

JUDICIAL COUNCIL
OF THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of
A Complaint of Judicial
Misconduct or Disability

Complaint No. DC-23-90001

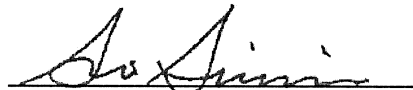
Before: Srinivasan, Chief Judge

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: 10/31/23

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.

On December 22, 2020, a group of plaintiffs filed a complaint in district court raising constitutional claims relating to the certification of the 2020 election and seeking declaratory and injunctive relief. Throughout the district court proceedings, the plaintiffs were represented by an attorney. In January 2021, the subject judge denied the plaintiffs' motion for a preliminary injunction, concluding that the plaintiffs did not establish a likelihood of success on the merits. The judge determined that the court lacked subject matter jurisdiction because the plaintiffs had not demonstrated standing and that their claims lacked merit. Following the denial of their motion for a preliminary injunction and the certification of the 2020 election, the plaintiffs filed a notice of voluntary dismissal, and the case was dismissed that day. After the dismissal of the case, the subject judge issued an order to show cause why the plaintiffs' attorney should not be referred to the Committee on Grievances for the reasons discussed in the subject judge's opinion denying the preliminary injunction motion. The plaintiffs' attorney, through counsel, filed a response to the order to show cause.

The subject judge subsequently issued an order referring the plaintiffs' attorney to the district court's Committee on Grievances. The referral order stated that the court "expresse[d] no opinion on whether discipline should be imposed or, if so, what form that

should take.” The subject judge, however, identified “several of [the underlying suit’s] numerous shortcomings that the Committee may wish to consider.” The judge further noted that, “[w]hen any counsel seeks to target processes at the heart of our democracy, the Committee may well conclude that they are required to act with far more diligence and good faith than existed here.”

The plaintiffs’ attorney, through counsel, appealed the referral order. The court of appeals appointed amicus to assist the court in addressing the plaintiffs’ attorney’s standing to appeal. The court ultimately dismissed the appeal for lack of jurisdiction under 28 U.S.C. § 1291, concluding that the district court’s referral was not a final appealable order.

The complainant, who was not a party or counsel in the underlying lawsuit or in the referral matter, has now filed the instant misconduct complaint against the subject judge. The complainant alleges that the subject judge committed misconduct both in his disposition of the underlying case and in making his referral to the Committee on Grievances.

As to the charge of misconduct based on the handling of the underlying case, the complainant alleges that the subject judge “violated Canon 3(C)(1)(a) by not recusing himself after concluding that the allegations of voter fraud were baseless before any evidence had been presented at trial.” More specifically, the complainant contends that the subject judge’s “willingness to discount the testimony of witnesses he had never seen, his mischaracterization of the allegations as baseless, and his apparent willingness to reach factual conclusions based on the evidence of sources not presented in court, demonstrate beyond any doubt that his impartiality could reasonably be questioned.”

Allegations that a judge committed misconduct by failing to recuse are generally dismissed as merits related. See JUD. CONF. RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS, Rule 4(b)(1) (“Cognizable misconduct does not include an allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse”). “A failure to recuse may constitute misconduct only if the judge failed to recuse for an improper purpose.” *In re Judicial Misconduct*, 605 F.3d 1060, 1062 (9th Cir. 2010). The complainant, however, has provided no evidence of a failure to recuse for an improper purpose other than his own beliefs that the judge’s conclusions were necessarily improper. In that regard, the complainant challenges the basis for the subject judge’s decision to deny the motion for a preliminary injunction. Because that allegation is “directly related to the merits of a decision or procedural ruling,” it must be dismissed. JUDICIAL-CONDUCT PROCEEDINGS RULE 11(c)(1)(B); see 28 U.S.C. § 352(b)(1)(A)(ii).

