

JUDICIAL COUNCIL  
OF THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of  
A Complaint of Judicial  
Misconduct or Disability

Complaint No. DC-20-90010

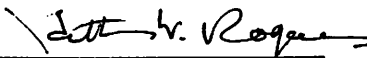
Before: ROGERS, Circuit Judge\*

**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).

  
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Judith W. Rogers, Circuit Judge  
District of Columbia Circuit

Date: 9/22/20

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\* Acting pursuant to Rule 25(f) of the RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS.

**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 complaint arises from cases in the United States District Court for the District of Columbia and one in another district court. The plaintiff in this district court filed a defamation suit against two individuals (the “District of Columbia case”). The case was assigned to the subject judge. A year after the District of Columbia case was filed, one of the defendants filed suit, in another district court, against the plaintiff’s counsel in the District of Columbia case alleging defamation based on statements the counsel made related to the District of Columbia case. The complainant represents the plaintiff in the other district court case, but is not counsel to any of the parties in the District of Columbia case.

The complainant has filed a judicial misconduct complaint alleging that the subject judge has: shown bias against the defendant who originally proceeded pro se (“pro se defendant”); unduly interfered with the proceedings in the other district court; and conducted an *ex parte* meeting without the pro se defendant present. A preliminary review of the validity of the complaint, *see* 28 U.S.C. § 352(a), reveals that the allegations lack adequate factual specification in support of the allegations or cannot be proven. *See* 28 U.S.C. § 352(b)(1)(A)(iii); JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS (2019), RULE 11(c)(1)(D).

I.

In support of the bias allegation, the complainant asserts that: the pro se defendant told him that the subject judge referred to the pro se defendant as “couch potato” in an off-the-record conversation in chambers; the subject judge improperly limited the number of depositions the pro se defendant could take because of his pro se status; and the subject judge was improperly influenced by his friendship with a Democratic Party official. In the original complaint the complainant had alleged that one of the defendant’s counsel stated that the subject judge referred to the pro se defendant as an “Arkansas couch potato.” Compl. at 5. In a letter supplement to the complaint, the complainant noted: “In retrospect, I believe the information originally came from [the pro se defendant], and I have since learned that [the subject judge] made no reference to Arkansas in that phrase.... [Counsel for the other defendant] acknowledged the conversation and expressed concern about bias towards [the pro se defendant].” Ltr Supp. at 1.

Even assuming the subject judge made the off-the-record comment as alleged, the complainant has failed to provide any evidence to support the allegation that the statement demonstrates misconduct. “[A] judge’s public comments can themselves be misconduct if sufficiently rude, derogatory, or intemperate.” *In re Complaint of Judicial Misconduct*, 761 F.3d 1097, 1098 (9<sup>th</sup> Cir. 2014); *see also* JUDICIAL-CONDUCT PROCEEDINGS RULE 4(a)(2)(B) (“Cognizable misconduct includes . . . treating litigants . . . in a demonstrably egregious and hostile manner.”). At worst, the statement appears to be a play on the pro se defendant’s name and was not “sufficiently rude, derogatory, or intemperate” to constitute misconduct, *In re Complaint of Judicial Misconduct*, 761 F.3d at 1098, and does not demonstrate bias.

Moreover, the subject judge's orders ruling on the pro se defendant's requests to take depositions do not support a claim of bias. The subject judge placed limitations on all of the parties' ability to take depositions. Status Conf. Corrected Tr. at 7-9 (July 31, 2019). Furthermore, while the record reflects that the subject judge required the pro se defendant to seek leave of the court prior to taking depositions, the subject judge clearly explained that was because the defendant was not an attorney, had never taken a deposition before, nor had he participated in a deposition. *Id.* at 9-10. The subject judge promptly ruled on the defendant's request to take depositions, explaining that some were granted while others were "denied for failure to demonstrate those depositions are likely to lead to relevant evidence." Order Addressing Pro Se Defendant's Mtn to Take Five Depositions at 1 (Feb. 5, 2020).

In addition, the complainant has failed to provide any evidence to support his allegation that the subject judge ruled in an effort to support the Democratic Party official's efforts to "preserv[e] the 'Russian collusion' hoax." Similarly, the subject judge's instruction that the defendants needed to curb their "public commentary about this case, . . . especially comments that are ridiculous and inaccurate and not productive and which could maybe some day impact on a jury pool in this case," Status Conf. Tr. at 18 (Mar. 3, 2020), is not evidence of bias.

Therefore, because all of the claims of bias are "based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred," these allegations must be dismissed. JUDICIAL-CONDUCT PROCEEDINGS RULE 11(c)(1)(D); *see* 28 U.S.C. § 352(b)(1)(A)(iii).

