

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-20-90001

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 filed a civil lawsuit to which the subject judge was assigned. The suit challenged an order of the Merit Systems Protection Board (MSPB) sustaining the complainant's discharge from a government agency. While the government's motion for summary judgment was pending, the complainant moved for an emergency telephone conference with the court concerning alleged fraud in the underlying investigation and reporting that was used to support his termination. The subject judge granted the motion, heard arguments from both parties about the underlying report, and received supplemental briefs. The judge then granted the government's motion for summary judgment, finding that the complainant's allegations of fraud did not cause it to question the MSPB's decision and did not affect the merits.

The complainant has now filed this judicial misconduct complaint against the subject judge. The complainant alleges that the judge assisted the defendants in the underlying case in covering up the agency's misconduct. He also alleges that he "believe[s] [he] was treated unfairly . . . by [the subject judge]," as evidenced by the fact that she "arbitrarily" denied his request to review the original report at issue in the underlying case. He further states that, "I can only assume that my *pro se* status and the

tone and wording of my grievances caused the Court to take advantage of me and retaliate against me.” The complainant also challenges the judge’s failure to “separately address the pleadings about the discrepancies between pages,” alleging that she “pieced together an opinion and order that made little sense to me” and that an “unauthenticated memorandum should have been disqualified and not deemed as evidence.” Finally, the complainant states that he is aware of the judge’s upcoming retirement for health reasons and “that the same health reasons more than likely affected [the subject judge’s] ability to rule fairly in my proceedings.”

To the extent the complainant is alleging that the judge improperly granted summary judgment, issued an opinion that “made little sense,” and failed to take into account evidence, those allegations “call[] 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).

The complainant’s additional allegations that the judge conspired with the defendants, took advantage of him, and retaliated against him do not cite, identify, or reference any evidence to support those allegations. Hence, those “allegations lack[] evidence to raise an inference that misconduct has occurred.” JUDICIAL-CONDUCT PROCEEDINGS RULE 4(b)(1).

Finally, to the extent the complainant is alleging that the judge suffered a disability as a result of health issues, the complaint fails to detail any evidence of how any alleged impairment “render[ed] the judge unable to discharge the duties of the particular judicial office.” JUDICIAL-CONDUCT PROCEEDINGS RULE 4(c).

Accordingly, because the misconduct complaint “is directly related to the merits of a decision or procedural ruling,” and is further “based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred or that a disability exists,” 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).