

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-18-90012

A Charge of Judicial Misconduct or Disability

Before: GARLAND, *Chief Judge*.

ORDER

Upon consideration of the complaint herein, filed against a judge of the United States Court of Appeals for the District of Columbia Circuit, 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 11(g)(2).


Merrick B. Garland, Chief Judge

Date: 10/25/18

MEMORANDUM

The complainant has filed a complaint of judicial misconduct against a judge of the United States Court of Appeals for the District of Columbia Circuit. For the following reasons, the misconduct complaint will be dismissed.

The complainant represented the plaintiffs in an action against former Secretary of State Hillary Rodham Clinton, alleging (inter alia) that her use of a private email server directly led to the deaths of the plaintiffs' sons and that she subsequently defamed the plaintiffs. The district court substituted the United States as a defendant for some of the claims and dismissed the complaint for lack of subject matter jurisdiction and failure to state a claim. The plaintiffs appealed.

Pursuant to D.C. Circuit Rule 34(j), a panel of the Court of Appeals -- of which the subject judge was a member -- issued a notice that the court would resolve the appeal without oral argument on the basis of the record and presentation of the briefs. The appellants then filed a motion to recuse the subject judge, asserting that her contribution to Clinton's presidential primary campaign warranted the judge's recusal. The judge denied the motion, noting that "[t]he single contribution to the Clinton campaign referred to in the motion was made in 2008 prior to [the judge's] . . . appointment to the court." The Court of Appeals subsequently affirmed the district court's order.

Thereafter, the complainant filed the instant judicial misconduct complaint against the subject judge. The complaint asserts that the judge's donations to the 2008 Clinton

primary campaign “provide clear evidence of her extrajudicial bias and prejudice that mandate her recusal.” But those donations, which were made almost six years before the subject judge’s appointment to the Court of Appeals and more than eight years before the complainant’s lawsuit was filed in the district court, are insufficient “to raise an inference that misconduct has occurred,” JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS, RULE 11(c)(1)(D). *See Matter of Mason*, 916 F.2d 384, 386-87 (7th Cir. 1990) (declining to disqualify a district judge in a case in which the defendants were beneficiaries of political contributions the judge made before his appointment, noting that “[c]ourts that have considered whether pre-judicial political activity is . . . prejudicial regularly conclude that it is not”).

As further evidence of bias, the complainant proffers that: 1) the judge failed to recuse herself on three separate occasions; 2) the three-judge panel “ruled that it would dispose of the appeal without the benefit of oral argument on the basis of the record and presentations in the briefs pursuant to Fed. R. App. 34(a)(2)”; and 3) in “upholding [the district court’s] erroneous ruling, the judicial panel . . . failed to even consider supplemental authority provided by Plaintiffs-Appellants that is directly on point.”

The first piece of proffered evidence, the judge’s failure to recuse, is insufficient because “an allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse, without more, is merits-related” and therefore does not constitute “cognizable misconduct” under the Judiciary’s misconduct rules. JUDICIAL-

CONDUCT RULE 3(h)(3)(A); *see* JUDICIAL CONDUCT RULE 11(c)(1)(B) (“A complaint must be dismissed” if it “is directly related to the merits of a decision or procedural ruling.”). The same is true of the panel’s decision to dispose of the case without oral argument pursuant to the Federal Rules and D.C. Circuit Rule 34(j). And the same is also true of the panel’s failure to address the supplemental authority cited by Plaintiffs-Appellants: a New York state trial court’s decision in an unrelated case involving President Donald Trump.

Accordingly, the “complaint must be dismissed” because it “is based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred.”

JUDICIAL-CONDUCT 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 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 RULE 18(b).