

JUDICIAL COUNCIL
OF THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of
A Complaint of Judicial
Misconduct or Disability

Complaint No. DC-20-90008

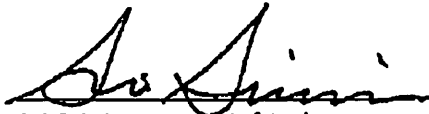
Before: Srinivasan, Chief Judge.

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: 6/5/20

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 subject judge was assigned a case in which the plaintiffs, invoking the Freedom of Information Act (“FOIA”), sought the release of the unredacted version of a report prepared by a Special Counsel regarding his investigation into Russian interference in the 2016 United States Presidential election (“Special Counsel Report”). The subject judge granted the plaintiff’s motion seeking an *in camera* review of the unredacted Special Counsel Report and denied without prejudice the government’s motion for summary judgment.

In the course of the subject judge’s decision to grant *in camera* review, the judge expressed concerns about the Attorney General’s actions and statements in connection with the release of the redacted version of the Special Counsel Report. The judge concluded that, “although it is with great consternation, . . . considering the record in this case, the Court must conclude that the actions of Attorney General Barr and his representations about the [Special Counsel] Report preclude the Court’s acceptance of the validity of the Department[] [of Justice’s] redactions without [the Court’s] independent verification.” Thus, the court determined that its *in camera* review of the Report was necessary to determine whether the redactions were valid under the claimed FOIA exemptions. The judge deferred his *in camera* review of the unredacted Special Counsel Report due to the effect on court operations of the

COVID-19 virus, and the judge therefore has not issued a ruling on the validity of the redactions.

The complainant, who is not a party to the FOIA litigation, filed a misconduct complaint against the subject judge. The complainant asserted that “[t]he Judge erroneously referred to [the] Attorney General[]’s unrelated comments to suggest that, because of the comments, DOJ redactions may have been biased or otherwise improper, a non sequitur, at best.” The complainant does not specify which comments by the Attorney General are ostensibly “unrelated” or were “erroneously referred to” by the subject judge. The complainant further alleges that the subject judge is operating under “a conflict of interest or, at least, there is an appearance of impropriety in his outrageous statements.” With regard to the asserted conflict of interest, the complainant claims that, because of the subject judge’s prior service as the Presiding Judge of the Foreign Intelligence Surveillance Act (“FISA”) Court, “it appears that [the subject judge] is trying to protect himself and his past FISA Court cronies.” The complainant further alleges that the subject judge made “inappropriately partisan statements” and treated litigants “in a hostile manner.” In support, the complainant states that the subject judge “assumed misconduct by the President and Attorney General, and accused them of trying to create a ‘Banana Republic,’ merely because they have different opinions on the law and seek to bring to justice those involved in wrongdoing.”

To the extent the complainant is alleging that the subject judge improperly granted the motion for *in camera* review of the unredacted Special Counsel Report, that allegation “calls into question the correctness of [the] judge’s ruling.” JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT

AND JUDICIAL-DISABILITY PROCEEDINGS (2019), Rule 4(b)(1). The judge's determination that the circumstances warranted granting the request for *in camera* view does not constitute "[c]ognizable misconduct" under the Judicial-Conduct Proceedings Rules or the applicable statute. *Id.*; see 28 U.S.C. § 352(b)(1)(A)(ii).

To the extent the complainant is asserting that the subject judge has a conflict of interest, acted in a partisan manner, treated the Attorney General or others in a hostile manner, or is acting in the judge's own self interest, the allegations "lack sufficient evidence to raise an inference that misconduct has occurred." JUDICIAL-CONDUCT PROCEEDINGS RULE 11(c)(1)(C) & (D). The subject judge's expression of concerns about the validity of the government's redactions, for purposes of granting *in camera* review of the unredacted Special Counsel Report, does not raise an inference of a conflict of interest or partisan behavior. The judge's decision granting *in camera* review states that, if, after reviewing the unredacted version of the Special Counsel Report, the judge concludes that the information was appropriately withheld, the judge will grant the government's motion for summary judgment on that ground. Moreover, the subject judge's prior service on the FISA Court does not in and of itself demonstrate that he is operating under a conflict of interest or has otherwise committed misconduct in this case. With regard to the judge's reference to a "Banana Republic," that comment appears to have been made during a status conference in a separate, unrelated case, and the complainant provides no evidence supporting the notion that the judge's comment in a separate, unrelated case affected the judge's handling of the underlying case here involving the redactions to the Special Counsel Report. Finally, while the complainant refers generally to

“outrageous statements” made by the subject judge in connection with the decision granting *in camera* review of the unredacted Special Counsel Report, the complainant does not identify any specific statements that ostensibly qualify as “outrageous” or amount to misconduct.

Accordingly, because the misconduct complaint “is directly related to the merits of a decision or procedural ruling,” and “is based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred,” it must 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).