

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-14-90021

**A Charge of Judicial
Misconduct or Disability**

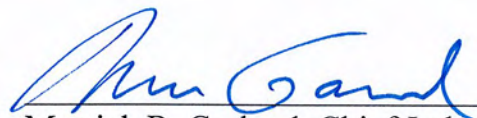
Before: GARLAND, Chief Judge

ORDER

Upon consideration of the complaint herein, filed against a judge of the United States District Court for the District of Columbia, it is

ORDERED that the complaint be dismissed for the reasons stated in the attached Memorandum.

The Clerk is directed to send copies of this Order and accompanying Memorandum to the complainant, the subject judge, and the Judicial Conference Committee on Judicial Conduct and Disability. *See* 28 U.S.C. § 352(b); JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS 11(g)(2).



Merrick B. Garland, Chief Judge

Date: _____

9/12/14

MEMORANDUM

The complainant alleges that a judge of the United States District Court for the District of Columbia has a disability and has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts. The allegations arise out of lawsuits the complainant filed in the district court that were assigned to the subject judge. For the following reasons, the allegations do not warrant action against the judge.

The complainant filed two lawsuits against the Department of Veterans Affairs (VA) under the Privacy Act. The subject judge dismissed one of the cases for failure to complete service of process. A motion to dismiss was pending in the second case. The complainant then filed a judicial misconduct complaint against the judge based on actions the judge took in those two lawsuits. The judicial misconduct complaint was dismissed on the grounds that intervening events made action on some of the allegations unnecessary and that the remaining allegations lacked evidence of wrongdoing. The complainant then filed a third lawsuit against eleven newspapers, alleging that they had unlawfully failed to publish stories about the first two lawsuits. The third lawsuit was also assigned to the subject judge, who dismissed it without prejudice for failure to complete service of process.

The complainant has now filed a second misconduct complaint against the subject judge, alleging that he “has a ‘disability.’” Because this aspect of the complaint proffers no evidence of a disability, it “is based on allegations lacking sufficient evidence to raise

an inference that misconduct has occurred” and “must be dismissed.” JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS 11(c)(1)(D); *see* 28 U.S.C. § 352(b)(1)(A)(iii) .

The complainant also asserts that the judge “is allowing an attorney . . . to have complete control and authority over the court’s case file, over my other two civil actions and to commit serious crimes against me inside and outside of the court.” The complainant further alleges that the judge “conspired with VA and federal attorneys to deny me the right to receive medical treatment, to scheme to dismiss my claims, to allow the VA attorneys to commit vicious acts of atrocities and terrorization against me, and to deny me all Constitutional and Human Rights.” Because these allegations are unsupported, this aspect of the complaint also “lack[s] sufficient evidence to raise an inference that misconduct has occurred” and must be dismissed. JUDICIAL-CONDUCT RULE 11(c)(1)(D); 28 U.S.C. § 352(b)(1)(A)(iii).

Finally, the complainant alleges that the judge has a “conflict of interest” and hence should be recused in the third lawsuit against the newspapers. The gravamen of the allegation appears to be that, because the third lawsuit is about the failure to publish stories about the first two, and because the judge conspired against him in those two cases, the judge has a conflict of interest that required sua sponte recusal. But a “failure to recuse may constitute misconduct only if the judge failed to recuse for an improper purpose,” *In re Judicial Misconduct*, 605 F.3d 1060, 1062 (9th Cir. 2010), and there is no

evidence of an improper purpose here. As noted above, the complainant has proffered no evidence that the judge unlawfully conspired against her. As a consequence, her complaint is essentially a challenge to the merits of the judge's decisions in the two lawsuits, and such a challenge does not constitute cognizable misconduct. JUDICIAL-CONDUCT RULE 3(h)(3)(A); see 28 U.S.C. § 352(b)(1)(A)(ii). Under these circumstances, the judge's impartiality in the third proceeding cannot "reasonably be questioned." CODE OF CONDUCT FOR UNITED STATES JUDGES, CANON 3(C)(1). s 11(c)(1)(B). Accordingly, this aspect of the complaint must also be dismissed.¹

¹ Pursuant to 28 U.S.C. § 352(c) and JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL -DISABILITY PROCEEDINGS 18(a), the complainant may file a petition for review by the Judicial Council for the District of Columbia Circuit. Any petition must be filed in the Office of the Clerk of the Court of Appeals within 35 days of the date of the Clerk's letter transmitting the dismissal Order and this Memorandum. *Id.* R. 18(b).