

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-19-90031

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 (2019), RULE 11(g)(2).



Merrick B. Garland, Chief Judge

Date: 2/5/20

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's misconduct complaint arises out of a lawsuit he filed in the district court, which was assigned to the subject judge for adjudication. The complainant is a former teacher, and a member of a teachers' union, who was dismissed from his teaching position. He sought recourse for his dismissal through nine different legal actions in three different fora. In the complainant's most recent suit, his sixth in the district court, he alleged (*inter alia*) that the teachers' union, and specifically the union president, failed to adequately represent him in challenging his termination. The union president moved to dismiss the suit on the grounds of *res judicata*, lack of jurisdiction, and failure to state a claim. She also asked the subject judge to enjoin the complainant from filing similar lawsuits in the future.

The subject judge granted the motion to dismiss, noting that five previous decisions in the district court explained that the court lacked jurisdiction over the complainant's duty of fair representation claim. The court also found that the complainant's constitutional due process and District of Columbia Human Rights Act claim "fail[ed] to 'state a claim to relief that is plausible on its face.'" Finally, while "recogniz[ing] that a pre-filing injunction is an extraordinary remedy," the judge noted

that, “once it is clear that a plaintiff will not relent, despite repeated admonitions that his claims lack legal merit, a defendant should not be left without recourse.” For that reason, the subject judge issued a pre-filing injunction requiring the complainant to obtain leave of the court before filing any future suit based on the union’s alleged failure to represent him.

The complainant has now filed a judicial misconduct complaint against the subject judge. The complainant challenges the judge’s “unprofessional decision making,” asserting that the injunction “punished and stopped [him] from ever reaching or grasping the Due Process . . . owed him.” The complainant’s attack on the judge’s orders dismissing the case and enjoining him from filing additional suits “calls into question the correctness of [the] judge’s ruling[s].” JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS (2019), RULE 4(b)(1). Such allegations do not constitute “[c]ognizable misconduct” under the Judicial-Conduct Proceedings Rules or the applicable statute, *id.*; *see* 28 U.S.C. § 352(b)(1)(A)(ii), and therefore will be dismissed, JUDICIAL-CONDUCT PROCEEDINGS RULE 11(c)(1)(B); *see* 28 U.S.C. § 352(b)(1)(A)(ii).

The complainant further alleges that the subject judge is “discriminating against [him],” “has presented an unprofessional and hateful attitude toward [him],” and “has issues of collusion, corruption and criminal tort.” These allegations do not cite, identify, or reference any evidence to support those claims. Nor can bias be shown merely by

“call[ing] into question the merits” of the judge’s decisions. JUDICIAL-CONDUCT PROCEEDINGS RULE 4(b)(1).

Accordingly, because the misconduct complaint “is directly related to the merits of a decision or procedural ruling” and “is based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred,” it will be dismissed. JUDICIAL-CONDUCT PROCEEDINGS RULE 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 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 after the date of the dismissal order. JUDICIAL-CONDUCT PROCEEDINGS RULE 18(b).