

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-17-90017

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: 1/10/18

MEMORANDUM

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

The complainant is an attorney who filed a lawsuit in the United States District Court for the Southern District of Texas, alleging employment discrimination by the U.S. Department of Justice. At the complainant's request, a district judge in that district entered a minute order stating that "Plaintiff's husband" -- also an attorney -- "is allowed to argue motions, but will not be considered Plaintiff's counsel." Thereafter, the Texas district judge granted the government's motion to transfer the case to the United States District Court for the District of Columbia, where the case was assigned to the subject judge.

The subject judge then entered her own order, stating (in part) that "[t]he portion of the Minute Entry for proceedings held before [the Texas district judge] . . . permitting plaintiff's husband to argue motions is also VACATED without prejudice." Thereafter, the subject judge issued a minute order. That order provided, in part, as follows:

The Court has [two of plaintiff's] motions under advisement and will schedule hearings on these and any other motions if and when it deems it necessary or appropriate to do so. Plaintiff may include a request for oral hearing in any other motion filed with the Court, but she need not, and the Court would strongly prefer if she does not, file any separate motions for hearings.

Approximately two months later, following the disposition of several motions and the issuance of a revised scheduling order, the complainant filed a motion for voluntary dismissal of her case, which the judge granted.

The complainant has now filed a judicial misconduct complaint, alleging that the judge deprived her of her right to privately retained counsel of her choice, without notice or an opportunity to be heard. While acknowledging that the judge vacated “without prejudice” the portion of the Texas district court’s order permitting her husband to argue motions, the complainant maintains that this language was “illusory” because of the difficulty of challenging the ruling “from a 3,000 mile round trip away” and because “she was deprived of her counsel” in the interim. The complainant also asserts that the judge’s second minute order put her in a “double-bind,” apparently interpreting the second sentence of the above indented quotation as indicating that the Court would strongly prefer that plaintiff not request an oral hearing on any other motion.

As a preliminary matter, it should be noted that the judge did not bar the complainant from filing a new motion requesting that the court permit her husband to argue. Whatever practical difficulties filing such a motion may have entailed, there is no evidence that the judge’s statement that the vacation of the previous judge’s ruling was “without prejudice” meant anything other than that. Nor is it clear that the subject judge meant to dissuade the complainant from requesting an oral hearing on such a motion. The

second sentence of the indented quotation appears merely to state the judge's preference that the complainant not file a "separate" motion for an oral hearing -- that is, separate from an underlying motion (e.g., a motion to permit her husband to argue) -- while expressly permitting her to "include" a request for oral hearing in any other motion filed with the court.

In any event, the gravamen of the complainant's misconduct complaint is that the subject judge "exceeded her authority in *sua sponte* vacating [the Texas district judge's] order, and vacating without notice to Plaintiff and genuine opportunity to be heard or a genuine opportunity to seek hearing." That allegation is "directly related to the merits" of the judge's procedural rulings; accordingly, it does not constitute "cognizable misconduct" under the Judicial-Conduct Rules and must be dismissed. JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS, RULES 3(h)(3)(A), 11(c)(1)(B); *see* 28 U.S.C. § 352(b)(1)(A)(ii).¹

¹Pursuant 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 42 days after the date of the dismissal order. JUDICIAL-CONDUCT RULE 18(b).