

JUDICIAL COUNCIL
OF THE DISTRICT OF COLUMBIA CIRCUIT

**In the Matter of
A Complaint of Judicial
Misconduct or Disability**

Complaint No. DC-25-90005

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: September 29, 2025

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 complaint concerns the subject judge's conduct during a preliminary injunction hearing. The underlying case involves a suit by private plaintiffs against the President and other government officials challenging an executive order. The case is ongoing. After the filing of the misconduct complaint, the subject judge issued a preliminary injunction against the government in the underlying case, and the government then appealed the preliminary injunction. The court of appeals granted an administrative stay of the preliminary injunction while it considers the government's motion for a stay pending appeal. The administrative stay remains in place, and the government's motion for a stay pending appeal, as well as the merits of the appeal, remain pending.

The misconduct complaint was filed by an official (and attorney) with the Department of Justice, which represents the government officials in the underlying case. The complaint is brought by the complainant in his official capacity with the Department and so will be treated as a misconduct complaint submitted by counsel for a party in the underlying case (the government).

The government’s complaint contends that the subject judge, while presiding over the preliminary injunction hearing, engaged in conduct that “compromised the dignity of the proceedings and demonstrated potential bias, raising serious concerns about her ability to preside impartially in this matter.” Complaint at 1. The complaint describes two exchanges between the subject judge and the Department of Justice attorney representing the government in the hearing. According to the complaint, the judge’s conduct in those exchanges “diminished respect for counsel,” “created an intimidating atmosphere inconsistent with the proper administration of justice,” and “risk[ed] undermining respect essential for fair proceedings.” *Id.* at 2. The complaint alleges that the subject judge’s conduct towards government counsel violated ethical canons requiring judges to “act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary” and to “avoid comment or behavior that could reasonably be interpreted as harassment, prejudice, or bias.” *Id.* at 2–3 (quoting CODE OF CONDUCT FOR UNITED STATES JUDGES, Canons 2 & 3 and commentary).

When, as here, a party in a pending case develops “serious concerns” about the judge’s “ability to preside impartially in the matter,” Complaint at 1, or believes that the judge’s conduct indicates a “bias” or “prejudice” against it, *id.* at 3, the ordinary procedure is to move for the judge’s recusal: under the statute governing judicial recusals, a judge must “disqualify himself in any proceeding in which his impartiality might reasonably be questioned,” 28 U.S.C. § 455(a), or if “he has a personal bias or prejudice concerning a party,” *id.* § 455(b)(1). If the government were to file such a recusal motion in the underlying case, any denial of the motion by the subject judge

would be subject to appellate review, in which the court of appeals would assess 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). And to the extent a party believes that circumstances warrant immediate appellate review of a district court judge’s denial of a recusal motion, the party can seek mandamus relief in the court of appeals while the case is ongoing. *See In re Flynn*, 973 F.3d 74, 82–83 (D.C. Cir. 2020); *In re Hawsawi*, 955 F.3d 152, 156 (D.C. Cir. 2020); *In re Al-Nashiri*, 921 F.3d 224, 233 (D.C. Cir. 2019).

Here, however, the government has not moved for the subject judge’s recusal in the underlying case based on its expressed concerns about the judge’s impartiality. Instead, the government has brought the instant misconduct complaint on the same grounds—i.e., that the judge’s conduct in the underlying case raises serious concerns about her impartiality and exhibits potential bias. But “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.” *In the Matter of a Complaint of Judicial Misconduct*, No. DC-22-90037, at 3 (D.C. Cir. 2023).

The government’s complaint “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.” *Id.* at 2–3. In these circumstances, a party “cannot bring [a] collateral misconduct complaint to challenge the subject judge’s impartiality in [a] pending case in lieu of seeking the judge’s recusal directly in that case.” *Id.* at 4; *see In the Matter of a Judicial Complaint Under 28 U.S.C. § 351*, No. 06-9028, at 2 (4th Cir. 2006) (“The judicial complaint procedure ‘may not be used to have a judge disqualified from sitting on a particular case. A motion for disqualification should be made in the case.’”) (internal citation omitted).

