

FILED: July 29, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
JUDICIAL COUNCIL

In the Matter of	*	Nos.	04-21-90039
Judicial Complaints	*		04-21-90119
Under 28 U.S.C. § 351	*		

MEMORANDUM AND ORDER

BEFORE: Circuit Judge Robert B. King, Acting Chief Judge; Circuit Judges James Andrew Wynn, Pamela A. Harris, and Julius N. Richardson; and Chief District Judges Martin K. Reidinger, James K. Bredar, Michael F. Urbanski, and Thomas S. Kleeh.

In proceedings pursuant to the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364, these judicial complaints come before the Judicial Council under § 354 for action on a Special Committee Report filed under § 353(c). The Council is charged with determining whether District Judge Joseph Dawson III engaged in “conduct prejudicial to the effective and expeditious administration of the business of the courts” within the meaning of § 351(a), and if so, what action should be taken pursuant to § 354(a)(2). After careful review and consideration, we conclude in No. 21-90039 that Judge Dawson did engage in “conduct prejudicial to the effective and expeditious administration of the

business of the courts” and that a reprimand is the appropriate sanction. We dismiss No. 21-90119 based on our determination that no misconduct occurred.

I. Judicial Complaints and Appointment of Special Committee

Prior to his appointment to the bench, Judge Dawson served as the County Attorney for a county in South Carolina (the “County”). On December 9, 2020, before his nomination was confirmed by the United States Senate, Judge Dawson and the County entered into an Employment Contract Separation Agreement (the “Separation Agreement”). Under the Separation Agreement, the County agreed to pay Judge Dawson \$216,000 in exchange for his “institutional and historical knowledge and insight” and “non-legal advice” over the next year. (Separation Agreement at 1). The County also agreed to pay the Judge a contingency fee for his work on then-pending litigation against opioid makers and distributors. (*Id.*).

In February 2021, the first judicial complaint, No. 21-90039, was filed. The complainant, citing the Separation Agreement, expressed concern that Judge Dawson had entered into a contractual agreement to provide legal services for compensation. The complainant also perceived the nature of the contingency fee arrangement to be “highly unusual” and noted that the Judge did not include the income or commitments laid out in the Separation Agreement in his response to the Senate Questionnaire for Judicial Nominees.

On May 17, 2021, Judge Dawson entered into an Addendum to Employment Contract Separation Agreement (the “Addendum”) with the County. The Addendum

amended the Separation Agreement by deleting the contingency fee arrangement and stating that the \$216,000 payment was “consideration for the foregoing services previously rendered as County Attorney” and not payment for any future services or advice. (Addendum at 1).

On October 19, 2021, Chief Circuit Judge Roger L. Gregory issued an order finding that, upon review of No. 21-90039 and Judge Dawson’s response thereto, the judicial complaint was not subject to dismissal pursuant to 28 U.S.C. § 352(b) and required the appointment of a Special Committee pursuant to § 353 to conduct an investigation and report its findings to the Judicial Council. Chief Judge Gregory recused himself, and the duties and responsibilities of the Chief Judge for purposes of the judicial complaint were assigned to Circuit Judge Paul V. Niemeyer in accordance with Rule 25(f) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.¹

Meanwhile, the second judicial complaint, No. 21-90119, was filed in August 2021. The complainant cited the language in a January 22, 2021 arrest warrant affidavit to allege that Judge Dawson continued to work for the County after taking the bench, potentially violating the restrictions on outside employment.² Judge Niemeyer conducted a limited

¹ Upon filing of the Special Committee report, Judge Niemeyer recused himself from Judicial Council review and final action on the complaints.

² The affidavit, which was prepared in response to a threatening communication delivered to Judge Dawson’s former office building and addressed to the Judge in his former role as County Attorney, used the present tense to describe Judge Dawson as the County Attorney.

inquiry in No. 21-90119 and concluded that responses from the investigating officer and Judge Dawson conclusively refuted complainant's claim that the affidavit established that the Judge had continued to represent the County. Judge Niemeyer dismissed this portion of the judicial complaint pursuant to 28 U.S.C. § 352(b)(1)(A)(iii) as lacking sufficient evidence to raise an inference of misconduct. The broader allegation, that Judge Dawson potentially violated the restrictions on outside employment, remained pending and was consolidated with No. 21-90039.

