

# The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-18-90006

## 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 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 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 a complaint of judicial misconduct against a judge of the United States District Court for the District of Columbia. The complainant, an attorney, alleges that the judge's decisions in a case pending before her "can truly only be explained by her deep unethical personal animus against [the complainant] and by extension, his clients." This is the fifth complaint that the complainant has filed against the subject judge and the second arising out of the same pending litigation.

The complainant represents an organization that filed a Freedom of Information Act (FOIA) action to compel two Executive Branch agencies to release documents pertaining to the then-ongoing criminal trial of one of the complainant's clients in another district. The plaintiff organization sought expedited document production. In a June 2017 order, the subject judge determined that the plaintiff had failed to "furnish[] the Court with any reason, based in fact or law, for expediting the production of documents beyond the schedule proposed by the [government]." The plaintiff organization filed a motion for reconsideration, as well as a motion for sanctions and attorney's fees for the government's alleged "bad faith" in proposing the production schedule. The subject judge concluded that the schedule was not proposed in bad faith because it was based on the breadth of the request.

In the plaintiff organization's subsequent status report, it requested that the court "either order immediate production of responsive documentation or allow [it] to take

immediate discovery . . . to determine whether [the government had] complied in good faith.” The organization stressed that urgency was required because of the pending criminal case. The judge found that the plaintiff organization was not a party to the criminal case and further held that discovery was unwarranted because the judge had previously determined that there was no evidence of bad faith.

The complainant then filed a judicial misconduct complaint, asserting that the subject judge had “allowed her political partisanship and personal animus against [him] and his clients to influence her numerous rulings.” On January 9, 2018, that misconduct complaint was dismissed on the ground that “[t]he complaint proffer[ed] no evidence of the judge’s alleged bias beyond the fact that the judge was appointed by a particular President and that the complainant believes the judge wrongly ruled against his client’s efforts to expedite production of the requested documents.” Memorandum, Judicial Council Complaint No. DC-17-90018, at 4 (2018).

After the complainant filed that first judicial misconduct complaint arising out of the FOIA litigation, the plaintiff organization filed an “Emergency Motion for Evidentiary Hearing Concerning Undue Delay and Concealment of Documents.” The subject judge denied the motion, finding that it “fail[ed] to identify any specific information or disclosures that would warrant an evidentiary hearing.” The judge also denied the plaintiff organization’s request to “conduct discovery into the scope of” what the plaintiff contended was “a bad faith bogus search for documents and records

discoverable under FOIA,” on the ground that the plaintiff “has not provided any details in support of its assertion that the search [was] in bad faith.” The plaintiff organization then filed another motion for discovery, “in light of new revelations that have been uncovered that confirm the existence of a huge cover-up of criminal and ethical misconduct” by the defendant Executive Branch agencies.

Thereafter, the complainant filed the instant judicial misconduct complaint, which alleges that the subject judge’s “pattern and practice of engaging [in] severely prejudicial conduct and exhibiting deep-seated unethical personal bias and animus against [the complainant] has not only continued, but incredibly has actually increased.” The evidence offered in support is that, despite “new revelations confirming . . . the massive cover-up and obstruction of justice” by the Executive Branch agencies in the now-concluded criminal case, the subject judge “has refused to even allow [the plaintiff organization] to take basic, limited discovery into the adequacy of the Defendants’ alleged ‘search’ for responsive documentation” to its FOIA requests. The complainant further avers that the judge also denied the complainant “leave to amend the operative Complaint, further gutting [his] case.” Arguing that “there is no basis in law or fact for th[ese] type[s] of ruling[s],” the complainant maintains that they “can only be explained by [the subject judge’s] deep, personal animus and disdain for” the complainant. As further support for his accusation of bias, the complainant cites “other unethical conduct brought to the Judicial Council on more than one occasion” -- an apparent reference to the

four previous misconduct complaints that the complainant filed against the subject judge.

As noted in the Memorandum dismissing the complainant's previous misconduct complaint arising out of the same litigation, bias cannot "be shown by allegations challenging a judge's orders because allegations that are 'directly related to the merits of a decision or procedural ruling' do not constitute '[c]ognizable misconduct.'" Memorandum, No. DC-17-90018, at 4 (2018) (quoting JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS, RULE 3(h)(3)(A)). Nor can the allegations in the complainant's previous misconduct complaints provide supporting evidence of bias for this complaint because all four were dismissed as lacking sufficient evidence by the then-Chief Judge or Acting Chief Judge. Memorandum, No. DC-17-90018, at 1 (2018); *see id.* at 1 (citing Nos. DC-15-90010 (2016), DC-14-90017 (2014), DC-11-90007 (2011)). Such allegations are 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). Accordingly, because the complainant proffers no further evidence, the complaint must be dismissed. JUDICIAL-CONDUCT RULES 11(c)(1)(B), (D); *see* 28 U.S.C. § 352(b)(1)(A)(ii), (iii).<sup>1</sup>

---

<sup>1</sup> 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).