

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-15-90022

A Charge of Judicial Misconduct or Disability

Before: GARLAND, *Chief Judge*.

ORDER

Upon consideration of the complaint described 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 brought a Freedom of Information Act (FOIA) case against several government agencies in the United States District Court. The case is assigned to the subject judge. The instant misconduct complaint concerns a number of rulings the judge has issued in the course of the litigation. The case remains pending in the district court, although proceedings have been largely stayed pending resolution of an interlocutory appeal that the complainant filed regarding one of the judge's rulings.

The complainant, who is proceeding pro se, filed a motion for permission to participate in electronic case filing with respect to his FOIA case. The subject judge denied the motion, without prejudice to reconsideration, on the ground (among others) that the complainant had not "fully complied with Local Rule 5.4 by 'confirming the capacity to . . . receive filings electronically on a regular basis[.]' LCvR 5.4(b)(2)." In his misconduct complaint, the complainant objects to this ruling on the ground that "previous courts allowed" him to file electronically. Because this objection "is directly related to the merits of a decision or procedural ruling," it does not constitute cognizable misconduct and this aspect of the complaint must be dismissed. JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS, RULES 3(h)(3)(A), 11(c)(1)(D).

The complainant also alleges that the subject judge denied him due process of law by granting certain motions without waiting for a response. It appears that some of the motions to which the complainant refers were his own motions, as to which a response would ordinarily come from the defendants rather than the plaintiff. The judge did, however, grant two defendants' motions without awaiting a response: a motion for a one-week extension to answer the complaint, and a motion for a stay of the complainant's discovery requests pending further order of the court. As to the latter, the judge held that district court case law requires that discovery in FOIA cases not proceed unless and until authorized by the court. That ruling is the subject of the complainant's pending interlocutory appeal to the United States Court of Appeals for the District of Columbia Circuit. Once again, because the complainant's challenges to all of these grants are "directly related to the merits of [the judge's] decision[s] or procedural ruling[s]," they do not constitute cognizable misconduct and this aspect of the complaint must also be dismissed. JUDICIAL-CONDUCT RULES 3(h)(3)(A), 11(c)(1)(D); *see* 28 U.S.C. § 352(b)(1)(A)(ii).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).