The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of **Judicial Council Complaint No. DC-17-90018**

A Charge of Judicial Misconduct or Disability

Before: GARLAND, *Chief Judge*.

ORDER

Upon consideration of the complaint herein, and the supplement thereto, 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: 11/9/18

No. DC-17-90018

MEMORANDUM

The complainant has filed a complaint of judicial misconduct, and a supplement thereto, against a judge of the United States District Court for the District of Columbia. The complainant, an attorney, alleges that the judge's rulings in two cases pending before her "can only be explained by a strong prejudice and animus" against the complainant, his clients, and his political views.

As evidence of the subject judge's prejudice against the complainant and his political views, he notes that "this is not the first Complaint that [he] has had to file against [the subject judge] for what appears to be her strong personal animus towards [him] and [his] political beliefs." Indeed, the complainant has previously filed three complaints raising such allegations. But all three were dismissed as lacking sufficient evidence by the Chief Judge or Acting Chief Judge at the time, *see* No. DC 15-90010 (2016); No. DC-14-90017 (2014); No. DC-11-90007 (2011), and they do not provide evidence of prejudice for this complaint. Accordingly, it is necessary to turn to the "two new matters" the complainant specifically cites in the instant misconduct complaint.

I

In the first case, the complainant represents an organization that filed a Freedom of Information Act (FOIA) action to compel the government to release documents pertaining to the then-ongoing criminal trial of one of the complainant's clients in another district. The FBI responded that there were over 250,000 pages of documents responsive to the

FOIA request and estimated that it would take "at least 500 months to complete its entire production of responsive documents." The FBI further stated that it was willing to consider and apply reasonable limitations on the scope of the request. The plaintiff organization responded that the materials had already been culled as part of the criminal investigation, and that therefore the government's response was a "disingenuous, dishonest delay tactic[]."

In a June 2017 order, the subject judge determined that the plaintiff organization had failed to "furnish[] the Court with any reason, based in fact or law, for expediting the production of documents beyond the schedule proposed by the [government]." The judge stated, however, that she was "amenable to receiving reasonable proposals from [the plaintiff organization] to expedite the production of responsive materials (e.g., by limiting the scope of its requests)." The plaintiff then filed a motion for reconsideration of the June 2017 order. The judge directed the parties to file a status report after conferring, and said she would consider modifications to the production schedule upon receipt of the parties' proposals for prioritizing the release of certain documents. She then denied the motion for reconsideration, as well as the plaintiff's motion for sanctions and attorney's fees for the government's alleged "bad faith" in proposing the release schedule, finding that the schedule was not proposed in bad faith because it was based on the breadth of the request.

In the plaintiff organization's subsequent status report, it requested that the court either order immediate production of the responsive documentation or allow it to take immediate discovery to determine whether the government had in fact complied in good faith. The organization stressed that urgency was required because its client was "facing imminent threat to his life and loss of substantial due process rights." The judge found that the plaintiff organization was not a party to the criminal case and further held that discovery was unwarranted because she had previously determined that there was no evidence of bad faith.

The complainant then filed this judicial misconduct complaint, asserting that the subject judge had "allowed her political partisanship and personal animus against [him] and his clients to influence her numerous rulings." The complaint alleges that the judge is "'running interference' for [the government] and the prosecuting attorneys in the [criminal] trial." It goes on to state that the judge was appointed by President Clinton and served as an "Obama loyalist from the bench." As evidence of the judge's alleged bias and personal animus, the complainant asserts that the judge allowed the government "to stonewall production of documents," "'rubber stamp[ed]'" the government's production proposal, prevented him from providing a reason for expedition by denying discovery, and failed to allow the parties an opportunity to argue the merits of their positions in person.

The complaint proffers no evidence of the judge's alleged bias beyond the fact that the judge was appointed by a particular President and that the complainant believes the judge wrongly ruled against his client's efforts to expedite production of the requested documents. But bias cannot be demonstrated based only on a judge's "alleged loyalty to those who selected, confirmed and appointed her." *Karim-Panahi v. U.S. Congress*, 105 Fed. Appx. 270, 274 (D.C. Cir. 2004). Such evidence is insufficient "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). Nor can bias be shown by allegations challenging a judge's orders because allegations that are "directly related to the merits of a decision or procedural ruling" do not constitute "[c]ognizable misconduct." JUDICIAL-CONDUCT RULE 3(A). Accordingly, the part of the complaint referring to the first case must be dismissed. JUDICIAL-CONDUCT RULES 11(c)(1)(B), (D); *see* 28 U.S.C. § 352(b)(1)(A)(ii), (iii).

II

In the second case, the complainant filed suit against his former employer for breach of contract. In February 2017, the defendant employer filed a motion to dismiss. In July 2017, the complainant filed a motion for entry of default, asserting that the judge had denied the defendant's motion to dismiss and that the defendant was therefore in default for failing to answer the complaint. The judge denied the motion for default, stating that she had not denied the defendant's motion to dismiss. Rather, the judge said,

the complainant had misconstrued oral statements the judge had made in pretrial conferences in a related matter. In those statements, the judge said, she merely gave her initial reaction to the motion to dismiss, while indicating that any final ruling would be forthcoming in the form of a written order.

The complainant now asserts that the subject judge evidenced personal animus towards him by delaying consideration of the defendant's motion to dismiss for four months. This, he argues, prevented him from conducting discovery and kept the case from proceeding expeditiously. But "a complaint of delay in a single case is excluded [from the definition of judicial misconduct] as merits-related." JUDICIAL-CONDUCT RULE 3(h)(3)(B), commentary. Taking four months to resolve a motion to dismiss does not, by itself, raise an inference of bias or improper motive. Accordingly, this part of the complaint must also be dismissed. JUDICIAL-CONDUCT RULES 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 42 days after the date of the dismissal order. JUDICIAL-CONDUCT RULE 18(b).