

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-18-90014

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 judges, 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: 10/4/18

MEMORANDUM

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

The complainant filed an action in the United States District Court against an employee of the Supreme Court Historical Society and several dozen officers and other employees of that organization. The action alleged that, while the complainant was attending an event at the United States Supreme Court, the lead defendant “brutally assaulted” her because of her sexual orientation. The complainant sought both an order directing the government to prosecute the assault as a hate crime and damages of \$250,000 per defendant.

The complainant’s action was assigned to the subject District Judge, who dismissed it on the ground that the court lacked authority to order the government to commence an investigation or prosecution. Insofar as the complainant sought to raise a tort claim against the lead defendant, the judge found that she had failed to establish the elements of diversity jurisdiction; as to all other defendants, the judge found that the complainant’s complaint lacked sufficient factual allegations to support a claim. The complainant appealed the decision.

A three-judge panel of the United States Court of Appeals affirmed the District Court's order for the reasons stated by the District Judge. The complainant then filed a petition for rehearing, alleging, inter alia, "that the 3-Judges were opposed to her gender with misogyny, her age 76, her religion . . . , and her sexual orientation." She also requested that one of the members of the panel -- who is the other subject judge in this matter -- recuse himself from the case because of his alleged bias. The complainant attached a letter that had been written to the United States Senate by "advocacy organizations" to oppose the subject Court of Appeals judge's confirmation to the Court of Appeals. The panel denied the petition for rehearing and the motion to recuse, stating that "[a]ppellant has not demonstrated that the court's impartiality might reasonably be questioned." The complainant then filed a series of motions, including two motions to reconsider. The motions to reconsider were denied and the other motions were denied or dismissed as moot.

Meanwhile, the complainant had also filed a "notice of appeal of habeas corpus from the 10th Circuit to the United States Court of Appeals for the District of Columbia," which was docketed as a petition for a writ of mandamus. She asked the court to "suspend the Federal Rules of Civil Procedure, Rule 2, and free this inmate currently in custody on probation from the 9th Judicial District of Colorado." The Court of Appeals denied the petition. The same three-judge panel held that, "[i]nsofar as petitioner seeks review of decisions by the United States District Court for the District of Colorado and

the United States Court of Appeals for the Tenth Circuit, this court lacks jurisdiction to review such decisions.” The complainant then filed a petition for rehearing, as well as several subsequent motions, all of which were denied.

While the complainant’s cases were pending in the Court of Appeals, she filed a judicial misconduct complaint against the subject Court of Appeals judge (No. DC-18-90014). The complaint alleges that the judge is biased against the complainant because of her sexual orientation and should be “remove[d]” from all her cases. Attached as evidence is the same letter that the advocacy organizations had sent to the Senate in opposition to the judge’s confirmation to the bench. The complaint proffers no evidence of the judge’s alleged bias beyond the advocacy organizations’ belief that his legal advice to the President and the Department of Justice, while he was serving in the Executive Branch, reflected bias. No claims are made with respect to the judge’s conduct as a judge. Because such evidence is 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), the complaint must be dismissed, *see id.*; 28 U.S.C. § 352(b)(1)(A)(iii).

The complainant also filed a misconduct complaint against the subject District Judge (DC-18-90053). Although the complaint includes voluminous attachments, the statement of facts simply says: “Refusal to enforce 18 USC 249 Medical and physical assessments to determine Axis I and Axis IV mental illness due to bias prejudice

. . . [against] Complainant in his court.” To the extent that the complainant is challenging the merits of the subject District Judge’s order dismissing her underlying District Court action, that contention does not constitute “cognizable misconduct” under the Judicial-Conduct Rules. JUDICIAL-CONDUCT RULE 3(h)(3)(A); *see id.* RULE 11(c)(1)(B); *see also* 28 U.S.C. § 352(b)(1)(A)(ii). To the extent that the complainant is charging the District Judge with bias, it proffers no evidence in support other than the dismissal of her action. Accordingly, the complaint must be dismissed. JUDICIAL-CONDUCT RULE 11(c)(1)(D); *see* 28 U.S.C. § 352(b)(1)(A)(iii); *see also* JUDICIAL-CONDUCT RULE 3(h)(3)(A) .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).