

**FILED**

December 29, 2025

Lyle W. Cayce  
Clerk

# Judicial Council for the Fifth Circuit

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Complaint Number: 05-26-90043

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

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### ORDER

Complainant, former in-house counsel for a company, has filed a complaint alleging misconduct by a United States Bankruptcy Judge involving two cases that both relate to a Chapter 11 bankruptcy proceeding filed by the company.

Complainant alleges that the judge made public comments about the merits of contested matters raised in the two pending cases in violation of Canons 3(A)(6) and 4 of the Code of Conduct for United States Judges and Rules 4(a)(1)<sup>1</sup> and 4(a)(7) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings (“JC&D Rules”).<sup>2</sup>

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<sup>1</sup> Complainant cites JC&D Rule 4(a)(1) in his complaint. However, that rule’s examples of cognizable misconduct are not relevant to the allegations in this complaint.

<sup>2</sup> Canon 3(A)(6) provides that “[a] judge should not make public comment on the merits of a matter pending or impending in any court.” Canon 4, in relevant part, provides: “[A] judge should not participate in extrajudicial activities that detract from the dignity of the judge’s office, interfere with the performance of the judge’s official duties, reflect adversely on the judge’s impartiality, lead to frequent disqualification, or violate the limitations set forth below.” *See* Guide to Judiciary Policy, Vol. 2A, Ch. 2. JC&D Rule 4(a) provides that “[m]isconduct is conduct prejudicial to the effective and expeditious administration of the business of the courts.” JC&D Rule 4(a)(7) provides that “[c]ognizable misconduct includes conduct occurring outside the performance of official duties if the conduct is reasonably likely to have a prejudicial effect on the administration

Specifically, Complainant contends that the judge made comments to an online news organization addressing allegations that a character in her fictional novel was modeled after the former CEO of the company and a frequent participant in the legal proceedings related to the company bankruptcy. These comments were made while the two cases were pending—a motion to recuse and a petition for writ of mandamus filed in the two cases—that raised, in part, the issue of whether the judge should have recused from the bankruptcy due to the appearance of bias against the CEO created through her extrajudicial writings.

Pursuant to JC&D Rule 11(b), I invited the judge to respond to the complaint in writing. In her response, the judge stated that she had received many media requests asking her to comment about whether a character in her novel was based on the CEO and she responded to one e-mail from her personal e-mail account. She submitted a copy of the e-mail with her response.

This e-mail reflects that the judge expressly declined to comment on any pending case, denied that the novel was about a pending case or litigant, and explained generally the plot of the novel. While the article states that the judge addressed the [then-pending] recusal motion, the judge's e-mail did not reference the recusal motion or any filing in any case.

The judge stated that, at the time she made the comments to the news organization, she did not perceive her comments as being related to the merits of a pending judicial matter. Rather she intended her comments to stop further media inquiries about her extrajudicial writings. Lastly, the judge expressed sincere sorrow that anyone would construe these comments as improper under the circumstances.

In a later correspondence with me regarding this complaint, the judge agreed to consult available ethics resources (e.g., codes of conduct,

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of the business of the courts, including a substantial and widespread lowering of public confidence in the courts among reasonable people.”

commentary, etc.) when ethical dilemmas arise in the future and, if questions remain after consulting those sources, to seek particularized guidance in the form of either informal guidance from the Fifth Circuit's representative on the Committee on Codes of Conduct of the Judicial Conference of the United States or from Committee counsel, or in the form of a confidential advisory opinion from the Committee.

Canon 3(A)(6) provides in pertinent part that "[a] judge should not make public comment on the merits of a matter pending or impending in any court." The Commentary on Canon 3(A)(6) adds:

The admonition against public comment about the merits of a pending or impending matter continues until the appellate process is complete. If the public comment involves a case from the judge's own court, the judge should take particular care so that the comment does not denigrate public confidence in the judiciary's integrity and impartiality, which would violate Canon 2A. A judge may comment publicly on proceedings in which the judge is a litigant in a personal capacity, but not on mandamus proceedings when the judge is a litigant in an official capacity.

While the Code's Canons are instructive, 28 U.S.C. § 351 ("the Act") and the JC&D Rules are the governing authority for determining what constitutes cognizable misconduct. *See* Commentary to JC&D Rule 4. Those authorities define misconduct as conduct "prejudicial to the effective and expeditious administration of the business of the courts." 28 U.S.C. § 351. An inadvertent, minor violation of the Code's specific rules, promptly remedied when brought to the attention of the judge, might be a violation of the Code, but might not rise to the level of misconduct contemplated by the Act. *See* Commentary to JC&D Rule 4.

While there was overlapping subject matter between the judge's comments to the news organization and the issues pending in litigation, it is debatable whether her comments constitute "comment[s] on the merits" of a pending matter. Regardless, any potential violation of Canon 3(A)(6) under

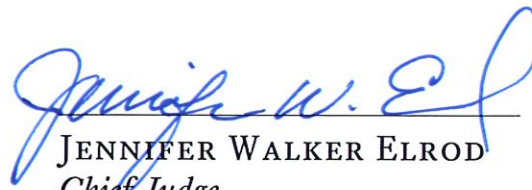
these particular facts was unintended and minor and does not rise to the level of “conduct prejudicial to the effective and expeditious administration of the business of the courts.” The complaint is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii) as “lacking sufficient evidence to raise an inference that misconduct has occurred.”

In addition, the judge expressed remorse that her statements could be construed as commenting on pending cases when she had made efforts to indicate that she could not comment on pending cases, and she promised to consult with available ethics resources when ethical dilemmas such as this arise in the future. This action constitutes appropriate corrective action. *See* Rule 11(d) (defining appropriate corrective action as voluntary action that acknowledges and remedies the problems raised by the complaint).

The complaint can therefore alternatively be concluded under 28 U.S.C. § 352(b)(2) (a chief judge may “conclude the proceeding if the chief judge finds that appropriate corrective action has been taken or that action on the complaint is no longer necessary because of intervening events”).

The complaint is DISMISSED. An unredacted private order is entered simultaneously herewith.

Pursuant to JC&D Rules 23(b)(1) and (8), IT IS ORDERED that a copy of this order be published on the court’s website forthwith.

  
JENNIFER WALKER ELROD  
*Chief Judge*