

JUDICIAL COUNCIL
OF THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of
A Complaint of Judicial
Misconduct or Disability

Complaint No. DC-23-90010

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: November 17, 2023

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.

A company initiated an eviction case against the complainant in D.C. Superior Court and the complainant subsequently removed the case to the district court here. The complainant filed a motion, which the subject district court judge – who was assigned to motion duty – construed as a motion for leave to proceed in forma pauperis. The subject judge denied the motion without prejudice. The underlying case was subsequently assigned to a different district court judge. Shortly thereafter, the subject judge concluded that the court lacked subject matter jurisdiction because the complainant had raised no federal question and because all parties resided or conducted business in D.C., precluding diversity jurisdiction. The subject judge thus remanded the case back to the Superior Court.

The complainant then submitted to the district court a “motion to vacate” the court’s remand decision and several documents related to that motion. The complainant argued that the district court had violated his civil rights by wrongfully profiling him as a “pauper,” thus “trigger[ing] a condition of an appealable removal action” under 28 U.S.C. § 1443, which governs civil rights cases.

The judge to whom the case had been assigned denied the complainant leave to file his motion to vacate and the accompanying documents, explaining that the remand order was unreviewable under 28 U.S.C. § 1447(d) and that the court thus could not reconsider that

order. The court also directed the Clerk not to accept further filings from the complainant in this case.

The complainant then filed a notice of appeal of the order directing the Clerk to accept no further filings from the complainant. The court of appeals dismissed the appeal for lack of jurisdiction. The court held that, insofar as the complainant challenged the district court's order remanding the case to the Superior Court of the District of Columbia, the notice of appeal was filed more than 30 days after the district court entered its remand order. Insofar as the complainant challenged the district court's minute order directing the Clerk of the district court not to accept further filings from the complainant, the court of appeals determined that the complainant had not demonstrated that the court had jurisdiction to review that order. To the extent the complainant alleged judicial bias or misconduct, the court of appeals determined that no bias or other impropriety was evident from the record. The complainant then filed a motion to recall the mandate, which the court of appeals denied. The complainant subsequently filed a petition for a writ of certiorari with the Supreme Court, which was denied.

The complainant has now filed a judicial misconduct complaint against the district court judge who remanded the case to the Superior Court of the District of Columbia. First, the complainant alleges that the subject judge improperly denied him leave to proceed in forma pauperis, because he has "never sought to proceed in the form of a pauper." Second, the complainant asserts that the subject judge "seems to have been able to reach into the chambers of the new judge [to whom the case was assigned], retrieve the removal action, and

dismiss it as if it was never assigned to a true judge and not just a motions judge.” As a result, the complainant argues, the subject judge’s removal order was “unlawful and illegal.”

In challenging the subject judge’s decision to deny leave to proceed in forma pauperis as improper, the complainant is directly challenging the judge’s order. “Any allegation that calls into question the correctness of an official decision or procedural ruling of a judge – without more – is merits-related.” JUD. CONF. RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS, Rule 4(b)(1) Commentary ¶ 12. Such an allegation does not constitute “[c]ognizable misconduct” under the Judicial-Conduct Proceedings Rules or the applicable statute. *Id.* Rule 11(c)(1)(B); *see* 28 U.S.C. § 352(b)(1)(A)(ii).

To the extent the complainant contends that the subject judge erred in disposing of the case because the underlying case had been assigned to a different judge, the complainant has failed to provide any evidence that the subject judge committed misconduct. While the complainant is correct that the case had been assigned to a different judge for disposition on the merits, he has provided no evidence that the subject judge committed misconduct by disposing of the case in her capacity as the motions judge. Even assuming the subject judge erred in taking an action disposing of the case, rather than waiting for the judge to whom the underlying case had been assigned to dispose of the case on the merits, the complainant has given no reason to conclude that the subject judge’s action amounted to misconduct. This allegation, therefore, “lack[s] 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).

Accordingly, because the complaint “is directly related to the merits of [the subject

judge's] decision[s]" and "lack[s] 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).