

JUDICIAL COUNCIL
OF THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of
A Complaint of Judicial
Misconduct or Disability

Complaint No. DC-23-90060

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: April 3, 2024

No. DC-23-90060

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 filed in district court a complaint against a correctional officer in a federal prison located outside of the District of Columbia and against the prison's current and former wardens. The complainant asserted claims under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), and the Federal Tort Claims Act. Finding that the complainant had failed to establish venue in the District of Columbia, the subject judge ordered that the case be transferred to the district court for the district in which the alleged incidents occurred, pursuant to 28 U.S.C. § 1391(b). The complainant filed a notice of appeal of the transfer order, which was construed as a petition for writ of mandamus. Because the district court had not yet transferred the case, the court of appeals had jurisdiction to review the transfer order. The court of appeals denied the mandamus petition, concluding that the district court had not abused its discretion in transferring this case to a district in which a "substantial part of the events or omissions giving rise to the claim occurred." The court of appeals subsequently denied the complainant's petition for rehearing and rehearing en banc. Meanwhile, the case was electronically transferred to the other district.

The complainant has now filed a judicial misconduct complaint against the subject judge, alleging that the judge improperly applied 28 U.S. C. § 1391(b) in transferring the complaint. The complainant further claims that her case was improperly transferred "8 days

after the court of appeals affirmed the district court's decision on Mandamus[, w]ithout any regard to the time frames provided for filing a rehearing or rehearing en banc in any civil proceeding." The complainant argues that, because "the case was subject to procedures for rehearing and rehearing en banc in the DC Court of Appeals," the subject judge did not have jurisdiction to transfer the case. She alleges that the transfer of the case "evidences partiality and a desire to administer undue summary disposition."

In challenging the propriety of the subject judge's order transferring the complaint and the ministerial act of transferring the case, the complainant is directly challenging the judge's transfer 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.* Here, the complainant has provided no evidence of judicial misconduct other than her own belief that the transfer order was improper. To the extent the complainant alleges that the subject judge lacked jurisdiction to transfer the case at a time when the court of appeals had yet to consider a petition for rehearing and rehearing en banc, pursuant to D.C. Circuit Rule 41(a)(3), "[n]o mandate will issue in connection with an order granting or denying a writ of mandamus." Thus, the subject judge was free to transfer the case upon receipt of the court of appeals order denying mandamus and did not need to wait for the resolution of a petition for rehearing and rehearing en banc. Accordingly, because the complaint 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)(D); *see* 28 U.S.C. § 352(b)(1)(A)(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 of 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).