Judge Niemeyer appointed Circuit Judge Pamela A. Harris and District Judge Gina M. Groh to serve with him on the Special Committee. Geoffrey M. Klineberg, Esq., of Kellogg, Hansen, Todd, Figel & Frederick, P.L.L.C., Washington, D.C., was appointed as the investigator and counsel to the Special Committee ("Special Counsel").

II. Investigation

Special Counsel's investigation consisted of interviews with Judge Dawson and County officials and a review of the documentary evidence. Upon completion of Special Counsel's investigation, the Special Committee filed its Report to the Judicial Council, presenting the findings of the investigation and its recommendations for necessary and appropriate action by the Council. The Committee's investigation and findings are summarized below.

A. Employment Contract

Judge Dawson worked for the County as an independent contractor for nearly 20 years. Under the terms of his contract (the "Employment Contract"), the County paid him

“a fixed fee of not less than \$250,000” to provide “legal services to the County (i.e., County Elected and Appointed Official[s] and their Offices, county boards and commissions staffed by employees under Council’s authority and supervision) to include managing, supervising, and directing the County’s legal services, in addition to legal services for bond transactions and real estate transactions.” (Employment Contract at 1). The Employment Contract also provided that “[l]itigation services shall be at the contractor’s discretion.” (*Id.*). Under this provision, Judge Dawson could either undertake litigation projects himself or hire counsel to represent the County, but such projects fell outside the scope of his fixed-fee compensation.

Judge Dawson’s responsibilities included providing legal opinions to the County Council during executive sessions, advising the Council on local ordinances, and counseling County departments and agencies on legal matters that came before them. The Judge, however, also worked on additional matters that fell outside of the fixed-fee provision of his employment contract, such as tasks related to the solid waste program and other projects that required his help. Although there was no written agreement governing these additional responsibilities, and additional payment was not always made, the County did pay the Judge for this extra work if there was the political will to do so.³

³ For example, the County paid Judge Dawson an extra \$8000 per month for his work on the County’s solid waste program.

B. Separation Agreement

Concerned that Judge Dawson's departure for the federal bench would leave an information void, the Council asked the Judge to prepare a separation agreement that would provide for the continued availability of his institutional knowledge and that would pay him an additional \$216,000.⁴ A 1.5% contingency fee was also agreed upon to compensate the Judge for his work on the opioids litigation.⁵ The terms of the Separation Agreement were as follows:

In consideration of six (6) months [of] compensation (\$216,000.00) ("Payment") to Mr. Dawson by the County, Mr. Dawson agrees to provide the County his institutional and historical knowledge and insight on proceedings related to services performed or required to be performed, or non-legal advice on matters where he possesses pertinent knowledge for twelve months from the date of his separation. Mr. Dawson shall be entitled to reimbursement for actual reasonable expenses, if any for this work.

...

In addition, as it relates to claims for damages arising out of the manufacture, distribution and sale of opioid drugs ("Opioids") against Purdue Pharma L.P. ("Purdue") and other defendants, . . . the County agrees to pay Mr. Dawson a contingency fee in the amount of 1.5% of the gross amount recovered for work performed in connection therewith.

(Separation Agreement at 1).

⁴ According to officials interviewed by Special Counsel, the County had entered into similar agreements with departing officials in the past.

⁵ The County and the opioids litigation are both identified by Judge Dawson on his conflicts list as requiring his recusal from cases involving either of them. No claim is asserted that the Judge ever failed to perform the duties of his office in an impartial manner.

Special Counsel interviewed the County Chairman who stated that Council members understood that Judge Dawson could not represent them as their lawyer after his departure. Judge Dawson similarly stated that he specifically informed the Council during an executive session that he could not be its lawyer, represent it in the future, or be on the County's payroll. Although Special Counsel noted that some County officials contacted Judge Dawson for "historical information," such as where to find documentation or whether a certain government official was present at a meeting, Special Counsel found no evidence that Judge Dawson provided legal advice or counsel to the County after taking the bench.

