SUPREME COURT OF THE UNITED STATES

IN RE COMPLAINT AGAINST JUDGE ACIDRAPS

ON MOTION FOR LEAVE TO FILE JUDICIAL ETHICS COMPLAINT

No. 09–47. Decided July 15, 2020

The motion for leave to file a judicial ethics complaint is denied.

Statement of JUSTICE BUTLER, respecting the denial of leave.

On July 3, a judicial complaint against District Judge AcidRaps (hereinafter "complainant" or "judge") was submitted to the Clerk of the Court, and by him referred to the United States Supreme Court. Jetpackboy (hereinafter "complainant") alleged that the complainant had engaged in *ex parte* communications and threatened the complainant via direct messaging. Furthermore, he contended that the judge erroneously dismissed a tort. Thereafter, the Court was faced with the decision whether to initiate proceedings to evaluate the judge's conduct and determine if punishment was necessary. The Court, inevitably, voted to deny review. Though I recognize this statement does not set precedent that is legally binding in nature, "statements of individual Justices . . . can be particularly helpful in discerning the law" and guiding future judicial officers when faced with similar situations.[1]

I

This Court—functioning as a Court of the Judiciary pursuant to established law—has been entrusted with the ability to "oversee the proper conduct of Judges."[2] Although this Act established a means for complaining about the conduct of judges, this Court has traditionally exercised the

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[1] *Federal Election Comm'n* v. *Raps*, 6 U. S. 42, 45 (2018).

[2] Enhancing the Judiciary Act, Pub. L. No. 67–4, §104(a).

aforementioned power *sua sponte*. Moreover, "petitioner's complaints are generally insufficient to justify such an extraordinary act"[3] such as expulsion or other forms of retribution. Generally, however, this Court will only exercise its fundamental responsibility to investigate complaints and redress the conduct of its own officers—a power profoundly springing from the confidence granted to the courts by our nation's Constitution—so long as three prerequisites are satisfied: "(1) [Congress has] been given sufficient opportunity to act, (2) [Congress] has nevertheless failed to act, and (3) the circumstances of the case are particularly egregious."[4] Considering this, valid complaints against judges and the review of such complaints is uncommon in our nation with there only being a few in the United States Reports. The same holds true in the "real world." The 1987 Annual Report of the Director of the Administrative Office of the United States Courts reported that of the 244 judicial misconduct complaints concluded during the year, 233 were dismissed, two were withdrawn, eight were terminated after appropriate action was taken,[5] and one was referred to the U. S. Judicial Conference. With that in mind, I plainly note: none of these necessary conditions were met, thus warranting our nonintervention in this matter.

A

I reject the complainant's assertion that the complainee engaged in *ex parte* communications and availed himself of threatening language. For context, Judge AcidRaps had messaged the complainant via direct messaging after the

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[3] *Ex parte Haven*, 7 U. S. ___ (2019) (*per curiam*).

[4] *In re Trump*, 6 U. S. ___ (2018). See also *In re Giordano*, 7 U. S. ____ (2019).

[5] Note that the available statistics did not report what the "appropriate action" was. However, this does not have any effect on the purpose for providing these numbers from this report: to exemplify how rarely courts and judicial councils act on judicial misconduct complaints.

conclusion of the case ordering him to pay the opposing party 20,000 dollars per the settlement. Not even considering whether the complainant can oppose a settlement that he agreed upon in writing, he disputed it nonetheless. Following some back-and-forth discussion, the complainant finally paid the opposing party.

Pursuant to the Canon 3A(4) of the Code of Conduct for United States Judges adopted by the U.S. Judicial Conference, "a judge should not initiate, permit, or consider *ex parte* communications or consider other communications concerning a pending or impending matter that are made outside the presence of the parties or their lawyers." Though that may be true, it is important to recognize: there are several exceptions to this rule. Judges may engage in the aforementioned communications so long as it is either authorized by law, when circumstances require it,[6] or with the consent of parties. Succeeding the conclusion of the case, we should not consider a judge's discussion with a party regarding the enforcement of the provisions of a legally-binding settlement to be a violation of the Canons. Though I wish the altercation could have been resolved more civilly and appropriately, nothing about Judge Acid-Raps' conduct warrants our review and punishment thereof.

