

Judicial Council of the Second Circuit

COMPLAINT OF JUDICIAL MISCONDUCT OR DISABILITY

To begin the complaint process, complete this form and prepare the brief statement of facts described in item 4 (below). The Rules for Judicial-Conduct and Judicial-Disability Proceedings, adopted by the Judicial Conference of the United States, contain information on what to include in a complaint (Rule 6), where to file a complaint (Rule 7), and other important matters. The Rules are available in federal court clerks' offices, on individual federal courts' websites, and on www.uscourts.gov.

Your complaint (this form and the statement of facts) should be typewritten and must be legible. For the number of copies to file, consult the local rules or clerk's office of the court in which your complaint is required to be filed. Enclose each copy of the complaint in an envelope marked "COMPLAINT OF MISCONDUCT" or "COMPLAINT OF DISABILITY" and submit it to the appropriate clerk of court. **Do not put the name of any judge on the envelope.**

1. Name of Complainant: David Roemer
Contact Address: 345 Webster Ave.
Apt. 4-O
Daytime telephone: (347) 414-2285

2. Name(s) of Judge(s): P. Kevin Castel
Court: U. S. District Court for the Southern District of N. Y.

3. Does this complaint concern the behavior of the judge(s) in a particular lawsuit or lawsuits?

Yes No

If "yes," give the following information about each lawsuit:

Court: U. S. District Court of the Southern District of N.Y.

Case Number: 17-cv-000703-PCK

Docket number of any appeal to the Second__Circuit:17-0818

Are (were) you a party or lawyer in the lawsuit?

Party Lawyer Neither

(Date) 3/14/18

4. Brief Statement of Facts

Judge Castel signed the order dismissing 17-cv-703 on February 23, 2017 (docket no. 13), one day after Andrew W. Schilling requested the dismissal (docket no. 7). The amended complaint was served on Lee C. Bollinger, the President of Columbia University, on 3:58 PM on February 23, 2017 (docket no. 16), one day after Mr. Shilling announced his appearance for Mr. Bollinger (docket no. 5). My allegation is that Judge Castel is deliberately deceiving the federal judiciary of the United States from the Southern District of New York to the Supreme Court of the United States by collaborating with Mr. Schilling's misrepresentation that he represents Mr. Bollinger in this lawsuit.

On September 22, 2016, I sent an email to Mr. Bollinger (docket no. 7, Exhibit B) repeating an offer to give a lesson/lecture on God's existence to the University Chaplain (Jewelnel Davis). This offer included my lesson plan and a link to the article I published in Academia.edu titled, "Why People Think God Caused the Big Bang." The email complained that Diedre Fuchs of Columbia University's Department of Public Safety threatened me with legal action if I contacted any members of the Columbia community with this offer. There was no response from Mr. Bollinger's office other than an acknowledgement of its receipt. There was also no response at all from Ms. Davis other than a telephone call from Ms. Fuchs. However, on October 13, 2016, the General Counsel of Columbia University (Jane Booth) sent me a letter threatening me with legal action if I contacted anyone at Columbia University with my offer. (docket no. 7, Exhibit C)

On February 24, 2017, I sent a letter to Judge Castel with the question: "How do you know Mr. Schilling is representing Lee Bollinger? Mr. Bollinger may claim that Mr. Schilling acted on his behalf without his knowledge." (docket no. 14)

On March 17, 2017, I filed a motion for the following default judgment against Mr. Bollinger: "That Lee Bollinger not cause any civil or criminal legal action to be taken against the plaintiff for offering to give a lecture/lesson on the arguments for God's existence via email, regular mail, or telephone to the following individuals appointed by the University Chaplain of Columbia University: Rev. Doyeon Park, Rabbi Yonah Blum, Rabbitzen Keren Blum, Rabbi Yonah Hain, Rev. Daniel Lee, Rev. Richard Sloan, Dr. Anne Klaeyesen, Bryan Scott, Ashley Byrd, Hon Eng, Monsignor John Paddack, and Eric Lipscomb."

On March 20, 2017, Mr. Schilling wrote a letter to Judge Castel repeating his claim that he represents Mr. Bollinger without offering any supporting document signed by Mr. Bollinger.

