



Issue Date: 15 February 2018

CASE No.: 2017-SOX-00055

In the Matter of:

JACK JORDAN,
Complainant,

v.

DYNCORP INTERNATIONAL, LLC., et al.¹
Respondents.

DECISION AND ORDER DISMISSING COMPLAINT & ORDER TO SHOW CAUSE

This case arises under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002 (hereinafter “the Act”), P.L. No. 107-204, as codified as 18 U.S.C. § 1514A, and implemented at 29 C.F.R. Part 1980.

Background and Procedural History

This complaint arises out of ongoing litigation involving Complainant and DynCorp International, LLC, (hereinafter DynCorp) before two other administrative law judges (ALJ): case no. 2015-LDA-00030 (hereinafter “the LDA case”) and case no. 2016-SOX-00042 (hereinafter “the SOX case”). Complainant is an attorney and serves as his spouse’s representative in the LDA case, but he is the complainant in the SOX case. DynCorp is a respondent in each case and is a former employer of Complainant and his spouse. Respondents Balsam and Branciforte represented DynCorp in the LDA case, and are employed by Respondent Littler Mendelson, P.C. Respondents Bresnahan and Ellis represent DynCorp in the SOX case, and are employed by Respondents Vorys, Sater, Seymour, and Pease LLP, and Littler Mendelson, P.C.,

¹ Complainant also identifies the following law firms, attorneys, and administrative law judges as respondents in his request for hearing: Littler Mendelson, P.C.; Ethan Balsam; Jason Branciforte; Edward T. Ellis; Vorys, Sater, Seymour, and Pease LLP; Pamela A. Bresnahan; Honorable Larry Merck; and Honorable Paul Almanza.

respectively. Respondent Judge Merck presided in the LDA case, while Respondent Judge Almanza presides in the SOX case.

In sum, Complainant originally sued DynCorp in the LDA case. He then sued DynCorp in the SOX case and added as respondents the two counsel who had represented DynCorp in the LDA case. In the instant case, Complainant again sues DynCorp and the counsel who represented DynCorp in the LDA case, but now adds as respondents the two counsel who defended DynCorp in the SOX case, the law firms that employ the attorney respondents, as well as the judges who presided over each case.

Complainant now alleges that the instant respondents have harassed and intimidated Complainant during the course of the LDA and SOX cases, purportedly in retaliation for his actions during litigation against DynCorp; specifically, Complainant alleges that DynCorp and its attorneys (hereinafter “Respondent Attorneys”) have violated his rights under SOX by seeking a protective order on the grounds of privilege concerning two emails related to the LDA case that have been repeatedly requested by Complainant, while Judges Almanza and Merck (hereinafter “Respondent Judges”) violated his rights by declining to order the release of the contents of two emails to Complainant.

On July 26, 2017, the Assistant Regional Administrator (hereinafter “the Administrator”) of the Occupational Safety and Health Administration (OSHA) determined that the Respondent Judges were not covered parties under SOX, and the allegations “appear to be duplicative of issues that have been raised and either are currently pending before ALJ Almanza or have, in some instances, already been addressed by the ALJ.” Secretary’s Findings at p.2. Accordingly, the Administrator dismissed the complaint without investigation.²

Complainant objects to the dismissal on three grounds and requests a hearing. Specifically, Complainant asserts the following errors: (1) OSHA dismissed his complaint without investigating it; (2) OSHA did not consider whether Respondents Almanza or Merck “were acting entirely outside their roles as ALJs”; and, in a related vein, (3) “OSHA did not consider whether an ALJ can be an employer’s agent.”

² Unfortunately, the Administrator did not expressly address the legal status of the complaints against remaining respondents in the findings and dismissal. That being noted, I may not remand the matter “for the completion of an investigation or for additional findings on the basis that a determination to dismiss was made in error.” 29 C.F.R. § 1980.109(c). As such, I will dispose of this matter as the facts and circumstances warrant. *See id.*

As noted by the Administrator when dismissing the instant complaint, these allegations appear to be largely duplicative or derivative of issues that have already been raised in litigation before Respondent Judges in their respective cases. If so, the proper forum for review of decisions made in those cases would be the appropriate Review Board rather than via collateral attack upon the ongoing proceedings before another administrative law judge. Moreover, Complainant appears to allege that actions of opposing counsel during litigation and adverse rulings by a presiding judge can, without more, constitute prohibited conduct under the Act that is independently actionable, rather than merely subject to review on appeal. The novelty of this theory, coupled with the danger of duplicative litigation, made the issuance of certain preliminary orders necessary and appropriate in this matter.

