

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-16-90001

A CHARGE OF JUDICIAL
MISCONDUCT OR DISABILITY

Before: HENDERSON, *Circuit 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. See 28 U.S.C. § 352(b)(1)(A)(ii); JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS 11(c)(1)(B).

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).

KLH

Karen LeCraft Henderson, Circuit Judge
District of Columbia Circuit

Date: 4/22/2016

* Acting pursuant to Rule 25(f) of the RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS.

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 filed a civil action in the District of Columbia Superior Court that was removed to the district court and assigned to the subject judge. One of the judge's law clerks was conflicted out of participating in the case because of her connections with the law firm that was acting as defense counsel in the case.

After the judge issued orders resolving various discovery motions, the law clerk communicated with attorneys at the law firm about the case. When the judge learned of these communications, he scheduled an emergency conference with the parties. During the conference, the complainant orally moved the judge to recuse himself from the case, to stay the case pending briefing on the recusal issue, and to vacate the discovery rulings. The judge denied the motion to vacate and the motion to stay, but directed the complainant to file a motion to recuse, if she so desired.

The complainant subsequently filed a motion to recuse and a request for additional discovery on the recusal issue, both of which the judge denied. Shortly thereafter, the case was voluntarily dismissed with prejudice.

The complainant has now filed a judicial misconduct complaint against the subject judge, alleging there was an abuse of judicial power and the judge ultimately denied her right to a fair trial. Specifically, the complainant alleges that the judge improperly denied disclosure of law clerk's communications and of evidence of her connections with the law firm. She also challenges the judge's determination regarding

the extent of the law clerk's involvement in the case. The complainant alleges that the judge was not impartial, as demonstrated by the fact that he treated the defendant more favorably than her.

First, it appears the complaint is really challenging the judge's failure to recuse. Allegations that a judge failed to recuse are generally dismissed as merits related. See JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS 3(h)(3)(A) ("An allegation that calls into question the correctness of a judge's ruling, including a failure to recuse, without more, is merits related."). "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). The complainant, however, has failed to provide any evidence that that happened in this case. As the judge noted in the memorandum opinion denying the motion for recusal, considering the totality of the circumstances, his impartiality could not be called into question. As evidence of the judge's partiality, the complainant noted that "he put on the record a minor number error filed by a paralegal at the same time, he provided professional courtesy when the defense forgot to file important documents." She also asserts that the judge "sealed the defendant's files but not the plaintiff's." Even assuming these statements are true, they do not demonstrate that the judge was biased, but simply that he ruled against the complainant. Thus, because these allegations are "directly related to the merits of a decision or procedural ruling," they must be dismissed. See JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS 11(c)(1)(B).

The complainant also asserts that the judge improperly denied her disclosure

request and improperly determined the extent of the law clerk's involvement in the case. These allegations are "directly related to the merits" of the district court's decisions denying the complainant's request for discovery and the motion to recuse and therefore do not constitute "cognizable misconduct." JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS 3(h)(3)(A). Accordingly, this part of the judicial misconduct complaint must also be dismissed. JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS 11(c)(1)(B); see 28 U.S.C. § 352(b)(1)(A)(ii).¹

¹ Pursuant to 28 U.S.C. § 352(c) and JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL -DISABILITY PROCEEDINGS 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 42 days of the date of the dismissal order. *Id.* Rule 18(b).