

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-13-90025

A Charge of Judicial Misconduct or Disability

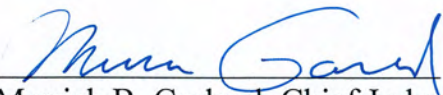
Before: GARLAND, Chief Judge of the Circuit

ORDER

Upon consideration of the complaint herein, filed against a Judge of the United States District Court for the District of Columbia pursuant to the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 and the Judicial Conference of the United States Rules for Judicial-Conduct and Judicial-Disability Proceedings, it is

ORDERED, for the reasons stated in the attached Memorandum, that the complaint be dismissed. *See* 28 U.S.C. § 352(b)(1)(A)(iii) and (b)(2); JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS 11(c)(1)(B) & (e).

The Clerk 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
District of Columbia Circuit

Date: 9/26/13

M E M O R A N D U M

The complainant alleges that a Judge of the United States District Court for the District of Columbia engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts. Specifically, the complainant alleges that the subject judge acted in a discriminatory manner by secretly denying her request to amend a Privacy Act complaint to add new claims and defendants, by changing the filing date on a second complaint she filed, by not informing her of a decision on her motion to correct the case by “terminating” it, and by conspiring with the defendants to have her second complaint dismissed before she discovered that some of the claims in her first complaint were no longer pending. For the following reasons, these allegations do not warrant action against the subject judge.

The complainant filed a complaint under the Privacy Act for monetary and injunctive relief stemming from the termination of the complainant’s disability benefits. The complainant then filed a “proposed amend[ment] to the complaint that adds to the original complaint two defendants and three causes of action.” The complainant subsequently moved the court to clarify whether it was permitting her to add her additional causes of action and defendants or whether it was “replacing” her complaint with the amended complaint. Shortly thereafter, the complainant filed a motion to withdraw the motion to amend the complaint. The subject judge then issued an order explaining that he intended to treat the complainant’s proposed amendment as an addition to the original complaint and held in abeyance the complainant’s motion to withdraw the

complaint, believing that the court had created some confusion as to which causes of action were to be considered. The complainant then sought, and was granted, an extension of time to respond to the judge's request to inform the court whether or not she wished to proceed with the additional claims and defendants. The complainant has since moved to withdraw her motion to amend her original complaint. The complainant also filed a second case, which was assigned to the subject judge as a related case. In that case, the complainant filed a "motion for the clerk to correct the case file by filing the documents it received from plaintiff . . . and by removing the documents that the court altered without plaintiff's consent and knowledge."

The complainant then filed the instant judicial misconduct complaint against the subject judge. The complainant alleges that the subject judge improperly "replaced" the claims alleged in the original complaint with those in the proposed amendment, instead of considering the new causes of action and defendants as additions to the original complaint. That issue, however, has been resolved by the subject judge's recent order explaining that he did not substitute the amendment for the original complaint, but instead intends to consider both if that is how she wishes to proceed. In addition, the complainant has moved to withdraw her motion to amend the complaint. The court's intervening order and the withdrawal of the motion to amend make action on this allegation no longer necessary. *See* 28 U.S.C. § 352(b)(2) (providing that the Chief Judge may "conclude the proceeding if the chief judge finds that appropriate corrective action has been taken or

that action on the complaint is no longer necessary because of intervening events”); Jud. Conf. U.S., Rules for Judicial-Conduct and Judicial-Disability Proceedings 11(e).

The complainant also asserts that the court improperly changed the date stamp on the complaint filed in the second related case. The complaint was received in the courthouse on November 22, 2012. Because November 22 was Thanksgiving, the court was closed, and the complaint was filed on November 26, the next business day. The complainant has, therefore, failed to provide any evidence that the subject judge improperly altered the date the second case was filed. *See* U.S.C. § 352(b)(1)(A) (iii) (providing that the complaint may be dismissed when it lacks “sufficient evidence to raise an inference that misconduct has occurred”); Jud. Conf. U.S., Rules for Judicial-Conduct and Judicial-Disability Proceedings 11(c)(1)(D).

The complainant further argues that in the second case, the subject judge improperly “closed [the] motion for the clerk to correct the case file . . . without issuing an order and providing Plaintiff notice of [the] closing.” The record, however, reflects that the judge has not terminated the motion. No action has been taken on the motion. Thus, the complainant has failed to provide any evidence that the subject judge improperly terminated the motion or failed to give the complainant notice of action taken. This allegation, therefore, lacks sufficient evidence to raise an inference that judicial misconduct has occurred. *See* U.S.C. § 352(b)(1)(A) (iii); Rule 11(c)(1)(D).

The complainant's final allegation is that the subject judge and the defendants conspired to dismiss the complainant's second case before she discovered that some of the claims in her first case were no longer pending. As detailed above, however, the judge explained that all of the complainant's claims in her first case are still pending, if the complainant wishes to pursue them. The complainant, however, has now elected not to pursue some of those claims. Moreover, the complainant's second case is also still pending. Hence, there is no merit to the allegation that the subject judge conspired to dismiss the complainant's second case, and this portion of the complaint must be dismissed. *See* U.S.C. § 352(b)(1)(A) (iii); Rule 11(c)(1)(D).

In sum, the complaint must be dismissed because action is no longer necessary on some of the claims due to intervening events, and because the complainant's allegations lack sufficient evidence to raise an inference that misconduct has occurred.¹

¹ Pursuant to 28 U.S.C. § 352(c) and JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL -DISABILITY PROCEEDINGS 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 Clerk of the Court of Appeals within 35 days of the date of the Clerk's letter transmitting the dismissal Order and this Memorandum. *Id.* R. 18(b).