

JUDICIAL COUNCIL
OF THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of
A Complaint of Judicial
Misconduct or Disability

Complaint No. DC-22-90037


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: 2/17/23

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 was indicted on six counts related to his conduct at the Capitol Building on January 6, 2021. The case was assigned to the subject judge, and the trial has yet to commence. The complainant has filed the instant misconduct complaint against the subject judge. The complaint's allegations do not point to any actions by the subject judge in the complainant's pending case, and the complainant has not moved in that case for the judge's recusal. The complaint instead relates to statements previously made by the subject judge when explaining her sentencing decisions for two other defendants convicted of committing crimes at the Capitol Building on January 6, 2021.

Specifically, the complainant contends that the subject judge's remarks when sentencing the other defendants show a "pattern of airing gratuitous, extraneous political remarks and partisan grievances during the handling of criminal cases of defendants who are clearly identified with siding with that political side," thereby allegedly infringing the judge's duty of impartiality and demonstrating an inappropriate partisan bias based on political party affiliation. See CODE OF CONDUCT FOR UNITED STATES JUDGES, Canon 3; JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS (2019), Rule 4(a)(1)(D) ("Cognizable misconduct includes . . . engaging in partisan political activity or making inappropriately partisan statements."). In contending that the subject judge

made “extraneous political remarks” critical of a particular political party at the previous sentencing hearings, the complainant asserts that the judge’s remarks “were made against a political party that I personally belong to.” The complainant recommends that, because of the subject judge’s “bias[ed] remarks,” she should “be removed . . . from all further January 6 cases,” a remedy that would include her removal from his own case.

The ordinary process for a party to seek a judge’s removal in a pending case based on the judge’s alleged bias, however, is to file a motion for the judge’s recusal in the pending case itself. See 28 U.S.C. § 455(a), (b)(1) (judge “shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned” or if “he has a personal bias or prejudice concerning a party”). If the complainant were to file such a recusal motion in the pending case, any denial of the motion by the subject judge would be subject to appellate review, which would entail an assessment by the court of appeals of whether a reasonable and informed observer would question the judge’s impartiality. *E.g., United States v. Cordova*, 806 F.3d 1085, 1092 (D.C. Cir. 2015); see also *In re Flynn*, 973 F.3d 74, 82–83 (D.C. Cir. 2020) (party injured by failure to recuse may seek mandamus before final judgment).

Given that the complainant retains the opportunity to file a recusal motion in his pending case, his instant misconduct complaint amounts to a collateral effort to obtain the subject judge’s removal from that case. The complainant thus essentially seeks to sidestep the ordinary process for considering and resolving allegations questioning a judge’s impartiality in a pending case. The complaint requests what would amount to a

determination by the undersigned—and ultimately by the circuit judicial council on review—that the subject judge’s impartiality in the complainant’s pending case might reasonably be questioned. That is precisely what the complainant would allege if he brought a motion for recusal in the pending case, except that the determination would then be made by the subject judge herself and then by the court of appeals in any appellate review, rather than by the undersigned and then by the circuit judicial council. The complainant even specifically requests as relief in this misconduct proceeding the same relief that would be sought in a motion for recusal in the pending case: the removal of the subject judge from that case.

Misconduct proceedings, however, are not meant to afford a substitute means for a party to obtain a judge’s removal from a pending case on grounds of alleged bias—either directly by seeking the judge’s removal from a pending case as a remedy in the misconduct proceeding itself, or indirectly by seeking a determination in the misconduct proceeding of the judge’s bias for ensuing use as the basis of a recusal motion in the pending case. Instead, the Rules for Judicial-Conduct and Judicial-Disability Proceedings presuppose that a motion for recusal in the pending case—not a collateral misconduct complaint under the Rules—is the proper means for a party in the case to contest a judge’s impartiality and seek the judge’s removal: under those Rules, a misconduct complaint is dismissed as merits-related if it challenges a judges’ refusal to recuse from a case, and that ground for dismissing a misconduct complaint applies even if no party moved for the judge’s recusal in the case. 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.”); see *Judicial Conduct & Disability Act Study Comm., Implementation of the Judicial Conduct and Disability Act of 1980: A Report to the Chief Justice*, 239 F.R.D. 116, 192–93 (Example C-10) (West 2006); *id.* app. E at 239 (“A mere allegation that a judge should have recused is merits-related; the proper recourse is for a party to file a motion to recuse.”).

Consequently, the complainant cannot bring this collateral misconduct complaint to challenge the subject judge’s impartiality in the complainant’s pending case in lieu of seeking the judge’s recusal directly in that case. That is not to say that the complainant would be forever foreclosed from bringing a misconduct complaint contending that the subject judge’s remarks in the previous sentencing hearings were “inappropriately partisan statements.” JUDICIAL-CONDUCT PROCEEDINGS RULE 4(a)(1)(D). The complainant would be free to do so when there is no longer a prospect of his seeking the subject judge’s recusal in his pending case based on her alleged partisan bias. As it stands, however, the complainant could still move for the judge’s recusal in his pending case on the same grounds he asserts in the instant misconduct complaint. And it would be inappropriate to permit a party in a pending case to forgo seeking the judge’s recusal in that case itself and instead to bring a collateral misconduct complaint contesting the judge’s impartiality in the pending case as an alternate means of obtaining her removal from it.

Accordingly, because the complaint is “not appropriate for consideration under the [Judicial Conduct and Disability] Act,” it will be dismissed. JUDICIAL-CONDUCT PROCEEDINGS RULE 11(c)(1)(G); *see also* JUDICIAL-CONDUCT PROCEEDINGS RULE 4(b)(1), 11(c)(1)(B).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).