

JUDICIAL COUNCIL
OF THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of
A Complaint of Judicial
Misconduct or Disability

Complaint No. DC-21-90027

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: 1/13/22

No. DC-21-90027

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 and her husband have been engaged in a feud with their former next-door neighbors about a fence built along their property. They filed their first of many lawsuits in that connection in a district court outside of this Circuit against multiple individuals and entities. That district court dismissed the case and enjoined the complainant and her husband from filing lawsuits related to the same subject matter in any federal or state court.

The complainant and her husband violated the district court's injunction by filing actions related to the same subject matter in other courts, including in the district court here. The original district court gave the complainant and her husband the option of dismissing their pending lawsuits or going to jail. The complainant's husband withdrew his name from the pending lawsuits, but the complainant refused to dismiss the cases and was sent to jail.

The original district court released the complainant from custody on the condition that she dismiss the remaining lawsuits. The court also entered another injunction, which prohibited the complainant from filing lawsuits anywhere in the country, regardless of the subject matter. After her release, however, the complainant failed to dismiss her pending lawsuits. When she failed to appear at a status conference, a warrant was issued for her arrest. She ultimately turned herself in to the U.S. Marshals. At a subsequent hearing, she promised to dismiss the pending lawsuits.

New violations of the filing restrictions, however, prompted an order for the complainant to appear before the original district court. She failed to appear, and the court issued a warrant for her arrest. Meanwhile, another circuit court issued a decision narrowing the original district court's second injunction so as to prohibit the complainant and her husband only from commencing any pro se litigation in any federal district court within that Circuit against the parties that had been involved in that case.

With the arrest warrant still outstanding, the complainant was arrested. At a hearing, the original district court granted the complainant's motion to reconsider the contempt proceedings in light of the court of appeal's decision, vacated the arrest order, and ordered that the complainant be released.

The complainant and her husband then filed suit in the district court here against the Department of Justice, alleging violations of the Privacy Act and other claims. The subject judge granted the defendant's motion for dismissal or summary judgment in a published opinion. In detailing the background of the case, the court noted that original district court had imposed filing restrictions on the complainant and her husband "[i]n light of what the [original district court] described as the [complainant and her husband's] 'abusive litigation tactics.'" The court, in relevant part, granted summary judgment on the complainant's claim that the U.S. Marshals Service violated the Privacy Act's requirement that an agency not maintain records on how individuals exercise their First Amendment rights. The court concluded that the relevant records fell within the exception to that requirement for records related to "authorized law enforcement activity." In addition, the court declined to address

numerous claims that had not been properly raised.

Subsequently, the subject judge denied motions for reconsideration filed by the complainant and her husband. The court rejected what it understood to be an argument that the Marshals Service's systems of records are only for prisoners charged with a crime, reasoning that the question of whether the complainant's records should be kept in those systems is irrelevant because the systems are exempt from the Privacy Act requirements in question. In addition, the court concluded that a certain document of the Marshals Service was pertinent to law enforcement activity and thus exempt from the Privacy Act's prohibition on agencies maintaining records on the exercise of First Amendment activities.

The complainant and her husband then noted an appeal. The Court of Appeals rejected their claims and granted summary affirmance.

Now, more than ten years later, the complainant has filed a judicial misconduct complaint against the subject judge. The complainant asserts that the subject judge conspired with the prosecutor, as ostensibly evidenced by the fact that judge referred to her "arrest warrants" without "acknowledg[ing] that [she] challenged the legitimacy of the partially completed [arrest warrant] forms." She further alleges that, in finding that any Marshals Service records describing her exercise of First Amendment rights were exempt from the Privacy Act's requirements, the subject judge failed properly to explain how the records fell within the scope of "authorized law enforcement activity." The complainant also claims that the subject judge's failure to rule on her motion for an extension of time exhibits "conduct that was prejudicial to the efficient administration of the court." Finally, the complainant alleges

that the subject judge's reference to her litigation practices as "abusive" was a "violation of the Rules of Evidence prohibition of character evidence and . . . prejudicial to the efficient administration of the court."

First, in asserting that the subject judge failed to acknowledge her challenges to her arrest warrant and failed to define the "authorized law enforcement activity" that provided the basis for withholding records under the Privacy Act, the complainant directly challenges the basis of the subject judge's decision to dismiss her Privacy Act claims. She thus "call[] into question the correctness of [the] judge's ruling." JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS (2019), Rule 4(b)(1). Such allegations about the merits of a judge's decision do not involve "[c]ognizable misconduct" under the Judicial-Conduct Proceedings Rules or the applicable statute. *Id.*; see 28 U.S.C. § 352(b)(1)(A)(ii).

Second, the complainant's claim that the subject judge committed misconduct by failing to rule on her motion for an extension of time is without merit. Eight days after the complainant filed her motion for extension of time, she filed her response to the motion for dismissal or summary judgment. The complainant's filing of her responsive pleading negated the need for the subject judge to rule on the motion for extension of time. The complainant's allegation in this regard thus "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).

Finally, as to the allegation that the subject judge's use of the word "abusive" in describing the complainant's litigant history violated the Rules of Evidence and was "prejudicial to the efficient administration of the court," the Judicial Conference has explained: "Because

of the special need to protect judges' independence in deciding what to say in an opinion or ruling," if a judge's "language was relevant to the case at hand – for example, a statement that a claim is legally or factually 'frivolous' – then the judge's choice of language is presumptively merits-related and excluded, absent evidence apart from the ruling itself suggesting an improper motive." JUDICIAL-CONDUCT PROCEEDINGS RULE 4 Commentary at ¶ 15. Here, the subject judge was merely quoting the original district court's description of the complainant's litigation history in setting out the background of the case. Moreover, there is no evidence suggesting an improper motive (other than the complainant's conclusory assertion that the subject judge's behavior was "prejudicial to the efficient administration of the court"). As a result, the subject judge's description of the complainant's litigation history is "directly related to the merits" of the judge's decision and does not constitute "cognizable misconduct."

JUDICIAL-CONDUCT PROCEEDINGS RULE 4(b)(1).

Accordingly, because the complainant's allegations are either "directly related to the merits of a decision or procedural ruling" or "lack sufficient evidence" to raise an inference of misconduct, 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).