

JUDICIAL COUNCIL
OF THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of
A Complaint of Judicial
Misconduct or Disability

Complaint No. DC-22-90006

Before: Srinivasan, Chief Judge

ORDER

Upon consideration of the complaint herein, and the supplement thereto, 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: January 10, 2023

MEMORANDUM

The complainant has filed a complaint of judicial misconduct, and a supplement thereto, 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 an organization asserting a variety of claims (“Case I”). The defendant counterclaimed. This litigation proceeded before the subject judge, and during the proceedings, the complainant filed numerous motions, including five unsuccessful motions for the subject judge’s recusal. The subject judge granted partial summary judgment to the defendant, and the remainder of the complainant’s claims and the organization’s counterclaims were presented to a jury. The jury returned a verdict against the complainant. The complainant filed several motions under Rules 50, 59, and 60 to alter the judgment, to grant a new trial, and for relief from judgment, all of which were denied. The Court of Appeals affirmed in full, finding no error in the subject judge’s handling of the case, and subsequently denied the petition for rehearing en banc. The Supreme Court then denied the complainant’s petition for a writ of certiorari.

The question of attorney’s fees and costs in Case I remains pending before the subject judge. The complainant has also filed two additional motions to reassign Case I, both of which the subject judge denied.

While Case I was proceeding, the complainant filed a separate action under Rule 60 (“Case II”), seeking relief from the judgment against him in Case I. Case II was assigned to a different district court judge, who ultimately dismissed the action sua sponte, finding that the

complainant had failed to state a claim for relief under Rule 60 and failed to plead facts supporting his allegation of fraud on the court. The Court of Appeals affirmed.

Meanwhile, the complainant filed a third action (“Case III”), this time against the sixteen judges of the Court of Appeals, the subject judge, and the district judge who handled Case II. The district court sua sponte dismissed Case III, holding that the claims were barred in their entirety either by judicial immunity or by collateral estoppel, and that the district court also lacked jurisdiction to grant any of the relief the complainant sought. The complainant filed a notice of appeal and subsequently filed a motion to transfer the case, arguing that the entire Court of Appeals had a conflict of interest because every judge was a named defendant in the case. Because all of the judges of the Court of Appeals were named defendants, the undersigned certified that there was a necessity for the designation and assignment of judges from another court to hear the appeal in Case III, and the Chief Justice designated three judges to consider the appeal. Those judges, sitting by designation as the Court of Appeals, affirmed the judgment of the district court and later denied rehearing. The complainant’s petition for rehearing en banc was also dismissed as there were no available judges of the court to constitute an en banc court. The Court of Appeals, sitting by designation, subsequently denied the complainant’s motion to set aside the order dismissing the petition for rehearing en banc.

The complainant has now filed another judicial misconduct complaint against the subject judge. In the instant misconduct complaint, the complainant once again makes claims

of bias.¹ The complainant generally alleges that the subject judge “openly displayed a clear extrajudicial bias and prejudice against” him. More specifically, the complainant makes two allegations of misconduct in his statement of facts. See D.C. CIRCUIT JUDICIAL-CONDUCT AND JUDICIAL DISABILITY RULE 6(b) (“Allegations made in exhibits or attachments to the complaint will not be considered.”).

First, the complainant contends that the subject judge improperly failed to recuse from considering Case I after she became a defendant in Case III, and that she “therefore has a clear conflict of interest which prevents her from presiding over this case.” This allegation, however, goes directly to the merits of the subject judge’s decision to deny the motion to transfer Case I to another judge. Allegations that a judge committed misconduct by failing to recuse are generally dismissed as merits related. See JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS (2019), Rule 4(b)(1) (“An allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse, without more, is merits related.”).

