regarding the judge's delays in issuing rulings were subject to dismissal under Rule 20(b)(1)(A)(i) because, even if true, the claimed conduct is not prejudicial to the effective and expeditious administration of the business of the courts, and/or under Rule 20(b)(1)(A)(iii) because the facts on which the complaint is based have not been established.

"Cognizable misconduct does not include an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases." Rule 4(b)(2). The two delays referenced in the complaint do not constitute a "habitual delay in a significant number of unrelated cases," and Complainant does not allege or provide any evidence that the judge had an improper motive for the delays.

As to the allegations regarding delays in issuing rulings, the recommendation of the Committee is ADOPTED and this aspect of the complaint is DISMISSED under Rule 20(b)(1)(A)(i) and/or under Rule 20(b)(1)(A)(iii).

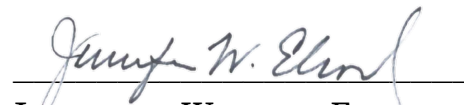
The Committee did not make findings regarding the veracity of each allegation of intemperate conduct and did not reach the issue of whether those allegations, even if true, amount to misconduct because they found that the judge has already taken appropriate corrective action, rendering the complaint subject to conclusion under Rule 20(b)(1)(B).

Rule 20(b)(1)(B) provides that the Judicial Council may conclude a “proceeding because appropriate corrective action has been taken.” This language tracks Rule 11(d), which provides for similar action by the chief judge before a special committee has been appointed. *See* Commentary to Rule 20(b)(1)(B). As with Rule 11(d), appropriate corrective action must be voluntary and must acknowledge and remedy the problem raised by the complaint. *See* Breyer Committee Report, 239 F.R.D. 116, 244 (Sept. 2006). Corrective action should be proportionate to any plausible allegations of misconduct. *Id.* In other words, minor corrective action will not suffice to dispose of serious misconduct. *Id.*

The Committee found that the judge’s corrective action acknowledges and remedies the issues of intemperate conduct raised by the complaint and is proportional to the allegations in the complaint. We agree. Therefore, the recommendation of the Committee is ADOPTED and this aspect of the complaint is CONCLUDED pursuant Rule 20(b)(1)(B) because appropriate corrective action has been taken.

Pursuant to Rule 24(a)(2), the subject judge’s identity shall not be disclosed.

For the Council:


JENNIFER WALKER ELROD
Chief Circuit Judge