

JUDICIAL COUNCIL  
OF THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of  
A Complaint of Judicial  
Misconduct or Disability

Complaint No. DC-20-90050


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: 3/19/21

**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.

A plaintiff filed a civil action alleging that his tenure applications were mishandled and that he was improperly terminated by his law school employer. The plaintiff resides in the District of Columbia, and the law school is located in North Carolina. The plaintiff also alleged that a university, which is located in the District of Columbia, improperly communicated with the plaintiff's employer about his application for a teaching position at the university's law school.

The plaintiff's complaint was filed in D.C. Superior Court concerning these and related matters. He named as defendants his employer, five affiliated individuals, and the university. The case was removed to district court. The plaintiff then filed an amended complaint after several defendants moved to dismiss his original complaint. The employer and three of the individual defendants moved to dismiss the amended complaint for lack of personal jurisdiction or, in the alternative, to transfer the case to the Eastern District of North Carolina. They later moved to strike the plaintiff's response to their motion to dismiss and moved for sanctions against the plaintiff and his attorney based on his jurisdictional assertions, including his argument that jurisdiction was proper here in light of alleged bias in the Eastern District of

North Carolina, where one of the defendants had served as a federal bankruptcy judge and magistrate judge. The other two employer defendants moved to dismiss the amended complaint for failure to effect service of process and for lack of personal jurisdiction. Finally, the university moved to dismiss the amended complaint for failure to state a claim.

The subject judge granted the employer defendants' motions to dismiss the amended complaint for lack of personal jurisdiction. The subject judge cited a lack of meaningful connections to the District of Columbia, said that the plaintiff had conceded as much, and rejected the plaintiff's argument that jurisdiction was proper here in light of alleged bias in the Eastern District of North Carolina. The subject judge also rejected the plaintiff's suggestion that the case should be transferred to the Western District of North Carolina. In addition, the subject judge denied as moot the university's motions to dismiss the complaints for failure to state a claim. The subject judge said that the plaintiff had abandoned one of his claims against the university, and declined to exercise supplemental jurisdiction over the remaining claim against the university after dismissing all of the federal claims. The subject judge thus dismissed the counts against the employer defendants, dismissed the abandoned count against the university, and remanded the remaining count against the university to D.C. Superior Court.

The subject judge did not dispose of the employer defendants' motion for sanctions in the opinion or order dismissing and remanding the counts. Rather, the subject judge ordered the clerk to open a miscellaneous case containing the motion for sanctions, the response thereto, and the reply. The subject judge also ordered that the remainder of the case

(presumably meaning the remaining count against the university) be remanded to Superior Court. The docket indicated that the case was remanded the next day.

The plaintiff then filed a Rule 59(e) motion for partial amendment of the order, so as to transfer, rather than dismiss, the counts against the university defendants. The plaintiff also argued that jurisdiction and venue were proper in the district court. The subject judge granted the university defendants' motion for sanctions and ordered the plaintiff's counsel to pay them \$2,500 "as a sanction for his jurisdictional arguments." The subject judge also ordered that his earlier order "is AMENDED as follows: The portion of the Court's order dismissing Counts One through Ten and Count Twelve of Plaintiff's amended complaint is stricken. Counts One through Ten and Count Twelve of Plaintiff's amended complaint are instead TRANSFERRED to the U.S. District Court for the Eastern District of North Carolina." These rulings were set out in a combined opinion and order that was entered in both the original case and the miscellaneous case.

The complainant, a "court-watcher eyewitness," has now filed a judicial misconduct complaint against the subject judge for his handling of the aforementioned case. The complainant asserts that the subject judge demonstrated abusive and harassing behavior towards the plaintiff and his attorney. As evidence of the subject judge's allegedly wrongful behavior, the complainant notes that the subject judge "opened up a second proceeding exclusively on *sanctions* – in order to punish [the plaintiff's] side beyond the improper use of dismissal to punish him in the first place." She further claims that the subject judge's own statement during the reconsideration hearing "revealed his bias and deviation from judicial

norms.” The complainant also alleges that the subject judge discriminated against the plaintiff’s attorney based on the attorney’s heritage.

As to the allegation of abusive and harassing behavior, the complainant specifically points to the subject judge’s decision to impose sanctions “[e]ven after he reversed himself and reinstated the case,” and to the judge’s statements made during the reconsideration hearing.