The only exception permitting consideration of such a merits-based challenge is if the decision resulted from an “improper motive.” *Id.* That exception does not apply here because

¹ This is the complainant’s sixth misconduct complaint against the subject judge. Although the prior complaints are unrelated to the underlying litigation currently pending before the subject judge, the complainant’s arguments in all of the misconduct complaints against the subject judge have included allegations of personal bias against him. All of the prior complaints were dismissed as lacking sufficient evidence to raise an inference that misconduct had occurred and as merits related. See DC-18-90006; DC-17-90018; DC-15-90010; DC-14-90017; DC-11-90007. The complainant is cautioned that the repetitive filing of complaints can result in the imposition of restrictions against the bringing of further complaints. See JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS (2019), Rule 10(a).

the complainant has failed to provide any evidence demonstrating an improper motive. The complainant points to the existence of Case III, the lawsuit he has filed against the subject judge and other judges. As numerous courts have recognized, however, the existence of such separate litigation does not alone require recusal. See *Aldrich v. Ruano*, 554 Fed.Appx. 28, 29 (1st Cir. 2014); *In re Taylor*, 417 F.3d 649, 652 (7th Cir. 2005); *In re Hipp, Inc.*, 5 F.3d 109, 116 (5th Cir. 1993); *United States v. Watson*, 1 F.3d 733, 735 (8th Cir. 1993); *United States v. Studely*, 783 F.2d 934, 940 (9th Cir. 1986); *United States v. Grismore*, 564 F.2d 929, 933 (10th Cir. 1977), *cert. denied*, 435 U.S. 954 (1978). The complainant's assertion that the subject judge must follow the Court of Appeals' example of recusing from considering the Case III appeal is misplaced. Case III was brought against the Court of Appeals judges themselves. Case I, by contrast, is not an action against the subject judge herself, but is an entirely distinct matter. The subject judge's consideration of Case I thus does not involve her considering a case filed against her.

The complainant has failed to demonstrate that the subject judge failed to recuse from Case I for an improper purpose. Instead, he simply disagrees with her decision not to recuse. His challenge to her failure to recuse 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).

The complainant also alleges that the subject judge has improperly denied him the right to file electronically in Case I and that the only explanation for her decision is "personal spite, animus, extrajudicial bias, and prejudice." As the complainant concedes, however, under the

governing rules, the decision whether to grant a pro se plaintiff's request to file electronically is "within the discretion of the judge to whom the case is assigned." D.D.C. Local Rule 5.4(b)(2). In denying the motion for leave to file electronically, the subject judge determined that the complainant "has demonstrated sufficient ability to file pleadings on the docket." The fact that other judges may have granted the complainant's requests to file electronically in other cases does not demonstrate that the subject judge ruled out of personal spite or prejudice. This allegation thus lacks sufficient evidence to raise an inference that misconduct has occurred. Moreover, to the extent the complainant is challenging the grounds for the subject judge's order or the adequacy of the judge's explanation of those grounds, these allegations are a direct challenge to her decision to deny the motion, and thus "call[] into question the correctness of [the] judge[s] ruling." JUDICIAL-CONDUCT PROCEEDINGS RULE 4(b)(1). Such allegations 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).

In a supplement to the complaint, the complainant alleges that he submitted a request for an extension of time to respond to the Magistrate Judge's Report and Recommendation on attorney's fees, but that his request was not docketed until several days later because it was not allowed to be electronically filed. The complainant contends that the subject judge's "unexplainable actions therefore nearly caused me to miss a significant deadline in litigation my case." Contrary to the complainant's assertion, the subject judge's handling of his motion for an extension of time in no way indicates misconduct. In her initial order addressing the motion for an extension, the subject judge granted the complainant an additional three days

beyond the time he requested. He filed “interim objections” to the report within the time he was granted but sought additional time to file his final version. The subject judge then granted the motion for a further extension of time and directed the complainant to file his final objections by a later date, which he did. The complainant has failed to present any evidence that the subject judge handled his motion for an extension in an inappropriate manner, and his allegation 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).

Accordingly, because the complaint “is directly related to the merits of [the judge’s] decision,” and “lack[s] sufficient evidence,” 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).²

² 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).