

JUDICIAL COUNCIL
OF THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of
A Complaint of Judicial
Misconduct or Disability

Complaint No. DC-24-90014

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: July 3, 2024

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 underlying case involves a class action suit. The subject judge certified the class and appointed counsel for the class, with the complainant serving as class counsel's co-counsel. The case ultimately made its way to the court of appeals, which remanded the case for further consideration. While on remand, because of disputes with class counsel, the complainant moved to be named sole class counsel. The subject judge denied the motion as not in the best interests of the class. As the case proceeded before the subject judge, the complainant filed a motion for leave to file a supplemental brief on behalf of the plaintiffs. The judge denied the motion, noting that "[t]his is not the first time that '[complainant], still unwilling to yield his claim as class-counsel-in-exile, filed a short supplemental brief in support of plaintiffs' motion.'"

Meanwhile, two plaintiffs, represented by the complainant, filed a separate but related suit. The subject judge dismissed the suit for violating the rule against claim-splitting, noting that "[p]ermitting a 'class counsel in exile' to unleash parallel, duplicative litigation against a defendant is not in the interest of judicial economy, fairness to defendants, or sound judicial policy." The judge further observed that the complainant "has not come to terms with the Court's decision to vest the authority of the class counsel in [another firm] and not him."

The complainant has now filed a judicial misconduct complaint against the subject judge. The complainant alleges that class counsel has "tried to push me aside to the significant

detriment of the class,” and that, “on two occasions, I felt I needed to file a supplement brief with the court. I have done so. The court has rejected both of them.” The complainant further claims that this puts him in a difficult situation because the class representatives hired him and his engagement letter with his clients allowed him to bring in co-counsel. The complainant asserts that the subject judge has infringed on his ability to represent his clients and has allowed class counsel to act in a way that is not in the best of interests of his clients. He further notes that, when he did not believe class counsel was doing a proper job, he moved to have his own firm replace class counsel but the subject judge denied the motion. Thus, the complainant alleges that the subject judge’s actions are resulting in “injustice,” and “[s]urely the Court can occasionally consider a supplemental brief, etc., given the . . . facts and circumstances.”

In a supplement to the misconduct complaint, which addressed the subject judge’s dismissal of the related case, the complainant asserts that the subject judge inappropriately referred to him as “class-counsel -in-exile.” He further claims that the discussion of the merits of the related case made it clear that class counsel inappropriately omitted an issue in the original complaint and that his own arguments better served the class.

The complainant’s complaint and supplement directly challenge the merits of the subject judge’s orders denying the complainant’s motions to replace class counsel and to file supplemental briefs. “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 alleges only his own beliefs that the subject judge was incorrect in declining to allow him to have greater control over the case.

To the extent the complainant alleges that the subject judge's reference to the complainant as "counsel-in-exile" is, in and of itself, misconduct, that argument also lacks merit. The "judge's language was relevant to the case at hand . . . [and thus] the judge's choice of language is presumptively merits-related and excluded." JUDICIAL-CONDUCT PROCEEDINGS RULE 4 Commentary ¶ 15. Furthermore, the complainant has not alleged that the language was used with an improper motive. *See id.*

Accordingly, because the complaint is "based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred" and is "directly related to the merits of a decision," 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 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).