

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-15-90021

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 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: 10/9/15

MEMORANDUM

The complainant has filed a complaint of judicial misconduct against a judge of the United States District Court for the District of Columbia. For the following reasons, the misconduct complaint will be dismissed.

The complainant has filed three civil actions in the district court that have been assigned to the subject judge. After the judge dismissed the complainant's first case for lack of jurisdiction, the complainant filed a misconduct complaint against him. On February 2, 2015, that misconduct complaint was dismissed. Thereafter, the complainant filed two more civil actions in the district court, which were also assigned to the subject judge. The judge denied the complainant's motions to recuse him in those two cases. One of these cases remains pending in the district court; the other has been dismissed for failure to state a claim upon which relief can be granted. The instant misconduct complaint raises allegations related to all three of the civil actions.

With respect to the first civil action, the complainant alleges -- as she did in her first misconduct complaint -- that the subject judge discriminated against her because of "race, sex, or being a pro se litigant." As with her first misconduct complaint, however, this element of the instant complaint lacks "sufficient evidence to raise an inference that misconduct has occurred." JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS, RULE 11(c)(1)(D). The complainant alleges that "[i]t is clear by [the judge's] many legal errors that he was bias[ed] against the Plaintiff." The "only logical reason why [the judge] dismiss[ed] this case," she alleges, "is his bias

against women, blacks and/or pro se litigants.” Allegations of legal error, however, are “directly related to the merits of a decision or procedural ruling” and do not constitute “[c]ognizable misconduct.” JUDICIAL-CONDUCT RULE 3(h)(3)(A). Such allegations alone are insufficient to raise an inference of misconduct and, accordingly, that element of the complaint must be dismissed. JUDICIAL-CONDUCT RULE 11(c)(1)(D).

With respect to the second and third civil actions, the complainant alleges that the subject judge had “refuse[d] to rule on pending Motions” for ten months. “This proves,” she contends, that the judge “deliberately violated [her] personal liberties.” The Rules for Judicial-Conduct Proceedings expressly provide that “[c]ognizable misconduct does not include . . . an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.” JUDICIAL-CONDUCT RULE 3(h)(3)(B). The complainant does not allege that the judge has habitually delayed in a significant number of unrelated cases.

The complainant does allege, however, that the ten-month delay “also proves [the subject judge] is discriminating against [the complainant], either because [she is] female, African American or a pro se litigant.” But delay alone is insufficient “to raise an inference that misconduct has occurred.” JUDICIAL-CONDUCT RULE 11(c)(1)(D). Rather, “[s]uch an allegation may be said to challenge the correctness of an official action of the judge -- in other words, assigning a low priority to deciding the particular case.”

JUDICIAL-CONDUCT RULE 3, Commentary. It is therefore “excluded as merits-related” from the category of cognizable misconduct, and this element of the complaint also “must be dismissed.” JUDICIAL-CONDUCT RULE 11(c)(1)(B).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).