

JUDICIAL COUNCIL
OF THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of
A Complaint of Judicial
Misconduct or Disability

Complaint No. DC-20-90024

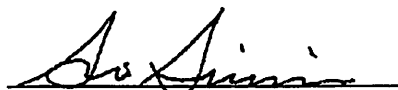
Before: Srinivasan, Chief Judge

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).


Sri Srinivasan, Chief Judge

Date: 9/22/20

No. DC-20-90024

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 subject judge was assigned a criminal case. The complainant, who is not a party to the criminal case, filed a misconduct complaint against the subject judge challenging the judge's handling of the case. The complainant alleges that the subject judge has engaged in political activity by requesting amicus briefs and failing to grant the Department of Justice's motion to dismiss the case. He further asserts that the subject judge treated the defendant "in a demonstrably egregious and hostile manner" when he raised a question whether the defendant might be guilty of treason and stated that the defendant's actions "undermine[d] everything this flag over here stands for. Arguably you sold your country out." Finally, the complainant claims that the subject judge delayed multiple decisions for the improper purpose of draining the defendant's resources.

To the extent the complainant is alleging that the subject judge engaged in political activity by improperly appointed amicus and failing to dismiss the case, 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).

The judge's decision to appoint amicus and to conduct further proceedings without yet granting dismissal does 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).

To the extent the complainant is asserting that the subject judge's comments about the defendant demonstrated that he treated the defendant in an egregious and hostile manner, those comments do not rise to the level of 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, 1099 (9th Cir. 2014); *see* JUDICIAL-CONDUCT PROCEEDINGS RULE 4(a)(2)(B) ("Cognizable misconduct includes . . . treating litigants . . . in a demonstrably egregious and hostile manner."). A review of the transcript reflects that the judge's statements were made in reference to the fact that the defendant had been charged with lying to the FBI about his communications with a foreign government while acting as the National Security Advisor. These comments reflect the subject judge's view of the serious nature of the alleged crime, and were not "sufficiently rude, derogatory, or intemperate" to constitute misconduct. *In re Complaint of Judicial Misconduct*, 761 F.3d at 1099. Thus, the allegation that the subject judge treated the defendant in a demonstrably egregious and hostile manner "lack[s] sufficient evidence to raise an inference that misconduct has occurred." JUDICIAL-CONDUCT PROCEEDINGS RULE 11(c)(1)(D).

Finally, the complainant also asserts that the subject judge “displayed an improper motive in delaying multiple decisions.” “Cognizable misconduct does not include an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.” JUDICIAL-CONDUCT PROCEEDINGS RULE 4(b)(2). The complainant does not allege habitual delay on the judge’s part, and the assertion that the alleged delays in the case derived from an “improper motive . . . to drain [the defendant] of his resources” is too conclusory to support a finding of misconduct.

Moreover, the en banc Court of Appeals has determined that the subject judge’s statements and conduct in the matter in question, including with regard to the appointment of amicus, has not “come[] close to meeting the ‘very high standard’ of ‘conduct so extreme as to display clear inability to render fair judgment,’” and thus reassignment to another judge was unwarranted. Accordingly, because the allegations are “directly related to the merits of a decision or procedural ruling,” and are “based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred,” the complaint must 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).