

JUDICIAL COUNCIL
OF THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of
A Complaint of Judicial
Misconduct or Disability

Complaint No. DC-20-90043

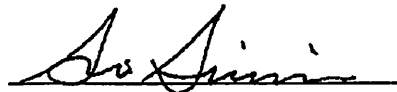
Before: Srinivasan, Chief Judge

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: 12/28/20

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 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 complaint asserts in its entirety:

[The subject judge's] leading question of the prosecutor, that he may be guilty of treason, was rebuffed by the prosecutor. The prosecution stated, at that time, that the Defendant . . . was NOT GUILTY OF TREASON. That question, on its face, should have been disqualifying of [the subject judge]. [The subject judge's] stalling and delaying tactics, gave rise to further PROOF that [the defendant] was the victim of a corrupt FBI, and Special Counsel. The prosecution, seeing the evidence in favor of [the defendant], moved to dismiss, rightfully so. It was not within the bounds of legality, to try and appoint a secondary prosecutor. The 3 member App. Decision was proper. Under F.R.A.P. R.35 [the subject judge] lacked standing as party to appeal further. The fraudulent appointees of an invalid [amicus curiae] should have recused themselves under ethics rules. The entire corrupt process brings disdain and contumacious feelings toward the federal judiciary.

To the extent the complainant is alleging that the subject judge improperly appointed amicus curiae and failed 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 decisions to appoint amicus and to conduct further proceedings without yet granting dismissal 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), as the challenge to those decisions is merits-related. Moreover, the en banc Court of Appeals has determined that the subject judge’s 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.

Furthermore, to the extent the complainant alleges that the subject judge improperly sought review by the en banc Court of Appeals of a decision granting mandamus relief, that allegation must be dismissed as “lacking sufficient evidence to raise an inference that misconduct has occurred.” JUDICIAL-CONDUCT PROCEEDINGS RULE 11(c)(1)(D). First, the Court of Appeals granted en banc review based on the suggestion of a member of the court to do so sua sponte. Second, the Court of Appeals determined that the filing of the petition for rehearing en banc did “not suggest a level of partiality justifying reassignment in this case,” that “the District Judge participated in the mandamus proceeding at this Court’s invitation,” and that “the further step of filing a petition for rehearing did not, on its own, create a reasonable impression of partiality.” Opinion at 17. Thus, the fact that the subject judge sought en banc review does not, in and of itself, constitute evidence of misconduct.

To the extent the complainant is asserting that the subject judge's reference to "treason" demonstrates that the judge treated the defendant in an egregious and hostile manner, that comment does 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 comment concerned the criminal offense at issue and conveyed the judge's view of the serious nature of the crime, and is not the kind of "sufficiently rude, derogatory, or intemperate" comment that can itself constitute misconduct. *In re Complaint of Judicial Misconduct*, 761 F.3d at 1099. Thus, this allegation "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 employed "stalling and delaying tactics." "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 neither alleges habitual delay nor an improper motive, and thus this allegation is too conclusory to support a finding of misconduct.

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 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).