Because it appears that Complainant is making a collateral attack upon the actions of opposing counsel and the adverse rulings of the presiding judge in ongoing litigation through the initiation of new litigation rather than through direct or interlocutory appeal, I ordered Complainant to show cause as to why the instant complaint should not be dismissed for failure to state a claim on which relief may be granted. I also ordered Complainant to include in his response to this order any supporting papers such as affidavits, declarations, or other proof necessary to establish any particular facts not already in evidence in the SOX and LDA cases that tend to support the collusion and culpable agency by respondents that has been alleged.

Complainant filed his response with OALJ on October 11, 2017. In this filing Complainant asserted that the undersigned was without authority to issue a show cause order under these circumstances, and, that by doing so, was displaying “bias” and discriminating against him in violation of SOX and the Administrative Procedure Act. *See Complainant’s Response* at 9, 11, 15, and 25-29. Notwithstanding specific direction in the Show Cause Order, Complainant did not include in his Response any supporting papers such as affidavits, declarations, or other proof necessary to establish any particular facts not already in evidence in the SOX and LDA cases that tended to support the collusion and culpable agency by Respondents that has been alleged.

On October 20, 2017, DynCorp timely filed a reply brief urging the complaint be dismissed as an impermissible collateral attack on opposing counsel and the two judges from the LDA and SOX cases. *See Respondent’s Brief* at 7. Counsel for DynCorp argues that Complainant “is attempting to avoid the administrative appeal process established by the Secretary by engaging in serial filings against the lawyers and ALJs who disagree with him.” *Id.* Respondent also urges dismissal because the act of taking adverse advocacy positions or issuing adverse rulings “is not discrimination ‘in the terms and conditions of employment’” under SOX. *Id.* at 8. Finally, DynCorp avers that

the instant litigation should be dismissed because the Respondent Judges enjoy absolute judicial immunity for decisions made during an administrative proceeding, *id.* at 11 (citing *Butz v. Economou*, 438 U.S. 478 (1978)), and are not “employers” as that term is used under SOX.

On November 2, 2017, I conditionally granted a Motion for Limited Intervention filed by the Solicitor of Labor provided that any filing on behalf of the Solicitor included the position of the Secretary of Labor (and authority therefor) as to whether the Respondent Judges are properly subject to suit under 18 U.S.C. § 1514A for actions taken in their official capacities, enjoy absolute immunity from suit stemming from their performance of judicial duties under *Butz*, or are otherwise “shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known,” as provided in *Harlow v. Fitzgerald*, 457 U.S. 800 (1982).

In a timely reply, counsel for the Solicitor agreed with DynCorp that the Respondent Judges enjoy absolute immunity and are not subject to suit under SOX for discovery rulings made in their official capacity. *Solicitor’s Reply* at 6-16. The Solicitor also noted that the Respondent Judges would enjoy qualified immunity as well because Complainant has not alleged sufficient facts showing that either judge violated a constitutional or statutory right that was “clearly established at the time of the challenged conduct.” *Id.* at 17 (citing *Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011)). And even if not immune from suit, the Solicitor proposes that Respondent Judges are neither covered persons under SOX nor agents of DynCorp, and are not therefore proper respondents in this matter.

Findings of Fact

1. I take official notice³ of the following facts:
 - 1.1. Complainant timely filed a request for hearing in this matter.
 - 1.2. At all times relevant to this adjudication, Respondent Judges have been Administrative Law Judges employed by the United States Department of Labor.

³ I may take official notice “of any adjudicative fact or other matter subject to judicial notice.” 29 C.F.R. § 18.84. Such notice is particularly appropriate given the procedural posture of this matter. Any party may file evidence or other documentation to show the contrary of any matter noticed within 14 days of the date of issuance of this Order.

