

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-17-90029

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: 1/11/18

MEMORANDUM

The complainant 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 and his wife filed a lawsuit against the United States under the Federal Tort Claims Act, 28 U.S.C. § 1346, alleging improper actions by Federal Deposit Insurance Corporation employees that they believed ultimately led to their house being foreclosed. The subject judge granted the government's motion to dismiss, finding that the claims were barred by both sovereign immunity and the Act's statute of limitations. The complainants filed a motion for reconsideration, which the judge denied. The complainant then filed the instant misconduct complaint, alleging that "the Orders are shown to be conduct on the part of the Judge, in collusion with our opposing Counsel, to violate and did violate our right of substantive and procedural due process, as well as our right to equal protection of law."

One of the contentions underlying the complainant's allegation is that the subject judge wrongly dismissed the couple's lawsuit without recognizing that it was "brought pursuant to the Federal Tort Claims Act, but also as provided . . . under the Financial Institutions Reform Recovery and Enforcement Act." He further contends that the judge failed to recognize that he and his wife did in fact "exhaust[] our administrative remedies," and unfairly said that they "had not been timely in recasting [their] complaint."

These contentions are “directly related to the merits” of the judge’s orders dismissing the action and denying reconsideration. Accordingly, this part of the complaint 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).

The complaint also contends that the judge’s characterization of the complainant and his wife as “frequent filer[s]” demonstrates that the judge was prejudiced against them and their case. The judge made this characterization in the context of noting that the plaintiffs had previously brought four related cases in another jurisdiction, “culminating in the U.S. District Court there declaring them vexatious litigants.” It does not reflect “the sort of ‘deep-seated and unequivocal antagonism’ that may constitute misconduct.” *In re Complaint of Doe*, 640 F.3d 861, 863 (8th Cir. Jud. Council 2011) (quoting *Liteky v. United States*, 510 U.S. 540, 556 (1994)); *see Liteky*, 510 U.S. at 555 (“[J]udicial remarks during the course of [litigation] that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge.”).

Finally, the complainant’s contention that the judge acted “in collusion with our opposing Counsel” appears to be based on the fact that the judge accepted “the arguments made by the offending dismissal motion” of said counsel. This contention, too, “lack[s]

sufficient evidence to raise an inference that misconduct has occurred” and must be dismissed. JUDICIAL-CONDUCT RULE 11(c)(1)(D); *see* 28 U.S.C. § 352(b)(1)(A)(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).