The complainant relies on the following statements by the subject judge in the hearing:

Here, as I think was clear in the opinion, the dismissal was more by way of sanction. I do not think that particularly the argument – the jurisdictional argument regarding the bias of the judges on the Eastern District of North Carolina was made in good faith. I don’t think it was researched. I think it was, largely, a frivolous motion.

As further evidence of ostensibly harassing behavior, the complainant asserts that the subject judge “attacked” the plaintiff “for daring to file a lawsuit against a retired federal judge” when the subject judge stated that “no one has been brash enough to bring” such a case. The complainant also points to an opinion the subject judge wrote in another case as “biased [and] disrespectful.”

While the complainant asserts that she is not challenging the merits of the subject judge’s decisions, she ultimately is doing so. What the complainant claims to be abusive was the subject judge’s decision to initially dismiss the claims against the employer defendants because of his determination that the asserted basis for personal jurisdiction was frivolous. After a hearing and further briefing, however, the subject judge granted the plaintiff’s motion for reconsideration and transferred the previously dismissed counts so that the plaintiff’s claims would not be barred by the statute of limitations. Contrary to the complainant’s allegations,

the subject judge was not harassing the plaintiff but was instead preserving his claims. The subject judge specifically noted that, “given the imposition of monetary sanctions, entirely barring him from seeking relief under a federal civil rights statute is too harsh a sanction for whatever role he played in pressing the unfounded jurisdictional arguments.” Similarly, the complainant is challenging the subject judge’s decision to impose sanctions, but that decision was based on a finding that the plaintiff’s counsel raised frivolous personal jurisdiction arguments.

These allegations thus “call[] into question the correctness of [the] judge’s ruling[s].” JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS (2019), 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).

Furthermore, to the extent the complainant is asserting that the subject judge’s comments themselves constituted misconduct, the record does not support such a finding. “[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 (9<sup>th</sup> Cir. 2014); *see* JUDICIAL-CONDUCT PROCEEDINGS RULE 4(a)(2)(B) (“Cognizable misconduct includes . . . treating litigants . . . in a demonstrably egregious and hostile manner.”). A review of the relevant transcript reflects that the judge’s reference to “brash” was not specifically about the plaintiff and his decision to file suit, and was not the type of “rude, derogatory, or intemperate” comment that itself constitutes misconduct. *In re Complaint of Judicial Misconduct*, 761 F.3d at 1099. With regard to the complainant’s reliance on the subject judge’s language in the

unrelated opinion, that language parodied the language used on a television show connected to the subject matter of the case, and thus “was relevant to the case at hand.” JUDICIAL-CONDUCT PROCEEDINGS RULE 4 Commentary. The allegation is “presumptively merits-related,” as the complainant failed to provide “evidence apart from the ruling itself suggesting an improper motive.” *Id.* Thus, the allegation that the subject judge treated the plaintiff in the unrelated case in a demonstrably egregious and hostile manner “is directly related to the merits of a decision or procedural ruling” and “lack[s] sufficient evidence to raise an inference that misconduct has occurred.” JUDICIAL-CONDUCT PROCEEDINGS RULE 11(c)(1)(B) & (D).

Finally, to the extent the complainant alleges that the subject judge discriminated against the plaintiff’s attorney because of the attorney’s heritage, that claim must also be dismissed. As evidence of ostensible discrimination, the complainant points to the fact that the subject judge had not imposed sanctions in any other cases. While the subject judge acknowledged that he had not granted other sanctions motions, he noted that the motion in this case presented “the strongest grounds for a sanctions motion that I have ever seen since I have been on this court.” In that context, the mere fact that the subject judge had not imposed sanctions in other cases is not evidence of bias. Therefore, the complainant has failed to provide “sufficient evidence to raise an inference that misconduct has occurred.” JUDICIAL-CONDUCT PROCEEDINGS RULE 11(c)(1)(D).

Accordingly, because the 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 will be dismissed. JUDICIAL-CONDUCT PROCEEDINGS RULE

11(c)(1)(B) & (D); *see* 28 U.S.C. § 352(b)(1)(A)(ii) & (iii).<sup>1</sup>

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<sup>1</sup> 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).