

NOV 06 2023

David J. Smith
Clerk

CONFIDENTIAL

Before the Chief Judge of the
Eleventh Judicial Circuit

Judicial Complaint No. 11-23-90133

ORDER

An attorney has filed a Complaint against 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.

Complainant alleges that the Subject Judge participated in a panel discussion at a law school about understanding a foreign war in the context of Jewish history, and the Subject Judge shared his views on legal and historical aspects of the conflict. Toward the end of the discussion, the Subject Judge stated, “None of these views I’m expressing are the views of the Federal Judiciary. And I don’t say them as a judge, I tell you them as an American and sometimes as a lawyer.”

Complainant also alleges that the Subject Judge wrote an article for a website about weighing evidence to determine who was

responsible for a bombing in the war. The article identified the Subject Judge as a United States district judge and stated, “The views expressed in this article are the author’s personal views; they are not offered in his capacity as a judge and do not represent the views of the federal judiciary.”

Complaint

Complainant alleges the Subject Judge’s public remarks and article “are (i) an inappropriate engagement in political activity, (ii) a misuse of the prestige of his judicial office, and (iii) 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 asserts that the conflict about which the Subject Judge spoke and wrote was “political in nature,” that the political nature of the statements “cannot be ignored by the simple act of calling such speech and writings a ‘history lesson’ or ‘educational,’” and that the statements do not “lose their political nature because they relate to foreign policy.” Complainant contends the remarks and article violated Canon 2B and Canon 5 of the Code of Conduct for United States Judges, and that they would cause certain individuals to feel that the Subject Judge was biased. Complainant also asserts the disclaimers in the panel discussion and article were “disingenuous” and did not mitigate the harm to the independence of the Judiciary. Complainant attached documents to the Complaint.

Discussion

The Complaint fails to allege facts that would support a finding of misconduct. 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 nonlegal subjects.” 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 and the free exercise of religion guaranteed by the First Amendment to the Constitution of the United States.

The Complaint misunderstands the Code of Conduct. Complainant’s allegations fail to create an inference that the Subject Judge engaged in prohibited political activity, engaged in conduct

reasonably likely to have a prejudicial effect on the administration of justice, was biased, violated the Code of Conduct for United States Judges, or otherwise engaged in misconduct. For that reason, this Complaint is **DISMISSED**.

/s/ William H. Pryor Jr.
Chief Judge