- 1.2.1. Respondent Judge Merck presided over case number 2015-LDA-00030 (the LDA case), in which Complainant represented his spouse who had filed a worker's compensation claim against DynCorp.
- 1.2.2. Respondent Judge Almanza presides over case number 2016-SOX-00042 (the SOX case), in which Complainant has filed in his personal capacity a complaint of unlawful retaliation against DynCorp and Respondent Attorneys Balsam and Branciforte stemming from their actions in the LDA case.
- 1.2.3. The Respondent Judges have made rulings regulating the conduct of discovery and denying Complainant access to the emails at issue in their capacities as presiding judges in their respective cases.
- 1.3. DynCorp was represented in the LDA case by Respondent Attorneys Balsam and Branciforte, who were employed by Respondent Firm Littler Mendelson, P.C.
- 1.4. DynCorp is represented in the SOX case by Respondent Attorney Ellis, who is employed by Respondent Firm Littler Mendelson, P.C., and Respondent Attorney Bresnahan, who is an attorney employed by Respondent Firm Vorys, Sater, Seymour, and Pease LLP.
- 1.5. Respondents Balsam, Branciforte, Bresnahan, and Ellis have advocated positions concerning access to the emails at issue as counsel for DynCorp that were contrary to Complainant's position.
- 1.6. Complainant is an attorney licensed to practice in the State of New York.
- 1.7. Complainant is representing himself in this matter.
- 1.8. Complainant filed his reply to the Order to Show Cause 23 days after the date of issuance of the Order.
- 1.9. Complainant was on notice that failure to comply with the provisions of the Show Cause Order "may result in the imposition of sanctions including, but not limited to, the following: the exclusion of evidence, the dismissal of the claim, the entry of a default judgment, or the removal of the offending representative from the case." Show Cause Order at 3.

2. Complainant has not alleged or otherwise produced any evidence of relevant facts or other actions by Respondents apart from those officially noted above.

Conclusions of Law

1. I have jurisdiction to hear this matter in light of Complainant's timely request. 29 C.F.R. § 1980.106(a).
2. I have the authority to issue all orders "necessary to conduct fair and impartial proceedings, including those described in the Administrative Procedure Act, 5 U.S.C. 556." See 29 C.F.R. § 18.12(b). I may also consider granting summary decision on my own after giving notice to the parties of the apparently undisputed matters and providing an opportunity to respond. *Id.* § 18.72(f)(3). In light of the novel theory of liability advanced by Complainant in this matter and the absence of complete investigation by OSHA, it was necessary and appropriate for the efficient and effective adjudication of this case to order Claimant to show cause why I should not dismiss his complaint outright for failure to state a claim on which relief could be granted. Complainant's assertion to the contrary is without merit.
3. Because Complainant did not file a reply to the Show Cause Order within 21 days of the date of issuance of the Order, he has failed to comply with the Order in a timely fashion and is thereby subject to sanctions such as those identified in the Order. While Complainant is self-represented, he is also a licensed attorney and experienced litigator in administrative adjudications. His tardy filing was not authorized, explained, or excused. As such, it would be appropriate to disregard his untimely filing in this matter. However, in light of the *de minimis* nature of the non-compliance and the absence of demonstrable prejudice to any Respondent resulting from the delay, I decline to impose sanctions on Complainant solely for his tardy filing and will consider the arguments he advances therein.

Judicial Immunity

4. Administrative Law Judges performing adjudicatory functions are absolutely immune from suit consistent with the principles governing immunity for other judges. *Butz v. Economou*, 438 U.S. 480, 511-13 (1978).
5. Applying those principles to the instant facts, an ALJ is absolutely immune from suit for judicial actions over which the ALJ had subject-matter jurisdiction. See *Stump v. Sparkman*, 435 U.S. 351, 355-56 (1978). Stated conversely, an ALJ is subject to suit only for non-judicial actions or other actions undertaken in the "clear absence of all jurisdiction." See *id.* at 357 (citation omitted). To protect the independence of judges,

“the scope of the judge's jurisdiction must be construed broadly where the issue is the immunity of the judge.” *Id.* at 356.

6. Adjudicating motions and regulating discovery are actions normally performed by a judge. See 5 U.S.C. § 556(c)(3) & (9); 29 C.F.R. §§ 18.33 & 18.52; *Schottel v. Young*, 687 F.3d 370, 374 (8th Cir. 2012) (citing *Duvall v. Cnty. of Kitsap*, 260 F.3d 1124, 1133 (9th Cir. 2001) for the proposition that "Ruling on a motion is a normal judicial function[.]").