## II.

The complainant further alleges that the subject judge improperly interfered with the related proceedings in the other district court. The plaintiff's counsel in the District of Columbia

case filed a motion here to enjoin the other district court case, on the ground that both cases arose from the same nucleus of facts and the District of Columbia case was filed first. In order to avoid the extraordinary step of enjoining a fellow district court, the subject judge encouraged the defendant to dismiss the other suit in favor of the first-filed District of Columbia case, and later advised the parties that he would enter the anti-suit injunction order if the parties could not reach an informal resolution. Status Conf. Tr. at 17 (Mar. 3, 2020). Contrary to the complainant's unsupported claim that the subject judge was simply trying to shield the defendants in the other case from liability by pressuring the defendant in this case to dismiss his claims outright, the record does not indicate that the subject judge personally interfered with the other case, or that he applied undue pressure on the parties in the other case. See Status Conf. Corrected Tr. at 20-21 (July 31, 2019); Status Conf. Tr. at 16-18 (Mar. 3, 2020). Although the subject judge did ultimately grant the motion for an anti-suit injunction, which had the effect of terminating the litigation in the other court, the complainant does not allege that the granting of the motion itself was legally baseless or beyond the subject judge's authority. This claim, therefore, also "lack[s] sufficient evidence to raise an inference that misconduct has occurred." JUDICIAL-CONDUCT PROCEEDINGS RULE 11(c)(1)(D); see 28 U.S.C. § 352(b)(1)(A)(iii).

### III.

The complainant's final allegation is that the subject judge participated in an *ex parte* meeting with counsel for the plaintiff and counsel for the represented defendant, without the pro se defendant present, immediately prior to a status hearing that was held on the record and at which the pro se defendant appeared telephonically. The complainant asserts that the

subject judge “discussed and *resolved* substantive discovery matters in the absence of [the pro se defendant].” Compl. at 3 (emphasis in original). The record reflects that the subject judge did have a conversation with the two attorneys outside of the presence of the pro se defendant. Opposition to Mtn for Relief from Order at 6-7 (Aug. 26, 2019). Nevertheless, the record also rebuts the complainant’s negative inferences regarding the pre-hearing meeting.

At the hearing scheduled to address the motions to compel, the subject judge first inquired as to why the pro se defendant was not physically present for the hearing as the subject judge had expected. Status Conf. Corrected Tr. at 3 (July 31, 2019). Upon hearing the explanation, the subject judge required written verification of the pro se defendant’s financial situation. The subject judge then turned to the issue of discovery, asking plaintiff’s counsel about the status of the discovery issues. *Id.* at 4. Plaintiff’s counsel responded that although counsel had received responses to interrogatories, counsel had not received any documents from any of the defendants despite having served requests for production of documents on each of the defendants. *Id.* at 5. The requests for documents had been pending for months, and plaintiff’s counsel informed the subject judge that there were three separate motions to compel pending before him. *Id.* Counsel proceeded to describe generally what was sought and from whom. *Id.* The subject judge responded: “All right. I’m going to grant all three motions to compel.” *Id.* This indicated that the subject judge granted the motions in light of the circumstances described at the hearing (and in prior pleadings) to justify granting the motions. *See id.* The complainant has not provided any evidence to support the allegation that the subject judge decided how to rule on the motions during the pre-hearing meeting.

Furthermore, although the defendant did not have an opportunity to file a response to the motion to compel that pertained to him, he was aware that the motion would be a subject of the hearing. At no point during the hearing did the pro se defendant suggest that he did not have an opportunity to oppose the motion to compel or to request a continuance of the hearing. Moreover, the complainant has failed to point to any prejudice to the pro se defendant or his case by reason of the pre-hearing meeting. The complainant asserts that the subject judge's granting of the motion to compel without a response thereby prevented the pro se defendant from asserting "reporter privilege" over the withheld information because the qualified immunity was deemed waived by the pro se defendant's failure to assert it during discovery. Not only did the pro se defendant have ample opportunity to raise the defense prior to or even during the hearing, the subject judge subsequently determined that "the purported privilege does not apply here because the information [the pro se defendant, who subsequently had counsel] seeks to withhold goes to the heart of plaintiff's claims and defendants' defenses." Order Addressing Production of Documents at 2 (Mar. 4, 2020). Thus, the allegation of *ex parte* contacts also does not raise an inference that misconduct has occurred.

Accordingly, because all of the allegations in the complaint are "based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred," the complaint

will be dismissed. JUDICIAL-CONDUCT PROCEEDINGS RULE 11(c)(1)(D); *see* 28 U.S.C. § 352(b)(1)(A)(iii).<sup>1</sup>

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<sup>1</sup> 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).