C. Addendum to Separation Agreement

Following criticism in the press and the filing of the first judicial complaint, Judge Dawson retained counsel to negotiate an addendum to the Separation Agreement. Negotiations between the Judge's attorney and the new County Attorney culminated in an agreement to delete the 1.5% contingency fee in its entirety and to provide as follows with respect to the \$216,000 payment:

The parties acknowledge that during his service as County Attorney since October 2001 Mr. Dawson has been a witness to or participant in every significant business or legal transaction in which the County has been involved. In the course of his service, Mr. Dawson has acquired a vast and irreplaceable fund of institutional and historical knowledge about the County. The parties acknowledge that it would be highly disadvantageous to the County to be deprived of access to the non-legal information that Mr. Dawson possesses and that from time to time in the future it might be necessary for Mr. Dawson to provide this information.

Therefore, Mr. Dawson agrees to cooperate if or when it becomes legally and/or ethically necessary to do so.

In consideration for the foregoing services previously rendered as County Attorney, the County has paid Mr. Dawson the sum of two hundred sixteen thousand dollars (\$216,000.00), the receipt and adequacy of which he hereby acknowledges. It is expressly understood and agreed that as a United States District Judge Mr. Dawson cannot and will not provide any services or advice to the County and he shall in no way be employed by or affiliated with the County.

(Addendum at 1).

D. Financial Disclosure Report

Judge Dawson did not disclose the Separation Agreement in the financial disclosure report filed with his Senate Questionnaire for Judicial Nominees. The financial disclosure report is to be filed within five days of nomination and updated through the period ending no more than five days before the Senate confirmation hearing. *See* Guide to Jud. Policy, Vol. 2, Pt. D, §§ 210.20, 210.20.10. The Judge's confirmation hearing took place before he entered into his Separation Agreement. Judge Dawson did not recall receiving any specific instructions in regard to the Questionnaire, and it was his understanding that there was no obligation to update the form after his hearing. The Judge stated that he understood that he was required to report the payment in his annual financial disclosure report and confirmed his intention to do so.⁶

⁶ Judge Dawson's annual financial disclosure report, filed on May 12, 2022, reflects the \$216,000 payment.

III. Applicable Standards

The Judicial Conduct and Disability Act provides an administrative remedy for “conduct prejudicial to the effective and expeditious administration of the business of the courts.” 28 U.S.C. § 351(a). “Cognizable misconduct includes conduct occurring outside the performance of official duties if the conduct is 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.” Judicial-Conduct Rule 4(a)(7). This Circuit applies a clear and convincing standard of proof in determining whether a judge has engaged in misconduct. *See In re Jud. Complaints*, No. 04-18-90137(L) (4th Cir. Jud. Council 2019); *In re Jud. Complaint*, No. 04-16-90088 (4th Cir. Jud. Council 2018).

Canon 1 of the Code of Conduct for United States Judges provides that a judge should uphold the integrity and independence of the judiciary. *See* Advisory Opinion No. 93, *Extrajudicial Activities Related to the Law* (Comm. on Codes of Conduct June 2009) (stating that activities that enmesh the judge in the operations of a state or local government undermine the independence of the judiciary).

Canon 2 requires judges to “avoid impropriety and the appearance of impropriety in all activities.” Canon 2. “An appearance of impropriety occurs when reasonable minds, with knowledge of all the relevant circumstances disclosed by a reasonable inquiry, would conclude that the judge’s honesty, integrity, impartiality, temperament, or fitness to serve as a judge is impaired.” Canon 2A cmt. A judge is to “act at all times in a manner that

promotes public confidence in the integrity and impartiality of the judiciary.” Canon 2A. Under Canon 2B, a “judge should neither lend the prestige of the judicial office to advance the private interests of the judge or others nor convey or permit others to convey the impression that they are in a special position to influence the judge.” Canon 2B.

