

JUDICIAL COUNCIL
OF THE DISTRICT OF COLUMBIA CIRCUIT

**In the Matter of
A Complaint of Judicial
Misconduct or Disability**

**Complaint Nos. DC-22-90002
DC-22-90003
DC-22-90004**

Before: Srinivasan, Chief Judge

ORDER

Upon consideration of the complaint herein, filed against a former judge of the United States Court of Appeals for the District of Columbia Circuit and two judges 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: January 9, 2023

No. DC-22-90002
No. DC-22-90003
No. DC-22-90004

MEMORANDUM

The complainant has filed a complaint of judicial misconduct against one former judge of the United States Court of Appeals for the District of Columbia Circuit and two judges of the United States District Court for the District of Columbia. For the following reasons, the misconduct complaint will be dismissed.

The complainant, who was an employee at the Department of Justice, filed five actions against the Attorney General of the United States in his official capacity, asserting claims of race, color, and gender discrimination and retaliation under Title VII of the Civil Rights Act. The case was assigned to a district court judge (subject judge I), who denied without prejudice the complainant's motion for court appointed counsel and consolidated the five cases against the Attorney General. Subject judge I subsequently granted the government's motion to dismiss with respect to the complainant's claims of race, color, and gender discrimination and denied the motion to dismiss with respect to the complainant's claims of retaliation. Subject judge I further denied the motion to the extent the government sought summary judgment.

After subject judge I was appointed to the Court of Appeals, the case was reassigned to the Calendar Committee. Subject judge II considered and denied the complainant's second motion for court appointed counsel. The case was ultimately reassigned to subject judge III. Subject judge III denied the complainant's motion for recusal, finding "nothing in the Motion warranting recusal or reassignment to a judge outside this District." Subject judge III also granted in part the complainant's motion to appoint counsel for the limited purpose of

representing the complainant in mediation. This case has since been removed from the mediation process and the litigation is proceeding.

The complainant has now filed the instant misconduct complaint against the three subject judges. To the extent the complaint alleges wrongdoing on the part of subject judge I, the complaint is concluded as to this judge. See JUD. CONF. RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS (2019), Rule 11(e) (“The chief judge may conclude a complaint proceeding in whole or in part upon determining that intervening events render some or all of the allegations moot or make remedial action impossible as to the subject judge.”). Subject judge I is no longer a judge covered under the Judicial Conduct and Disability Act. As a result, no further action can be taken with respect to allegations against her. See JUDICIAL-CONDUCT PROCEEDINGS RULE 1(b) (“A covered judge is defined under the Act as is limited to judges of the United States court of appeals, judges of United States district courts, judges of United States bankruptcy courts, United States magistrate judges, and judges of the courts specified in 28 U.S.C. § 363.”).

The complainant appears to allege that subject judges II and III were improperly biased because “District Court Judges have daily interaction” with the U.S. Attorney’s Office. That allegation is without merit. The fact that the judges may have some manner of interaction with the U.S. Attorney’s Office does not in and of itself demonstrate bias in cases in which the Office may be involved. Consequently, this allegation “lack[s] sufficient evidence to raise an inference that misconduct has occurred.” JUDICIAL-CONDUCT PROCEEDINGS RULE 11(c)(1)(D).

To the extent the complainant is asserting that subject judges II and III erred in not providing her with notice of the reassignments of her case, the complainant has failed to

provide evidence of wrongdoing on the part of the judges. It is the Clerk of Court, not the judges, who notifies counsel and parties proceeding pro se of the reassignment of cases. See United States District Court for the District of Columbia, Local Rule 40.1(d).

The complainant also appears to challenge subject judge III's decision to deny the motion for recusal. Allegations that a judge committed misconduct by failing to recuse are generally dismissed as merits related. See JUDICIAL-CONDUCT PROCEEDINGS RULE 4(b)(1) ("Cognizable misconduct does not include an allegation that calls into question the correctness of a judge's ruling, including a failure to recuse"). "A failure to recuse may constitute misconduct only if the judge failed to recuse for an improper purpose." *In re Judicial Misconduct*, 605 F.3d 1060, 1062 (9th Cir. 2010). The complainant, however, has provided no evidence that subject judge III failed to recuse for an improper purpose. Consequently, because this allegation is "directly related to the merits of a decision or procedural ruling," it also must be dismissed. See JUDICIAL-CONDUCT PROCEEDINGS RULE 11(c)(1)(B); see 28 U.S.C. § 352(b)(1)(A)(ii).

Accordingly, because the complaint is "directly related to the merits of a decision or procedural ruling" and "lack[s] sufficient evidence to raise an inference that misconduct has occurred," it 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).