

JUDICIAL COUNCIL
OF THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of
A Complaint of Judicial
Misconduct or Disability

Complaint No. DC-21-90054

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: 2/17/22

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 alleges that he was fired from his job for his role as a whistleblower regarding corruption within one of his former employer's projects. He filed a complaint in the district court alleging that, a few weeks after he was fired, security guards escorted him out of leased space on his employer's premises. Based on this incident, the complainant sued his employer for assault, false imprisonment, and intentional infliction of emotional distress. At the complainant's request, the subject judge allowed the complainant to conduct jurisdictional discovery pertaining to whether his employer had waived its absolute immunity based on its Articles of Agreement and the International Organizations Immunities Act. The employer appealed the jurisdictional discovery ruling to the Court of Appeals, which reversed and remanded, holding that jurisdictional discovery was unnecessary because it was clear that the employer had not waived its absolute immunity. The complainant filed a petition for a writ of certiorari in the Supreme Court, which was denied. The complainant, through counsel, filed a notice of voluntary dismissal with prejudice.

More than three years later, the complainant filed in district court a pro se "notice to court filed by plaintiff for the concealed filing of voluntary stipulation of dismissal." The complainant stated that his former counsel had filed the voluntary dismissal without his knowledge and that he was planning to file a motion to vacate the dismissal. The district court

took no action on the complainant's "notice," and over a year later the complainant filed a motion to vacate the voluntary dismissal, which included a motion to reopen the case and a motion for sanctions against his former counsel and his employer's counsel. The subject judge denied the motions in a minute order, noting that, because the Court of Appeals had held that the employer had not waived its immunity, the court lacked subject-matter jurisdiction to hear the case. The complainant timely appealed the order, and the Court of Appeals *sua sponte* dismissed the appeal for lack of jurisdiction to the extent the district court's order denied the complainant's motion to reopen the case and vacate the notice of voluntary dismissal. The Court of Appeals also *sua sponte* summarily affirmed the district court's order to the extent it denied the complainant's motion for sanctions.

The complainant also filed a separate action against the security company that provides security services for the employer, asserting various tort claims, including defamation. The subject judge granted the security company's motion to dismiss for failure to state a claim, but subsequently granted the complainant's motion for reconsideration and reinstated the defamation claim. The complainant then attempted to bring an interlocutory appeal in the Court of Appeals, but the Court of Appeals dismissed the appeal for lack of jurisdiction, noting that the district court had not certified the interlocutory orders for immediate appeal and that the complainant otherwise provided no valid basis upon which the court could exercise jurisdiction. The complainant then filed numerous motions to recuse the subject judge, all of which were denied.

The complainant then filed in the Court of Appeals a mandamus petition seeking an

order compelling the district court to resolve all motions then pending and to docket certain other motions and replies. The complainant also sought an order compelling the recusal of the subject judge. The Court of Appeals denied the mandamus petition in part and dismissed it as moot in part. The Court observed that the district court had already resolved many of the motions about which the complainant complained, and it concluded that he had not shown unreasonable delay on the part of the district court with respect to others. The Court also concluded that the complainant had not shown a clear and indisputable right to have the subject judge recused or to have certain motions and replies docketed by the district court.

The complainant also filed an interlocutory appeal of various minute orders, including those denying his motions for recusal, denying leave to amend the complaint, and denying reconsideration. The Court of Appeals denied the petition for permission to appeal and dismissed the appeal for lack of jurisdiction, noting that the district court had not certified the orders for immediate appeal and that the orders did not otherwise qualify for any exception to the requirement to await a final decision before bringing an appeal.

While the interlocutory appeal and mandamus petition were pending, the complainant filed the instant misconduct complaint against the subject judge. The complainant asserts that the judge has demonstrated bias against him by “[u]nlawfully backdating docket entries”; “denying all his ‘leave to file’ and denying his Motions without even docketing his replies”; “[r]etaliating against Plaintiff’s . . . Interlocutory Appeal by staying the case for one year”; “[h]arassing Plaintiff and engaging in a pattern of delays to exhaust him . . . and manipulating the docket”; “treating Plaintiff in a demonstrably egregious and hostile manner and

discriminating against him by refusing to docket his documents”; and “ma[king] false representation[s]” about the docketing of filings.

To the extent the allegations in the complainant’s misconduct complaint are based on the subject judge’s rulings on various motions or on his ultimate disposition of one of the complainant’s actions, such allegations are “directly related to the merits of a decision or procedural ruling,” and thus cannot give rise to a finding of judicial misconduct. See JUD. CONF. RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS (2019), Rule 11(c)(1)(B); 28 U.S.C. § 352(b)(1)(A)(ii).

With respect to the complainant’s allegations about undue delay, “[c]ognizable 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 has not identified a “significant number of unrelated cases,” and insofar as he alleges that the subject judge’s delays are the result of an improper motive, the complainant alleges only conclusorily that the judge was biased against him. Similarly, the complainant’s generalized allegations that the subject judge was biased against him, harassed him, or discriminated against him “lack[] sufficient evidence to raise an inference that misconduct has occurred.” See JUDICIAL-CONDUCT PROCEEDINGS RULE 11(c)(1)(D); 28 U.S.C. § 352(b)(1)(A)(iii).

To the extent the complainant asserts that the subject judge has “manipulat[ed] the docket” or improperly refused to docket the complainant’s filings, those allegations either “lack sufficient evidence to raise an inference that misconduct has occurred,” or are “directly

related” to the subject judge’s decisions whether to grant leave to file. JUDICIAL-CONDUCT PROCEEDINGS RULE 11(c)(1)(B) & (D); 28 U.S.C. § 352(b)(1)(A)(ii) & (iii).

Accordingly, because the complaint “is directly related to the merits of [the judge’s] decision[s],” and is “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).