Canon 4A(5) restricts a sitting judge from the practice of law. Although the Code does not define “practice of law,” the Canon has been broadly construed to apply to the utilization of legal skills regardless of the existence of a formal representation agreement.

Additional obligations are imposed by the Ethics Reform Act of 1989, 5 U.S.C. App. §§ 501-505, and judiciary regulations implementing the Act, Guide to Jud. Policy, Vol. 2, Pt. C, Ch. 10. Section 502(a)(3) of the Act prohibits the practice of a profession which involves a fiduciary relationship for compensation. Guide to Jud. Policy, Vol. 2, Pt. C, § 1020.35(a)(3) (limitations on outside employment). Providing legal, consulting, and advising services as part of a fiduciary relationship is included in this prohibition. *Id.* § 1020.50(j). Section 501(a)(1) of the Act prohibits the earning of outside income in excess of 15% of the annual rate of basic pay for Level II of the Executive Schedule. *Id.* § 1020.25(a) (outside earned income limitation); *see* Judicial-Conduct Rule 4(a)(1)(F) (violating rules or standards pertaining to restrictions on outside income constitutes misconduct).

Not every violation of the provisions governing judicial conduct warrants imposition of discipline under the Judicial Conduct and Disability Act. Canon 1 cmt. The need for disciplinary action, and the nature of that action “should be determined through a

reasonable application of the text and should depend on such factors as the seriousness of the improper activity, the intent of the judge, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system.” *Id.*

IV. Findings and Conclusions

The initial Separation Agreement, signed one week prior to Judge Dawson’s confirmation and providing compensation for the Judge’s continuing insight and non-legal advice, raises significant ethical concerns under Canon 1 (integrity and independence of the judiciary), Canon 2 (impropriety and appearance of impropriety), Canon 4A(5) (practice of law), and the Ethics Reform Act (limitations on outside employment and outside earned income). Although conduct preceding a judge’s confirmation is outside the scope of the Judicial Conduct and Disability Act, *see In re Complaint of Jud. Misconduct*, 570 F.3d 1144 (9th Cir. 2009), the continued operation of the agreement after the Judge took the bench falls within the scope of the Act.

Judge Dawson undertook voluntary corrective action to remedy the Separation Agreement’s improprieties soon after taking the bench, culminating in the execution of the Addendum. The Addendum corrected certain ethical flaws in the Separation Agreement by eliminating the 1.5% contingency fee, eliminating compensation for future services, identifying the \$216,000 payment as based on past services, and stating that the Judge would provide only non-legal information to the County as legally and/or ethically necessary.

The Special Committee's investigation failed to uncover any evidence that Judge Dawson engaged in the practice of law or provided legal advice to the County after taking the bench. Although County officials occasionally contacted him for historical information, those exchanges were brief and confined to answering factual questions such as where to locate documentation. The Special Committee also found that there was no clear and convincing evidence that the Judge's appointment to the bench improperly factored into the payment made by the County. The Special Committee pointed to the County's history of providing compensation to departing employees, its history of compensating the Judge for additional projects beyond his fixed-fee arrangement, and the evidence that the Judge had completed several projects outside of his contractual obligations.

The Special Committee did find, however, that the Separation Agreement created an appearance of impropriety that was not resolved by the subsequent Addendum. The Addendum recharacterized the County's payment as being for past, rather than future, services without identifying the specific past services for which Judge Dawson was being compensated. Absent a clear and appropriate justification for the payment, the cumulative impact of the agreements created the appearance in the public's mind that the Judge received a large payment on the eve of taking the bench for no coherent reason, or worse, that the Judge agreed to practice law while serving as a judge, thereby undermining public confidence in the integrity and impartiality of the judiciary. *See* Canon 2A; Judicial-Conduct Rule 4(a)(7).