B

In regard to the complainant's assertion that the judge wrongfully dismissed a civil tort, a judicial misconduct complaint is not the appropriate remedy for reversing an interlocutory order such as that (or any, for that matter). The

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[6]For example, this may pertain to scheduling, administrative, or emergency purposes so long as such communication does not "address substantive matters and the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the *ex parte* communication." See Canon 3A(4) of the Code of Conduct for United States Judges.

purpose of judicial misconduct complaints can simply be derived from its name: to review the conduct and possible ethical or Canon violations of judges, not orders and decisions rendered throughout the execution of a judge's constitutional duties. Generally, they are designed to shed light on a particular judge's conduct that is "prejudicial to the effective and expeditious administration of the business of the courts", or meant to "allege that such judge is unable to discharge all the duties of office by reason of mental or physical disability."[7]

There is nothing this Court can do to grant relief to the complainant through a judicial complaint in this matter, especially considering there are other adequate and appropriate legal remedies at his disposal. These include courses of action such as an interlocutory appeal, or even mandamus if the matter is "an exceptional circumstance of peculiar emergency or public importance."[8] Considering the second allegation of misconduct by Judge AcidRaps is centered around his autonomous decision to dismiss a tort no matter whether "the action he took was in error"[9]—especially considering he was well within his jurisdiction and was not in excess of his constitutional and statutory authority—I can neither conclude that myself nor a reasonable person in possession of all the facts would determine that a judicial complaint against the trial court judge for an interlocutory order is the proper method for the complainant to utilize.

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Complaints of judicial misconduct are scrupulously and prudently designed to only be employed when the conduct of a judge is particularly egregious or improper. Furthermore, they ought to subsist as a last resort when the legis-

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[7]See 28 U. S. C. §351.

[8]*LaBuy* v. *Howes Leather Co.*, 352 U. S. 249, 256 (1957).

[9]*Stump* v. *Sparkman*, 435 U. S. 349, 356 (1978).

lature has been afforded the chance to investigate and review the conduct of the judge in question and have failed to take action. With that in mind, it is in the best interest of the Judiciary for this Court to avoid reviewing and adjudicating judicial complaints in a liberal fashion, and I fervently warn against any other view. As previously mentioned, a brief survey of available statistics and prior cases highlight how uncommon complaints of this nature are, and rightfully so.

Although this may be an isolated example, both myself and the Court frown upon the frequent, inappropriate filing of judicial misconduct complaints nevertheless. Of course, we wholeheartedly recognize: no one—including judicial officers, attorneys, and legal scholars—is perfect. "Being human, lawyers . . . will not always dot every 'i' and cross every 't' in trying to live up to their obligations."[10] Although judges and Justices can sympathize with inexperienced counsel and their submissions,[11] the ever-increasing caseload—perhaps unmannerly—does not care. That is why the Court must not divert precious judge-time and resources from cases and litigants who could have their cases resolved more thoughtfully and expeditiously while, simultaneously, giving newer litigants leeway and flexibility as they attempt to maneuver the rather tricky world of law and legalese.

It is merely my intention and hope that this note will prove to be practical and useful in guiding parties in future scenarios akin to the one we find ourselves in. However, in this specific case, the complainant has not made the requisite showing to establish that this Court's review of Judge

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[10] *Mohasco Corp.* v. *Silver*, 447 U. S. 807, 819 (1980).

[11] This is primarily why the Court has, traditionally, been hesitant and particularly loath to impose sanctions and employ Draconian consequences when faced with newer, more inexperienced litigants who are still learning.

AcidRaps' behavior is warranted, necessary, and the adequate remedy for his grievances.

For the foregoing reasons, I join the Court in denying review of the complaint filed against District Judge AcidRaps.