

JUDICIAL COUNCIL
OF THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of
A Complaint of Judicial
Misconduct or Disability

Complaint No. DC-23-90019

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: December 28, 2023

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 complainant, formerly an employee of a federal government agency, was the subject of a complaint by a subordinate. Shortly after the subordinate complained to the complainant's supervisor, the supervisor and another individual conducted a mid-year evaluation of the complainant, giving him less-than-satisfactory marks on all elements. The same day the complainant received his review, he made an informal Equal Employment Opportunity ("EEO") complaint alleging that he was being subjected to a hostile working environment. Shortly thereafter, the complainant resigned, citing a hostile work environment. That same day, he filed a formal EEO complaint. The agency eventually concluded that the complainant had not been subjected to discrimination or harassment, and the Merit Systems Protection Board dismissed the complainant's appeal.

Several years later, the complainant received an employment offer from another government agency. The offer was conditioned on his successful completion of a background check. As part of the background check, Office of Personnel Management ("OPM") investigators interviewed many of the complainant's prior supervisors and managers. The complainant was informed that the background check revealed he had failed to disclose his full employment history and that, although he had denied leaving previous positions under unfavorable conditions, employment checks revealed unfavorable information. The agency ultimately

withdrew its offer of employment.

The complainant then filed a formal EEO complaint alleging that he was “discriminated against based on reprisal (previous and current EEO activity)” when his clearance for the subsequent position was denied due to “negative comments” from his former employer’s management. An EEOC administrative judge granted summary judgment to the agency, and that decision was affirmed by the Equal Employment Opportunity Commission. Meanwhile, the complainant submitted to the agency a Freedom of Information Act (“FOIA”) request, seeking “all investigations and [Inspector General] reports concerning” his supervisors. The agency asserted that the information sought was exempt from disclosure, and the complainant did not file an administrative appeal.

The complainant then filed an action in district court alleging that the supervisors’ statements to the OPM investigator were false and retaliatory, that the agency refused to release reports he had requested under FOIA, and that the agency had violated the Privacy Act by refusing to rectify allegedly untruthful statements in his personal records and improperly disclosing information about him. The subject judge granted summary judgment as to the complainant’s FOIA claim because he did not pursue his administrative appeal rights, and the judge dismissed for lack of exhaustion any Privacy Act claim based on an alleged failure to amend agency records. The judge also granted summary judgment to the agency on any Privacy Act claim based on an alleged improper disclosure because mid-year evaluations were not part of the agency’s system of records. The judge allowed the complainant’s retaliation claim to proceed, however, concluding that, drawing all reasonable inferences in the

complainant's favor, a causal connection between his EEO complaint and his supervisor's statements to the investigator was plausible.

The parties then engaged in discovery. The complainant sought to depose two agency officials. The subject judge granted the agency's motion to quash the depositions, explaining that high-ranking agency officials are generally not subject to depositions unless they have personal knowledge about the matter that cannot be obtained elsewhere and, here, the officials submitted sworn declarations averring that they were not involved in supervising the complainant and possessed no personal knowledge about a reference provided for the complainant. The judge further stated that, if the complainant obtained evidence of the supervising officials' personal knowledge about his case, he should adhere to the court's procedures for discovery disputes. Those procedures call for parties to jointly email the court with "clear, concise description of the issues in dispute and proposing dates and times for a teleconference," before filing any discovery-related motions.

Discovery closed, and the parties jointly proposed a briefing schedule for the agency to move for summary judgment. The agency did so, and, although the complainant filed both an opposition and a surreply to the agency's motion, he did not file a declaration or affidavit under Federal Rule of Civil Procedure 56(d) regarding any facts that were unavailable to him.

The complainant later filed a motion for a new judge, arguing that the subject judge had "no intention on allowing this case to move forward" because he was pro se and was suing a government agency and that his case was "being ignored and forgotten." The same day, the subject judge denied the complainant's motion, concluding that he had provided no basis to

question the court's impartiality nor shown that she had a personal bias or prejudice concerning a party.

Shortly thereafter, the subject judge granted the agency's motion for summary judgment. The judge concluded that the agency had asserted a legitimate, non-discriminatory reason for the statements the supervisor made to the investigator and that the complaint had failed to show the agency's asserted reason was pretextual.

The complainant appealed, and the court of appeals granted the agency's motion for summary affirmance. The court determined that the subject judge did not abuse her discretion in granting the motion to quash the deposition of two agency officials and in denying the complainant's motion for a new judge.

The complainant has now filed a judicial misconduct complaint against the subject judge. The complainant alleges that the judge: (1) "delayed [his] case for years with no decisions or movement on motions filed;" (2) required him to confer with the court before filing a motion to compel discovery but then "refused to acknowledge or answer my request for a conference call;" (3) granted summary judgment "almost immediately" after he filed a motion for a new judge; and (4) improperly granted the agency's motion to quash certain depositions, effectively allowing the agency "to not participate in Discovery."

The complaint, however, is largely based on allegations challenging the subject judge's discovery rulings and her order granting summary judgment. In particular, the complainant's allegations related to discovery challenges, the motion to quash, and the granting of summary judgment are "directly related to the merits of a decision or procedural ruling" and thus cannot

give rise to a finding of judicial misconduct. *See* JUD. CONF. RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS (2019), Rule 11(c)(1)(B); 28 U.S.C. § 352(b)(1)(A)(ii).

With respect to the complainant’s allegation that the subject judge delayed ruling on the case, “[c]ognizable misconduct does not include an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.” JUDICIAL-CONDUCT PROCEEDINGS RULE 4(b)(2). The complainant has not identified delay in a “significant number of unrelated cases,” and insofar as he alleges that the subject judge’s delays were the result of an improper motive, the complainant only states generally that “her decisions reflect her extreme bias.” The complainant’s generalized allegations that the subject judge’s decisions themselves are evidence of bias “lack[] sufficient evidence to raise an inference that misconduct has occurred.” *See* JUDICIAL-CONDUCT PROCEEDINGS RULE 11(c)(1)(D); 28 U.S.C. § 352(b)(1)(A)(iii).

Accordingly, because the complaint “is directly related to the merits of [the judge’s] decision[s],” and is “based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred,” 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).