- 6.1. At a minimum, Complainant is alleging that the decisions by the Respondent Judges in connection with the disputed emails are erroneous and therefore unprotected judicial acts. But, as the Supreme Court has noted, “[i]f judges were personally liable for erroneous decisions, the resulting avalanche of suits, most of them frivolous but vexatious, would provide powerful incentives for judges to avoid rendering decisions likely to provoke such suits. The resulting timidity would be hard to detect or control, and it would manifestly detract from independent and impartial adjudication.” *Forrester v. White*, 484 U.S. 219, 226-27 (1988). As has been ably summarized in another federal opinion, “Immunity will not be forfeited because a judge has committed ‘grave procedural errors,’ or because a judge has conducted a proceeding in an ‘informal and ex parte’ manner. Further, immunity will not be lost merely because the judge's action is ‘unfair’ or controversial.” *Gallas v. Supreme Court*, 211 F.3d 760, 769 (3d Cir. 2000) (citations omitted). Accordingly, the actions by Respondent Judges alleged by Complainant are “judicial actions” even if they are, as alleged by Complainant, erroneous.

- 6.2. Complainant has also alleged bias and collusion on the part of the Respondent Judges in favor of DynCorp. As a threshold matter, the record is barren of specific allegations or evidence of such misconduct other than judicial rulings adverse to Complainant. But even if there were more specific allegations and/or evidence of such misconduct, judicial immunity applies “even when the judge is accused of acting maliciously and corruptly,” as “it ‘is not for the protection or benefit of a malicious or corrupt judge, but for the benefit of the public, whose interest it is that the judges should be at liberty to exercise their functions with independence and without fear of consequences.’” *Pierson v. Ray*, 386 U.S. 547, 554 (1967) (citations omitted). Even assuming there were bias and collusion on the part of Respondent Judges to the detriment of Complainant in connection with the emails at issue, the actions by Respondent Judges alleged by Complainant remain “judicial actions.”

6.3. For these reasons, I conclude that all actions alleged by Complainant to have been committed by the Respondent Judges are “judicial actions” for the purposes of determining whether the Respondent Judges are immune from suit for said actions.

7. Administrative Law Judges have jurisdiction to conduct formal hearings upon request by one or both parties to a claim under the Defense Base Act, see 33 U.S.C. § 919(d); 20 C.F.R. § 702.332, or a complaint under the SOX. 49 U.S.C. § 42121(b)(2)(A); 29 C.F.R. § 1980.107. The regulation of discovery in the hearing process is also within the ambit of the Administrative Law Judge presiding over the hearing. See 29 C.F.R. §§ 18.51-52. In this matter, there is neither allegation nor evidence that either Respondent Judge lacked subject-matter jurisdiction over the matter being adjudicated.

7.1. Complainant does argue that Respondent Judges “were acting entirely outside their roles as ALJs” by denying him access to the emails at issue, and should therefore be subject to suit and damages. However, Complainant’s position is unsupported by legal precedent. In considering the applicability of judicial immunity to putatively *ultra vires* judicial actions, the Supreme Court has long-noted the distinction between the exercise of an “excess of jurisdiction and the clear absence of all jurisdiction over the subject-matter”:

Where there is clearly no jurisdiction over the subject-matter any authority exercised is a usurped authority, and for the exercise of such authority, when the want of jurisdiction is known to the judge, no excuse is permissible. But where jurisdiction over the subject-matter is invested by law in the judge, or in the court which he holds, the manner and extent in which the jurisdiction shall be exercised are generally as much questions for his determination as any other questions involved in the case, although upon the correctness of his determination in these particulars the validity of his judgments may depend.

Bradley v. Fisher, 80 U.S. (13 Wall.) 335, 351-52 (1871). Applied to the instant facts, this standard illuminates the deficiency in Complainant’s assertion: this is not a case in which Respondent Judges have attempted to adjudicate criminal matters or resolve other matters beyond their jurisdiction. See, e.g., *id.* at 352 (“Thus, if a probate court, invested only with authority over wills and the settlement of estates of deceased persons, should proceed to try parties for public offences, jurisdiction over the subject of offences being entirely wanting in the court, and this being necessarily known to its judge, his commission would afford no protection to him in the exercise of the usurped authority.”). To the

contrary, both Respondent Judges were adjudicating matters squarely within the jurisdiction entrusted to them by statute and regulation.

