

JUDICIAL COUNCIL  
OF THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of  
A Complaint of Judicial  
Misconduct or Disability

Complaint No. DC-20-90044

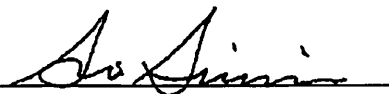
Before: Srinivasan, Chief Judge

**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

No. DC-20-90044

**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 suit against the United States Embassy in Tokyo and the Department of State, alleging that they unlawfully refused to issue the citizenship and immigration documents that he requested for his family and seeking an order to compel the issuance of U.S. passports. The complainant originally filed the suit in another District Court, but the case was ultimately transferred to the District Court for the District of Columbia and assigned to the subject judge. After the transfer, the complainant submitted additional filings, which the subject judge construed as motions for leave to amend, noting that the filings sought to introduce new claims, add new factual allegations and a new defendant, and broaden the scope of the original complaint.

In the meantime, the complainant filed a mandamus petition with the Court of Appeals, seeking an order compelling the subject judge to “issue a ruling on [his] Return Order.” The complainant was ordered to pay the docketing fee or file a motion for leave to proceed IFP. When the complainant did neither, the case was dismissed for lack of

prosecution. The complainant subsequently sought reconsideration of the dismissal order and included a motion to proceed IFP.

While the motion for reconsideration was pending, the subject judge granted in part and denied in part the complainant's numerous motions for leave to amend his complaint. The subject judge denied as futile his motions to amend his complaint to include a request for a Hague Convention return order. Citing the Convention, the International Child Abduction Remedies Act, and caselaw, the subject judge said that "it is abundantly clear that, for a federal district court to order the return of an abducted child under ICARA, the aggrieved parent must file a petition in state or federal district court for the return of a child located within the court's jurisdiction, and that a child located abroad is not within that jurisdiction." Opinion at 6 (internal quotation marks and citations omitted). The court then said that "there is no dispute that the child is located in Japan," the "child is [therefore] outside the jurisdiction of the Court, and the Court cannot issue a return order under ICARA." *Id.* at 7. The court added that the complainant "seems to recognize that Japan is the appropriate venue for seeking a return order, but [he] has been unsuccessful in obtaining a return order from Japanese authorities" and "argues that, with Japanese authorities seemingly unwilling to help, his only recourse is to request a return order from a U.S. court." *Id.* The court "acknowledg[ed] the apparent unfairness of the situation" but said that the court was

"powerless to remedy" the situation and denied the complainant's request to amend the complaint in this regard as futile. *See id.*

The Court of Appeals then denied the complainant's motion for reconsideration of the order dismissing his mandamus petition. The Court determined that reinstating the mandamus petition would be "pointless" because the district court had ruled on the return order question and the complainant had failed to demonstrate the clear and indisputable right to relief required for mandamus relief.

While the mandamus petition was proceeding, the complainant continued to file pleadings in the district court, including a motion to recuse the subject judge because of his prior employment with the U.S. Attorney's Office. The subject judge denied the recusal motion, finding that the complainant only made "vague allusions to this judge's prior employment... [and failed to point to] specific facts that support his claim of bias or establish an extrajudicial source of prejudice." Order at 4. The subject judge further found that the complainant was simply challenging the basis for the judge's decisions. *Id.* at 4-5. The complainant continues to file various motions and the case is proceeding in the district court.

The complainant has now filed a judicial misconduct complaint against the subject judge. The complainant asserts that the subject judge "has repeatedly failed to take appropriate action, regarding any emergency filing and provide relief demanded." He further claims that the subject judge's actions have caused "excessive delays . . . [that]

have resulted in harms even greater than that which Defendants have cause[d].” The complainant also alleges that the subject judge is biased towards the government because he once worked for the U.S. Attorney’s Office and holds a close relationship with individuals who supervise the U.S. Attorneys who are representing the United States in the case. Finally, the complainant argues that the subject judge erroneously dismissed an issue as lacking final agency action. In a supplement to the complaint, the complainant continues to argue that the subject judge is not acting expeditiously and that he erroneously dismissed the visa claim. The complainant also alleges, without support, that the subject judge “holds ex parte hearing with his former colleagues In Chambers.”

First, as to the claim of excessive delay and failure to take action, those claims are without merit. “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.” JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS (2019), Rule 4(b)(2). The complainant does not allege an improper motive or habitual delay in unrelated cases, and thus the claim is too conclusory to support a finding of misconduct.

Second, the allegation that the subject judge is biased because of his prior employment at the U.S. Attorney’s Office is also without merit. While the subject judge

served in the U.S. Attorney's Office, he left that office prior to when defendants' counsel started working there. Moreover, the subject judge left the office almost seven years before the complainant filed his case, and the judge thus never worked on this case as a practicing lawyer. The subject judge's prior employment in that office and his familiarity with the supervisors of complainant's counsel, standing alone, are insufficient to raise an inference of misconduct. *Cf. Jud. Conf. U.S., Code of Conduct for United States Judges*, Canon 3(C)(1)(e) (requiring disqualification where, inter alia, "the judge has served in governmental employment and in that capacity participated as a . . . counsel [or] advisor . . . concerning the proceeding"); *McKee v. United States Dep't of Justice*, 253 F. Supp. 3d 78, 81 (D.D.C. 2017) (denying motion to recuse where judge "once worked at the Department of Justice, but . . . left the Department over fifteen years [previously] and had no involvement of any kind with this case or the predicate facts"), *aff'd*, 2018 WL 1388575 (D.C. Circ. Feb. 21, 2018) (per curiam). Furthermore, the complainant has failed to provide any evidence to support his claim of bias or establish an extrajudicial source of prejudice, relying instead on his own beliefs or the subject judge's rulings in the case. The subject judge's decisions, however, do not "display a deep-seated favoritism or antagonism" that would warrant recusal. *See Liteky v. United States*, 510 U.S. 540, 555 (1994). Thus, the bias allegation "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).

Third, to the extent that the complainant is alleging that the subject judge's rulings were erroneous, that claim "calls into question the correctness of [the] judge's ruling[s]." JUDICIAL-CONDUCT PROCEEDINGS RULE 4(b)(1). Such an allegation 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).

Finally, to the extent the complainant is claiming that the judge had ex parte contacts with the defendants' counsel, the complainant has failed to provide any support for that allegation. Thus, this allegation lacks any evidence to support the allegation of misconduct. JUDICIAL-CONDUCT PROCEEDINGS RULE 11(c)(1)(D).

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).<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).