

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-14-90028

A Charge of Judicial Misconduct or Disability

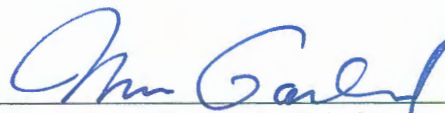
Before: GARLAND, Chief Judge

ORDER

Upon consideration of the complaint described herein, filed against a judge in this Circuit, it is

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

The Circuit Executive 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: 12/17/14

MEMORANDUM

The complainant alleges that a judge in this Circuit engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts. The allegations arise out of a lawsuit that was assigned to the subject judge. For the following reasons, the allegations do not warrant action against the judge.

The complainant sued a government agency and its chair, asserting that they had breached a collective bargaining agreement and violated her constitutional rights. The subject judge dismissed with prejudice the complainant's claim regarding breach of the collective bargaining agreement for lack of subject matter jurisdiction, on the ground that the exclusive remedial scheme of the Civil Service Reform Act provides for judicial review only in the appropriate court of appeals, not in a district court. The judge dismissed without prejudice the remaining counts alleging constitutional violations on the ground that the complainant was required to pursue her available remedies for unfair labor practice claims under the Civil Service Reform Act before she could bring a civil complaint based on the same facts. The complainant appealed, and the Court of Appeals summarily affirmed. The complainant then filed the instant judicial misconduct complaint against the judge.

Among other allegations, the complainant suggests that the judge demonstrated a lack of impartiality because he "litigated against Complainant on behalf of the Defendant[s]" by "engaging in a series of questions that resulted in the Defendant[s] recanting their original position," and because he "took the time to find case law

[supporting] the Defendant[s]” that they had not themselves found. The former refers to an on-the-record colloquy in which the judge tried to determine whether the complainant had available remedies for unfair labor practices, and whether if he dismissed the complaint for failure to exhaust those remedies, the defendants would simply turn around and argue that she had no such remedies. The latter refers to the judge’s effort to examine the case law to determine whether the court had subject matter jurisdiction. Neither demonstrates a lack of judicial impartiality and, accordingly, this contention “is based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred.” JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS, JUDICIAL-CONDUCT RULE 11(c)(1)(D); *see* 28 U.S.C. § 352(b)(1)(A)(iii).

The complainant also alleges that the judge improperly “invalidated the case when he used inapplicable case law to dismiss the Complaint,” and that he cited cases that “did not support his ruling.” She further alleges that “[t]he judge’s refusal to allow the case to go to trial” without exhausting administrative remedies “constitutes a gross abuse of discretion as well as failure to take into consideration the material facts and law present in this situation.” Similarly, she charges that the judge violated her right to due process and to a jury trial based on the “technicality” of a failure to exhaust. All of these allegations are “directly related to the merits of a decision or procedural ruling” and therefore do not constitute “[c]ognizable misconduct.” JUDICIAL-CONDUCT RULE 3(h)(3)(A).

For the foregoing reasons, the complaint “must be dismissed,” JUDICIAL-CONDUCT RULE 11(c)(1)(B), (D). *See* 28 U.S.C. § 352(b)(1)(A)(ii), (iii).¹

¹ Pursuant to 28 U.S.C. § 352(c) and Judicial-Conduct Rule 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 Circuit Executive for the D.C. Circuit within 35 days of the date of the Circuit Executive’s letter transmitting the dismissal Order and this Memorandum. JUDICIAL-CONDUCT RULE 18(b).