The complainant also asserts that the subject judge “violated Canon 2(A) by publicly announcing the referral in violation of the requirement that disciplinary proceedings be confidential.” The complainant further claims that Canon 2(A) requires that judges “respect and comply with law,” and that publicly announcing the referral violated District Court Local Rule 83.14(d). That Rule states that “[a]ll proceedings before the Committee involving allegations of misconduct of an attorney and all documents and charges presented to the Committee shall remain confidential and privileged.” RULES OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA (LCvR), Rule 83.14(d).

The complainant's challenge to the public nature of the order and to the subject judge's application of the local rules, however, directly relates to the judge's referral order. "Any allegation that calls into question the correctness of an official decision or procedural ruling of a judge – without more – is merits-related." JUDICIAL-CONDUCT PROCEEDINGS RULE 4(b)(1) Commentary ¶ 12. "[A] cognizable misconduct complaint based on allegations of a judge not following prevailing law . . . in particular cases must identify clear and convincing evidence of willfulness, that is, clear and convincing evidence of a judge's arbitrary and intentional departure from prevailing law based on his or her disagreement with, or willful indifference to, that law." *In re Memorandum of Decision of Judicial Conference Committee on Judicial Conduct and Disability*, 517 F.3d 558, 562 (U.S. Jud. Conf. 2008). In his complaint, however, the complainant has failed to provide any evidence that the subject judge intentionally departed from the law or did so with willful indifference.

In dismissing the appeal of the referral order, the court of appeals observed that "it is unclear whether the confidentiality rules that [the attorney] cites apply to a judge's referral decision, see LCvR 83.14(d)." Furthermore, Local Rule 83.13(b), Powers of Individual Judges, states that "[n]othing contained in these Rules shall be construed to deny to this Court or to any individual judge . . . such powers as are necessary for the Court to maintain control over proceedings conducted before it." LCvR 83.13(b). Accordingly, it is not unprecedented for district court judges to make public referrals to the Committee. See *Annapolis Citizens Class Overcharged for Water-Sewer, By Loundon Operations v. Stantec, Inc.*, No. 20cv2603, order filed January 8, 2021; *Williams v. Romarm S.A.*, No. 19cv183, order filed April 1, 2020. Thus, while

there may be instances in which a judge's disregard for a prevailing legal standard could rise to the level of misconduct, this is not such a case. Because there is a question as to whether the local rule involving confidentiality even applies to the subject judge's referral decision, and because the complainant has pointed to no evidence or indication of willful disregard on the subject judge's part, there is no basis for concluding that the subject judge intended to depart from "prevailing law" based on his "disagreement with, or willful indifference to, that law." *In re Memorandum of Decision of Judicial Conference Committee*, 517 F.3d at 562. Absent more, consequently, this allegation must be dismissed as merits-related. See JUDICIAL-CONDUCT PROCEEDINGS RULE 11(c)(1)(B); see 28 U.S.C. § 352(b)(1)(A)(ii).

Finally, the complainant claims that the subject judge "violated Canon 3(A)(1) by failing to exercise competence when he made a referral which was not based on the Rules of Professional Conduct." As further evidence of the alleged misconduct, the complainant asserts that the subject judge "made no reference to the Rules in his referral," presented an analysis of the alleged violation of the Rules that was "grossly deficient," issued an ambiguous order to show cause, "ignored the Rules entirely and, instead, rendered a critique of [the plaintiffs' attorney's] response," and failed "to make at least a preliminary assessment of whether [the plaintiffs' attorney] had actually violated any Rule." Those allegations, however, challenge the merits of the subject judge's decision to refer the plaintiffs' attorney to the Committee on Grievances. The allegations are a direct challenge to the judge's referral order and thus "call[] into question the correctness of [the] judge's ruling." JUDICIAL-CONDUCT PROCEEDINGS RULE 4(b)(1). Such allegations do 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).

Accordingly, because the complaint “is directly related to the merits of [the subject judge’s] decision[s],” the complaint will 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).