



U.S. COURT OF APPEALS FOR VETERANS CLAIMS

625 Indiana Avenue, NW, Suite 900
Washington, DC 20004-2950
202-501-5970

Office of the Clerk

March 13, 2024

Mr. Gabe Roth
348 4th Ave, #1007
Brooklyn, NY 11215

RE: Complaint of Judicial Misconduct No. 24-9001A

Dear Mr. Roth:

The Court received your complaint of judicial misconduct against a judge of this Court on February 5, 2024. Chief Judge Bartley has reviewed your complaint pursuant to Rule 4 of the Rules Governing Complaints of Judicial Misconduct and Disability (Rules). A copy of Chief Judge Bartley's order dismissing your complaint and the supporting memorandum are attached.

Pursuant to Rule 5(b), you have the right to petition the Court's Judicial Council for a review of Chief Judge Bartley's determination. Such a petition must be received in this office no later than thirty (30) days after the date of this letter and conform to the other requirements under Rule 6. You may access an electronic version of the Rules at http://www.uscourts.cavc.gov/judicial_misconduct.php.

Sincerely,

/s/ Tiffany M. Wagner
TIFFANY M. WAGNER
Clerk of the Court/Executive Officer

Enclosures:
Order
Supporting Memorandum

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 24-9001A

IN RE: MATTER OF JUDICIAL MISCONDUCT COMPLAINT

ORDER

On consideration of the complaint of judicial misconduct received by email on February 5, 2024, and for the reasons stated in the Supporting Memorandum accompanying this order, it is

ORDERED that the complaint is dismissed pursuant to Rules 4(b)(1)(A) and 4(b)(1)(D) of the Court's Rules Governing Complaints of Judicial Misconduct and Disability.

DATED: March 8, 2024

BY THE COURT:



MARGARET BARTLEY
Chief Judge

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 24-9001A

IN RE: MATTER OF JUDICIAL MISCONDUCT COMPLAINT

SUPPORTING MEMORANDUM

On February 5, 2024, the Court received a complaint of judicial misconduct pursuant to 38 U.S.C. § 7253(g) and the Court's Rules Governing Complaints of Judicial Misconduct and Disability ("Rules"). The Rules allow for complaints against judges "who have 'engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts' or who are 'unable to discharge all the duties of office by reason of mental or physical disability.'" Rule 1(b) (quoting 28 U.S.C. § 351(a)).

The Rules provide several grounds for dismissal of a complaint, including if the Chief Judge finds that "the claimed conduct, even if the claim is true, is not 'conduct prejudicial to the effective and expeditious administration of the business of the courts' and does not indicate a mental or physical disability resulting in inability to discharge the duties of office." Rule 4(b)(1)(A). The Chief Judge may also dismiss a complaint if "a limited inquiry conducted under subsection (a) [of Rule 4] demonstrates that the allegations in the complaint lack any factual foundation or are conclusively refuted by objective evidence." Rule 4(b)(1)(D).

The complainant alleges that the judge's spouse donated to the legal defense fund of a sitting U.S. Senator and that the donation constitutes misconduct on the part of the judge. The complainant also alleges that "the vast majority of married couples share at least some of their finances, so it would be reasonable to presume that the donation had [the judge's] knowledge, if not blessing," but provides no evidence to support this statement.

The donation, which the complainant identified from a publicly available Internal Revenue Service form, is made in the name of one person; neither the name of the judge nor the judge's affiliation with this Court is included in the donation information submitted by the complainant.

A limited inquiry, undertaken pursuant to Rule 4(a), established that the donation was made by the judge's spouse from the spouse's personal checking account. The inquiry also found that the judge did not have control over that account and did not participate in the donation. Further, although the inquiry revealed that the spouse communicated an intent to donate before making the donation, the inquiry also revealed that the judge did not influence the spouse's decision to donate and that the judge informed the spouse that any donation had to be made from the spouse's own funds.

While the Code of Conduct for United States Judges ("Code") prohibits judges from contributing financially to a political organization or candidate, *see* Canon 5A(3), "[t]he Code does not govern the conduct of a judge's spouse." Jud. Conf. of the U.S., Comm. on Codes of

Conduct, *Advisory Opinion No. 53: Political Involvement of a Judge's Spouse* (June 2009) ("*Advisory Opinion 53*"). In fact,

[a] judge's spouse may freely contribute to political campaigns and causes so long as the judge plays no role in the decision to contribute and makes reasonable efforts to ensure that the contribution is perceived as that of the spouse and not the judge, including, but not limited to, requiring that the contribution be made from a separate account over which the judge has no control.

Jud. Conf. of the U.S., Comm. on Codes of Conduct, *Compendium of Selected Opinions* § 5.3(a) (Sept. 2023). In other words, "a judge should, to the extent possible, disassociate himself or herself from the spouse's political involvement." *Advisory Opinion 53*.

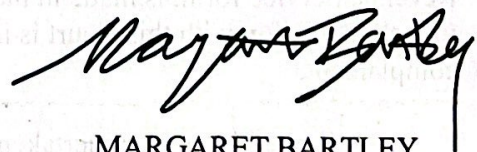
In sum, first, a political donation by a judge's spouse in the spouse's own name does not constitute misconduct on the part of the judge. Thus, this allegation will be dismissed pursuant to Rule 4(b)(1)(A).

Second, to be sure, judges have an ethical responsibility to disassociate themselves from their spouse's political activities. The Rule 4(a) limited inquiry referenced above established that the judge who is the subject of this complaint fulfilled this ethical responsibility. The judge did not influence their spouse's decision and did not participate in the donation. In addition, the judge confirmed with their spouse that any donation the spouse wished to make had to be made with the spouse's own funds. And the limited inquiry confirmed that the donation was made from the spouse's personal checking account, over which the judge had no control. Thus, the speculative allegations that the donation was made with shared funds or with the judge's "blessing" will be dismissed pursuant to Rule 4(b)(1)(D).

Accordingly, pursuant to Rules 4(b)(1)(A) and 4(b)(1)(D), the complaint of judicial misconduct is dismissed.

DATED: March 8, 2024

BY THE COURT:



MARGARET BARTLEY
Chief Judge