7.2. As such, I conclude that Complainant has not alleged or otherwise established a “clear absence of subject matter jurisdiction” in either matter under consideration by the Respondent Judges.

8. The application of judicial immunity is particularly appropriate for cases in which there are alternative means through which litigants such as Complainant can protect themselves from the consequences of judicial error. In this case, the wrongs alleged by Complainant “are open to correction through ordinary mechanisms of review, which are largely free of the harmful side-effects inevitably associated with exposing judges to personal liability.” *Forrester*, 484 U.S. at 227; 29 C.F.R. § 702.391 (providing for appellate review of ALJ decisions in Defense Base Acts cases); 20 C.F.R. § 1980.110(a) (providing for appellate review of ALJ decisions in SOX cases); see *Butz*, 438 U.S. at 514 (“Those who complain of error in such proceedings must seek agency or judicial review.”).
9. Respondent Judges are therefore entitled to absolute immunity from suit and liability for their judicial acts. See *Butz*, 438 at 514 (“We therefore hold that persons subject to these restraints and performing adjudicatory functions within a federal agency are entitled to absolute immunity from damages liability for their judicial acts.”). To conclude otherwise would allow unsatisfied litigants to hound an ALJ “with litigation charging malice or corruption. Imposing such a burden on judges would contribute not to principled and fearless decision-making but to intimidation.” *Pierson v. Ray*, 386 U.S. 547, 554 (1967).⁴

Sufficiency of Allegations of Adverse Employment Action

10. Regardless of whether the Respondent Judges are entitled to absolute judicial immunity, the issue remains as to whether Complainant has stated a legally sufficient claim under SOX against any of the respondents in this matter. To state a claim and obtain relief under SOX, Complainant must allege and prove that

⁴ As previously noted, counsel for the Solicitor complied with my order to provide the position of the Secretary concerning the applicability of “qualified immunity” to the actions of the Respondent Judges at issue. The Solicitor’s brief acknowledged the possible applicability of qualified immunity to the instant facts, but asserted that Complainant did not allege with sufficient specificity the violation of a clearly-established constitutional or statutory right in this matter. *Solicitor’s Reply* at 17. I agree, and to the extent that Complainant has alleged any basis for error at all, it is grounded in the non-disclosure of the two emails at issue, which I have concluded are judicial acts by Respondent Judges and therefore may not serve as the basis for suit against Respondent Judges. In light of this disposition, further discussion of the applicability of qualified immunity to the instant facts is unnecessary.

respondents are persons covered by SOX and have engaged in discrimination “against an employee in the terms and conditions of employment” because of certain specified protected activity by the employee. 18 U.S.C. § 1514A(a). In sum, Complainant must allege in the complaint (and eventually prove) that his protected activity was a contributing factor in an adverse employment action by a covered person. See 29 C.F.R. § 1980.109(a).

11. Even assuming without deciding that all respondents are “covered persons”⁵ and Complainant is an “employee” of DynCorp for the purposes of SOX,⁶ Complainant has not specifically alleged *any* adverse action by *any* respondent that discriminates against him “in the terms and conditions of employment” as required for liability under SOX. Advocacy efforts by counsel concerning the discoverability of certain pieces of electronic mail and the decisions made by judges consequent to those efforts may have an adverse effect upon Complainant’s litigation posture in a particular case, but they do not, without more, constitute discriminatory conduct against Complainant “in the terms and conditions of employment.” *Cf. Jordan v. Sprint Nextel Corporation*, 3 F. Supp. 3d 917, 931-32 (D. Kan. 2014) (dismissing SOX appeal filed by Complainant because statements by Sprint’s counsel to the SEC were not adverse employment actions).
12. In sum, Complainant does not allege a claim that arises out of his term of employment with DynCorp, and, as such, fails to state a claim against any respondent upon which relief may be granted under SOX. SOX does not empower an aggrieved complainant to mount a collateral attack upon actions of opposing counsel and the adverse rulings of a presiding judge in ongoing litigation through the initiation of new litigation rather than through direct or interlocutory appeal as provided by law and regulation.⁷

⁵ I emphasize that I do not conclude that bare assertions of collusion and bias on the part of a presiding judge are legally sufficient to allege that the judge is an “agent” of another, and as such a “covered person” under SOX. While complaints under SOX are ordinarily not to be scrutinized with the rigor given to ordinary complaints governed by the Federal Rules of Civil Procedure, the instant situation is different in that Complainant was put on notice—first by OSHA, and then by my Order to Show Cause—that his pleadings were deficient, and given an opportunity to supplement his pleadings with additional detail, documentation, or other evidence. Nevertheless, he has persisted with his unsupported allegations that adverse judicial decisions are sufficient to allege that the judicial decision-maker is an agent of a covered person and thereby a covered person himself.