When invited by the Special Committee to respond to its proposed finding in this regard, Judge Dawson expressed his sincere apology for any undermining of public confidence due to the Separation Agreement's lack of clarity for the justification for the payment or any perception in the public's mind that he agreed to practice law while serving as a judge.⁷

Upon review, we adopt the following findings of the Special Committee: Judge Dawson never provided legal advice to the County after becoming a judge; there is no clear and convincing evidence that the Judge's appointment to the bench was a factor in the \$216,000 payment made by the County; and the Separation Agreement failed to present a clear and appropriate justification for the payment, which created the appearance that Judge Dawson received a large payment on the eve of taking the bench for no coherent reason, or worse, that he might have agreed to practice law while serving as a judge. As concluded by the Special Committee, Judge Dawson's actions undermined public confidence in the integrity and impartiality of the judiciary in violation of Canon 2A and Judicial-Conduct Rule 4(a)(7).

⁷ Judge Dawson also provided a copy of his annual financial disclosure statement, which reflects his receipt of the \$216,000 payment. No violation of the Judge's financial disclosure obligations is found. He was required to file and update his financial disclosure report in advance of his confirmation hearing, which took place before he entered into the Separation Agreement. *See* Guide to Jud. Policy, Vol. 2, Part D, §§ 210.20, 210.20.10(a). A further update was not required until the filing of his first annual financial disclosure report in May 2022. *Id.* § 210.10.

The Special Committee noted that Judge Dawson was fully cooperative during the investigation of these complaints, acknowledged the harm caused by his actions, and offered an apology. Although the Special Committee concluded that the misconduct in this case was serious because it undermined public confidence in the courts, the Special Committee nevertheless recommended a private rather than a public reprimand based on the absence of any pattern of improper activity and the judge's sincere apology for the harm caused.

“[T]o ensure the effective and expeditious administration of the business of the courts,” we may “take remedial action,” including “censuring or reprimanding the subject judge, either by private communication or by public announcement.” Judicial-Conduct Rule 20(b)(1)(D); *see* 28 U.S.C. § 354(a)(2)(A). In determining whether to impose a private or public reprimand, we consider “the seriousness of the improper activity, the intent of the judge, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system.” Canon 1 cmt.

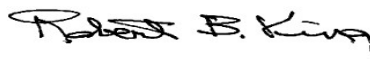
Although we find no wrongful intent or pattern of improper activity on the part of Judge Dawson, we agree with the Special Committee that the misconduct in this case was serious. We further find that the effect of the misconduct on the judicial system was significant. The terms of the Judge's Separation Agreement and the resulting payment were topics of public concern in local newspapers and on social media, clearly indicating that the Judge's actions undermined the public's confidence in the integrity and impartiality of the judiciary. This public concern requires a public response. *See In re Complaints*

Against District Judge Colin S. Bruce, No. 07-18-90053(L) (7th Cir. Jud. Council May 14, 2019) (investigation and discipline made public to restore confidence in the judiciary in the wake of news reports); *see also In re Complaint of Judicial Misconduct*, 751 F.3d 611 (U.S. Jud. Conf. 2014) (imperative of transparency precluded vacating prior misconduct order); *cf.* Judicial-Conduct Rule 23(b)(1) (providing that the existence of misconduct proceedings may be disclosed “when necessary or appropriate to maintain public confidence in the judiciary’s ability to redress misconduct or disability”).

Accordingly, we conclude that the public interest requires transparency and a reprimand in 21-90039 in the form of this public Memorandum and Order. We dismiss No. 21-90119 because that complaint is limited to the allegation that Judge Dawson “potentially violated the restrictions on engaging in outside employment while serving as a federal judge,” and we find that no such violation occurred.

Review of this Memorandum and Order may be sought by filing a petition for review with the Judicial Conference Committee on Judicial Conduct and Disability within 42 days of the date of this order. *See* Judicial-Conduct Rule 22. This Memorandum and Order will be released to the public upon completion of any further review. *See* Judicial-Conduct Rule 24(a).

FOR THE JUDICIAL COUNCIL:



Robert B. King
Circuit Judge⁸

⁸ Acting as Chief Judge pursuant to Judicial-Conduct Rule 25(f).