

JUDICIAL COUNCIL
OF THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of
A Complaint of Judicial
Misconduct or Disability

Complaint No. DC-20-90018

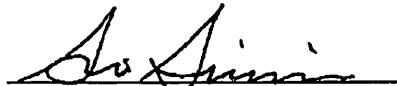
Before: Srinivasan, Chief Judge

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: 9/22/20

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 criminal case. The complainant, who is not a party to the criminal case, filed a misconduct complaint against the subject judge challenging the judge's handling of the case. Specifically, the complainant alleges that the subject judge is "[t]reating litigants, attorneys, or others in a demonstrably egregious and hostile manner." As evidence of the alleged misconduct, the complainant states that allowing amicus curiae to submit briefs is "typically not something that happens in a criminal case for a reason." The complainant further alleges that the judge's comment that "I'm not hiding my disgust, my distain for this criminal offense," "should be viewed as obvious hostility towards this defendant." Finally, the complainant notes that the judge "has denied third party amicus over 20 times, yet for some reason is eager to do so in this matter. It is obvious [the defendant] has been treated inappropriately."

The subject judge's acceptance of amicus curiae briefs does not support an allegation of misconduct. 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), and 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).

With regard to the allegation concerning the subject judge's comment, "a judge's public comments can themselves be misconduct if sufficiently rude, derogatory, or intemperate." *In re Complaint of Judicial Misconduct*, 761 F.3d 1097, 1099 (9th Cir. 2014); see JUDICIAL-CONDUCT PROCEEDINGS RULE 4(a)(2)(B) ("Cognizable misconduct includes . . . treating litigants . . . in a demonstrably egregious and hostile manner."). Here, however, the subject judge's comment does not rise to the level of misconduct. A review of the transcript reflects that the judge's comment concerned the criminal offense at issue and conveyed the judge's view of the serious nature of the crime, and is not the kind of "sufficiently rude, derogatory, or intemperate" comment that can itself constitute misconduct. *In re Complaint of Judicial Misconduct*, 761 F.3d at 1099. The allegation therefore "lack[s] sufficient evidence to raise an inference that misconduct has occurred." JUDICIAL-CONDUCT PROCEEDINGS RULE 11(c)(1)(D).

Moreover, the en banc Court of Appeals has determined that the subject judge's statements and conduct in the matter in question, including with regard to the appointment of amicus, has not "come[] close to meeting the 'very high standard' of 'conduct so extreme as to display clear inability to render fair judgment,'" and thus reassignment to another judge was unwarranted. 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).