

THE JUDICIAL COUNCIL OF THE SEVENTH CIRCUIT
219 South Dearborn Street
Chicago, Illinois 60604

June 28, 2022

Chief Judge Diane S. Sykes

No. 07-22-90030

IN RE COMPLAINT AGAINST A JUDGE

MEMORANDUM AND ORDER

The complainant, an attorney, filed a misconduct complaint against the judge who presided over his clients' civil case. The complainant alleges that the judge is a close friend of one of the defendants, a public official, and engaged in ex parte communications with that defendant before and during the pendency of the case. He also alleges that before the case was filed, the judge had ex parte communications with the supervisory attorney in the defense counsel's office and met with that supervisory attorney—along with other judges in the district—to discuss the office's general litigation strategies when litigating before the court. Finally, the complainant alleges that the judge should have recused from the case—and potentially all cases involving this particular defendant—based on the social relationship between the two.

Following my review of the complaint, I determined that a limited inquiry, as permitted by 28 U.S.C. § 352(a) and Rule 11(b) of the *Rules for Judicial-Conduct and Judicial-Disability Proceedings*, was appropriate and invited the judge to provide a response.

In response the judge acknowledged having a close friendship with the public-officer defendant until the mid-1990s and also asking the defendant to speak at the judge's investiture. However, since the mid-1990s, the judge and the defendant have not been close; the judge has not been to the defendant's home, had a meal with the defendant, met the defendant's family, or had any involvement in the defendant's personal or professional life. Likewise, the defendant has not been to the judge's home or socialized with the judge.

The judge acknowledged two e-mail exchanges with the defendant that were referenced in and attached to the complaint. The first occurred prior to the filing of the case and confirmed that the defendant would speak at the judge's investiture. In the second, sent during the pendency of the case, the judge noted that the defendant was under pressure to

fire the supervisory attorney and acknowledged the difficulty of the defendant's decision to do so. (Although the supervisory attorney did not appear in the case, I accept as true the complainant's allegation that the attorney oversaw the litigation.) The e-mail between the judge and the defendant did not address the pending case or bear on the substance of the matter, and the defendant did not respond to the e-mail; however, the judge nonetheless acknowledged that the decision to send the e-mail during the pendency of the case may have been an error in judgment.

The judge also addressed the complainant's allegations of a friendship with the supervisory attorney who had been fired by the defendant. The judge's description of the relationship, which was consistent with the allegations in the complaint, reflects that the judge knew and occasionally — though infrequently — socialized with the attorney professionally. The e-mails between the judge and the attorney occurred before the case was filed and were not related to the case or any issue in the case. As for the allegation that the judge and other judges in the district met with and discussed litigation strategies with the supervisory attorney, the judge confirmed that before the case in question was filed, the attorney was invited to address the district's judges at a monthly meeting but that the judge had no part in the invitation and did not comment during the meeting. The judge acknowledged that following the meeting, the attorney asked for the judge's impressions on how the meeting went. The e-mails attached to the complaint reflect that the judge commented on the attorney's professionalism and on some of the comments made during the meeting.

Based on this initial review, I conclude that pursuant to 28 U.S.C. § 352(b)(1)(B), the complaint must be dismissed because my limited inquiry demonstrates that the allegations of judicial misconduct "are conclusively refuted by objective evidence." *See also* RULES FOR JUD.-CONDUCT & JUD.-DISABILITY PROC. 11(c)(1)(A) (requiring dismissal of a complaint if it "alleges conduct that, even if true, is not prejudicial to the effective and expeditious administration of the business of the courts"). Judges have wide discretion in determining whether to recuse from a case, and the facts alleged by the complainant do not suggest that misconduct occurred or that the judge was required to recuse in the case in question or must do so in every case involving this defendant.

Canon 2(B) of the Code of Conduct for United States Judges prohibits a judge from allowing family, social, or various other relationships to influence judicial conduct or judgment. ADMINISTRATIVE OFFICE OF THE U.S. COURTS, GUIDE TO JUDICIARY POLICY, Vol. 2A, Ch. 2. It likewise directs judges not to convey or allow others to convey the impression that any person is in a special position to influence the judge. *Id.* But it does not require judges to disclose all previous relationships or friendships to the parties and lawyers in their cases. The complainant contends that the judge's impartiality could reasonably be questioned, but the facts alleged and adduced during the limited inquiry demonstrate that the judge's relationship with the defendant was simply one of historical significance and that the only

real interaction between the two in the last 20 years was symbolic (speaking at the judge's investiture). Moreover, all but one of the communications identified by the complainant occurred before the case at issue was filed. The single communication during the pendency of the case, which on its face is unrelated to the case or any issues presented in the case, may have been better left unwritten but alone does not amount to judicial misconduct.

Accepting as true the remainder of the complainant's nonspeculative allegations, the allegations do not support a conclusion that the relationship between the judge and the defendant or supervisory attorney required recusal in the case in question. An advisory opinion on judicial ethics is clear that judges need not recuse from all cases handled by a law firm simply because they have law-firm members for friends. *Id.*, Vol. 2B, Ch. 2, § 220, Published Advisory Opinions, No. 11 (June 2009). That principle applies equally here. Some personal relationships may present special circumstances requiring recusal, but a mere friendly relationship is not sufficient reason in itself. Here, that is all that has been alleged.

For the foregoing reason, the complaint is dismissed pursuant to § 352(b)(1)(B). The complainant may petition the Judicial Council of the Seventh Circuit for review of this order in accordance with Rule 18(b) of the *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. 28 U.S.C. § 352(c); see RULES FOR JUD.-CONDUCT & JUD.-DISABILITY PROC. 11(g)(3). A petition for review must be filed in the clerk's office of the United States Court of Appeals for the Seventh Circuit not later than 42 days of the date of this order.