

JUDICIAL COUNCIL OF THE SIXTH CIRCUIT
MICHIGAN-OHIO-KENTUCKY-TENNESSEE

In re:
Complaint of Judicial Misconduct

*
*
*No. 06-16-90007
*
*
*
*

MEMORANDUM AND ORDER

This complaint of judicial misconduct was filed by **[REDACTED]** (“complainant”) against the Honorable **[REDACTED]** (“subject judge”). The complainant argued that the subject judge violated Canons 2(B), 5(A)(2), and 5(C) of the Code of Conduct for United States Judges by writing a letter to the editor of the local daily newspaper in which he endorsed a candidate in a contested election for county prosecutor. The letter was published in both the print and internet editions of the newspaper.

As part of the “limited investigation” authorized by Rule 11(b) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, I asked the subject judge to formally reply to the complaint and address the complainant’s allegations. In his reply, the subject judge admitted the conduct alleged and acknowledged that he had unintentionally violated the Code of Judicial Conduct by writing the letter.

Canon 5 of the Code of Conduct for United States Judges warns that “a judge should refrain from political activity.” Canon 5(A)(2) specifically states that “[a] judge should not . . . endorse or oppose a candidate for public office.” Canon 5(C) further provides that “[a] judge should not engage in any other political activity.” Additionally, Canon 2(B) states that “[a] judge should n[ot] lend the prestige of the judicial office to advance the private interests of . . . others.” Rule 3(h)(1)(E) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings defines as cognizable misconduct “engaging in partisan political activity.” There is little room for interpretation of the letter as anything other than a public endorsement of a political candidate under Canon 5(A)(2) and the type of political activity prohibited by Canon 5(C). Moreover, submitting a letter endorsing a candidate in a contested political race could easily be interpreted as lending the prestige of the writer’s office to the endorsed candidate, particularly where, as here, the writer explicitly identified himself as a federal judge. Because one or more of the Canons cited herein have been violated, I find that the subject judge engaged in partisan political activity as defined by Rule 3(h)(1)(E) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Once a Chief Judge has found that cognizable misconduct has occurred, there are limited circumstances under which the complaint procedure may be concluded without the appointment of a special committee and referral to the judicial council for disposition. If a subject judge takes “appropriate voluntary corrective action that acknowledges and remedies the problem raised by the complaint,” the Chief Judge may, in his discretion, conclude proceedings on the complaint. 28 U.S.C. § 352(b)(1); see also Rule 11(d) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. Although the Chief Judge may not direct, order, or compel the corrective action contemplated by Rule 11(d), he may “facilitate” a corrective action “by giving the subject judge an objective view of the appearance of the judicial conduct in question and by suggesting appropriate corrective measures.” See *Implementation of the Judicial Conduct and Disability Act of 1980, A Report to the Chief Justice*, 239 F.R.D. 116, 244 (2006) (Breyer Committee Report).

At the request of the subject judge, I have exercised the discretion afforded me under the rules and have reviewed and approved the letter of retraction that he has now submitted for publication to the newspaper in which the challenged letter was originally published. The newspaper ran an article in its September 1, 2016, edition covering the complainant’s letter of retraction and quoting from it extensively, and ran the letter itself in the letters-to-the-editor section on the following day. Both the article and the letter of retraction appeared in both the print and internet versions of the paper.

I am satisfied that the subject judge has taken voluntary corrective action that is sufficient to allow conclusion of the proceedings under 28 U.S.C. § 352(b)(1) and Rule 11(d) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. By admitting the conduct alleged in the complaint, acknowledging its wrongfulness, apologizing, and ensuring that the conduct will not be repeated, and doing so in a manner calculated to reach the same audience affected by the offending letter, the subject judge has remedied the harm caused in a manner proportional to the alleged misconduct. See *id.*, commentary.

For these reasons, it is **ORDERED** that proceedings on this complaint be concluded in whole pursuant to 28 U.S.C. § 352(b)(1) and Rule 11(d) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

/s/R. Guy Cole, Jr.
Chief Judge

Date: September 2, 2016