⁶ It is uncontroverted that Complainant was last employed by DynCorp on and before November 7, 2012, but he does not allege retaliation stemming from that term of employment. See *Respondent’s Brief* at 5 n.6.

⁷ That being noted, I reach no conclusions in this matter as to the legal or factual sufficiency of Complainant’s allegations in either the LDA or SOX case. I simply conclude that Complainant has not, in this matter, alleged conduct that is actionable under SOX whether committed by DynCorp, its attorneys, their employers, or the presiding judges in the LDA and SOX cases.

Other Matters

13. Counsel for DynCorp asserts that the complaint against the Respondent Judges in this matter is frivolous. *Respondent's Brief* at 11. Such allegations must not be made lightly, and are taken with utter seriousness by the undersigned.
14. By filing the instant complaint and his response to the Order to Show Cause, Complainant has certified that to the best of his knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, that the following points *inter alia* are true:
 - 14.1. The legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law; and
 - 14.2. The filing is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of the proceedings.
- 29 C.F.R. § 18.35(b). Respondent's assertion calls these certifications into question.
15. The precedent recognizing judicial immunity for Administrative Law Judges is long-standing. See *Butz v. Economou*, 438 U.S. 480, 511-13 (1978).
16. Precedent recognizing judicial immunity in general has even greater longevity. See *Bradley v. Fisher*, 80 U.S. (13 Wall.) 335, 351-52 (1871).
17. Complainant's filings do not expressly address the issue of judicial immunity.
18. Complainant instead argues that judges may be liable to suit and damages for *ultra vires* judicial actions, notwithstanding long-standing precedent to the contrary cited above.
19. Complainant's legal contentions are not warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law.
20. The serial nature of the litigation in this matter and, particularly the addition of counsel from the LDA case as respondents in the SOX case, and the subsequent addition of counsel from the SOX case and the judges from both cases as respondents in the instant case, evidences that Complainant is filing complaints

merely to harass counsel and judges who rule against him and needlessly increase the cost of the proceedings.

21. Improper purpose is further evidenced by the facts that Complainant is an attorney with experience in administrative adjudications whose arguments asserting liability of counsel under SOX have been previously rejected by at least one federal court. See *Jordan v. Sprint Nextel Corporation*, 3 F. Supp. 3d 917, 931-32 (D. Kan. 2014) (dismissing SOX appeal filed by Complainant because statements by Sprint's counsel to the SEC were not adverse employment actions).
22. I may order Complainant to show cause why the conduct specifically described above has not violated 29 C.F.R. § 18.35(b). 29 C.F.R. § 18.35(c)(3).
23. I may order sanctions if, after notice and a reasonable opportunity to respond, I determine Complainant has violated 29 C.F.R. § 18.35(b). *Id.* § 18.35(c)(1). Possible sanctions include, but are not limited to, admonishment, referral of counsel misconduct to the appropriate licensing authority, and, if requested by a respondent, award to the respondent of reasonable attorney fees, not exceeding \$1,000 per respondent. See *id.* §§ 18.35(c)(4) & 1980.109(d)(2).
24. Further inquiry into this matter is justified by the circumstances described above. As such, I will issue all necessary and appropriate orders.

ORDER

1. For the reasons stated above, the Complaint in this matter is hereby **DISMISSED**. I will retain jurisdiction over this matter to address various ancillary issues.
2. Within 21 days of the date of issuance of this Order, Complainant will **SHOW CAUSE** why his conduct in this matter has not violated 29 C.F.R. § 18.35(b).
3. Within 28 days of the date of issuance of this Order, any respondent seeking reasonable attorney fees may file a fee petition with appropriate supporting documentation.

- SIGNATURE ON NEXT PAGE -

SO ORDERED.

WILLIAM T. BARTO
Administrative Law Judge