In my brief to the Second Circuit filed on March 27, 2017, I argued, "Let's suppose, for the sake of argument, that Mr. Bollinger was aware of the Notice of Appearance. When Mr. Bollinger got the summons and complaint, there are two possible decisions he may have made. He may have decided, like Mr. Schilling and Judge

Castel, that the complaint is frivolous and that Mr. Schilling should represent him and Columbia University. The other possibility is that he read the complaint with its six footnotes and the articles referred to in the footnotes carefully. He realized that indeed no one could learn about the cosmological argument [for God's existence] by reading these entries and decided that the University Chaplain showed poor judgment in declining my offer. Since the complaint only asks for an injunction, Mr. Bollinger decided to let the court issue whatever injunction it deemed just. If this is so, Mr. Schilling is quite wrong to claim he represents Mr. Bollinger."

On June 23, 2017, Mr. Schilling responded to my brief. What follows are excerpts from this brief touching on my accusation against Judge Castel:

"Roemer next filed a motion for a default judgment against defendant Bollinger, but by then that motion was moot because the action had already been dismissed against all defendants."

"On February 24, 2017, before any defendant's time to respond to the Complaint had run, the district court dismissed the action *sua sponte* as frivolous."

"Finally, to the extent Roemer argues that a default judgment should have been entered against defendant Bollinger, that argument too is frivolous. Bollinger timely appeared and defended this action in the district court through counsel. Although Roemer (without any basis) challenges the propriety of that appearance, Roemer's motion for a default judgment was nevertheless meritless because the Court had already dismissed the claims against all defendants (Bollinger included) before Roemer made the motion. Bollinger therefore was not in default at any time."

"Finally, to the extent Roemer challenges the district court's failure to enter a default judgment against Bollinger, that argument too is frivolous. Although the district court did not enter a separate order expressly denying the application for a default judgment, this Court may treat the application as having been implicitly denied, given that entry of default would have been inconsistent with the prior order of dismissal."

"In this case, Bollinger appeared in the action below through counsel (SA 6), and urged the district court to dismiss the Complaint against him (SA 7-9). In accordance with Judge Castel's individual rules, the filing of that letter stayed Bollinger's time to respond to the Complaint until further order of the Court. Before Bollinger's time to respond to the Complaint had expired, the district court entered an order dismissing the action as frivolous. Accordingly, Bollinger did not fail to "plead or otherwise defend" against the action, which had been dismissed, and the district court had no basis to enter a default judgment against him."

When he signed the dismissal, Judge Castel might have thought that Mr. Bollinger did not want me to send emails or letters to the individuals named in my proposed

default judgment. Since Mr. Bollinger is the president of a private organization, he has every legal right to prohibit the use of its email address and mailing addresses for undesirable communications. It is certainly true that the General Counsel of Columbia University (defendant Jane Booth) did not want me to communicate with ministers appointed by the University Minister, however, there is no evidence that Mr. Bollinger and Ms. Davis support the actions taken by Ms. Booth and Ms. Fuchs, other than to remain silent. The only evidence is Mr. Schilling's repeated assertions that he was justified in saying he represented Mr. Bollinger. There is no document signed by Mr. Bollinger or Ms. Davis supporting the threats delivered to me by Ms. Booth and Ms. Fuchs.

On June 23, 2017, I submitted a request for oral argument, not to discuss my brief or the brief submitted by Mr. Schilling, but to explain the connection between my lawsuit and three other lawsuits concerning the First Amendment.

On October 2, 2017, I sent an email to the United States Attorney General telling about my accusation against Judge Castel and the lawsuit. On October 3, 2017, the Second Circuit scheduled the oral argument, which took place on January 18, 2107.

On January 30, 2018, the Second Circuit upheld Judge Castel's dismissal. Concerning my complaint against Judge Castel, the order states:

"And Roemer's conjecture that Bollinger may have 'decided to let the court issue whatever injunction it deemed just' finds no support in the record."

On February 1, 2018, I filed a Petition for Review En Banc with the Second Circuit. My request was denied on March 13, 2018.