

JUDICIAL COUNCIL
OF THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of
A Complaint of Judicial
Misconduct or Disability

No. DC-22-90007

Before: Henderson, Circuit 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 a copy 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).



Karen LeCraft Henderson, Circuit Judge

Date: 6/2/22

* Acting pursuant to Rule 25(f) of the RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS.

MEMORANDUM

Complainant has filed a complaint of judicial misconduct against a judge of the United States Court of Appeals for the District of Columbia Circuit. For the following reasons, the misconduct complaint will be dismissed.

Complainant previously filed a judicial misconduct complaint against the district court judge that is currently presiding over a lawsuit he filed. That prior misconduct complaint was assigned to the subject judge, who dismissed it on the ground that it was directly related to the merits of a judicial decision and thus presented no proper ground for a finding of judicial misconduct.

In the present misconduct complaint, complainant accuses the subject judge of failing to conduct an adequate review of the evidence in the prior misconduct matter, improperly delaying the resolution of that matter, misinterpreting the substance of the prior misconduct complaint, and incorrectly applying the relevant rules and statutes in resolving the prior misconduct matter. Complainant also alleges that the subject judge was biased against him in resolving the prior misconduct matter because the subject judge serves on the Judicial Council with the district court judge who was the subject of the prior misconduct complaint.

Insofar as complainant challenges the subject judge's ultimate disposition of the prior misconduct matter, such allegations are "directly related to the merits of a decision or procedural ruling," and are thus not proper grounds for a finding of judicial misconduct. See JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS, Rules 4(b)(1) and 11(c)(1)(B); 28 U.S.C. § 352(b)(1)(A)(ii). Furthermore, insofar as complainant

alleges that the subject judge's ruling was "the result of an improper motive . . . or improper conduct in rendering a decision or ruling . . . the complaint is not cognizable to the extent that it calls into question the merits of the decision." JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS, Rule 4(b)(1).

Although complainant asserts that the subject judge was influenced by an improper motive – the judge's collegial relationship with the subject judge of the prior misconduct complaint – that relationship does not per se give rise to a finding of partiality or bias. Cf. Guide to Judiciary Policy, Vol. 2B, C. 2, Published Advisory Opinion No. 103 (2009) ("If one or more of an assigned judge's judicial colleagues – but not the assigned judge – is named as a defendant in a civil action, the assigned judge need not automatically recuse from the case."). Complainant's allegation on this point thus does not "raise an inference that misconduct has occurred." JUD. CONF. RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS, Rule 11(c)(1)(D); 28 U.S.C. § 352(b)(1)(A)(iii).

Finally, "[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." JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS, Rule 4(b)(2). Although the complainant raises a generalized complaint about what he perceives to be disparate treatment on the part of the court toward parties who are represented by counsel and those who are not, he has not alleged any "improper motive" or "habitual delay" on the part of the subject judge in particular in connection with the timing of the prior misconduct matter. Complainant's allegation on this point thus does not "raise an inference

that misconduct has occurred.” JUD. CONF. RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS, Rule 11(c)(1)(D); 28 U.S.C. § 352(b)(1)(A)(iii).

The present complaint will therefore be dismissed.*

* Pursuant to 28 U.S.C. § 352(c) and JUDICIAL-CONDUCT PROCEEDINGS RULE 18(a), 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 of the date of the dismissal order. JUDICIAL-CONDUCT PROCEEDINGS RULE 18(b).