Granted, the government in the instant misconduct complaint does not explicitly ask for the subject judge’s removal from the underlying case. It instead generally seeks—without further specification—“appropriate action” to assure “dignity and impartiality” in the pending case. Complaint at 3. But the complaint challenges the subject judge’s actions in that case on the ground that they raise serious questions about her impartiality, and a determination to that effect could then be used as the predicate for seeking her recusal: armed with such a determination from a misconduct proceeding, a party could contend in the underlying case that it has already been determined that the judge’s “impartiality might reasonably be questioned.” 28 U.S.C. § 455(a). A misconduct complaint, however, is “not meant to afford a substitute means for a party to obtain a judge’s removal . . . 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.” *In the Matter of a Complaint of Judicial Misconduct*, No. DC-22-90037, at 3.

Indeed, there very well could be no need for the party even to move for the judge’s recusal in such a situation. Under the terms of the recusal statute, a judge “shall” recuse herself whenever her “impartiality might reasonably be questioned,” regardless of whether there is any recusal motion. 28 U.S.C. § 455(a); *see United States v. Barrett*, 111 F.3d 947, 955 (D.C. Cir. 1997) (Tatel, J., concurring) (“[S]ection 455 requires judges to consider recusal *sua sponte*.”); *see also Christiansen v. Nat’l Sav. & Tr. Co.*, 683 F.2d 520, 524 (D.C. Cir. 1982) (considering potential conflict of interest “*sua sponte* . . . because the federal statute governing disqualification is self-enforcing”). So, if a chief circuit judge—and ultimately the circuit judicial council—were to determine in a misconduct proceeding that there are questions about a subject judge’s impartiality in a pending case, the subject judge might have little choice but to conclude on her own that the determination itself effectively requires her recusal, entirely aside from whether there is any specific request for that relief.

In short, the necessary upshot of a misconduct complaint grounded in concerns about a subject judge’s impartiality in an ongoing case is to bring into play the potential need for her to recuse in that case. A misconduct proceeding is not meant to function in that way—i.e., as an alternate means by which a party in a pending case could bring about the judge’s recusal. To the contrary, “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 alternative means of obtaining her removal from it.” *In the Matter of a Complaint of Judicial Misconduct*, No. DC-22-90037, at 4.

If a party that believes a judge’s conduct in a case raises serious questions about her impartiality were to press its concerns in the ordinary way—by seeking her recusal in the case itself—the standards for resolving the matter are well established. “[J]udicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge,” but they will do so “if they reveal such a high degree of favoritism or antagonism as to make fair judgment impossible.” *Liteky v. United States*, 510 U.S. 540, 555 (1994). “Not establishing bias or partiality, however, are expressions of impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what imperfect men and women, even after having been confirmed as federal judges, sometimes display.” *Id.* at 555–56. There is no occasion here to apply those standards in the context of the instant misconduct complaint. The dispositive point instead is that the proper means of raising the matter would be through a recusal motion in the underlying case itself rather than through a collateral misconduct complaint.

A different situation might be presented if a party in a pending case were to allege judicial misconduct that was independent of—and thus to disclaim any concerns about—the subject judge’s impartiality. Allegations could, for instance, contend that a judge’s conduct was improper under applicable standards but not in ways indicative of bias or partiality in favor of (or against) one side or the other. In such a situation, the concerns

about circumventing the normal process for seeking a judge’s recusal based on questions about her impartiality might not arise.

The instant misconduct complaint, by contrast, squarely raises those concerns. Far from disclaiming or setting aside any concerns about the subject judge’s impartiality, the complaint, as noted, contends that the judge has “compromised the dignity of the proceedings and demonstrated potential bias, raising serious concerns about her ability to proceed impartially in this matter.” Complaint at 1. The complaint correspondingly focuses on the judge’s conduct towards one side in the dispute, and alleges violation of ethical canons requiring the judge to “act at all times in a manner that promotes public confidence in the *integrity and impartiality of the judiciary*” and to “avoid comment or behavior that could reasonably be interpreted as *harassment, prejudice, or bias*” against that one side. *Id.* at 2–3 (quoting CODE OF CONDUCT FOR UNITED STATES JUDGES, Canons 2 & 3 and commentary) (emphasis added).

Accordingly, because the complaint is “not appropriate for consideration under the [Judicial Conduct and Disability] Act,” it will be dismissed. JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS (2019), 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 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).