

JUDICIAL COUNCIL  
OF THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of  
A Complaint of Judicial  
Misconduct or Disability

Complaint No. DC-21-90050

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: 2/2/22

**MEMORANDUM**

The complainant has filed a complaint of judicial misconduct against a judge who heard a lawsuit brought by the complainant in the United States District Court for the District of Columbia. For the following reasons, the misconduct complaint will be dismissed.

The complainant had a workplace dispute with his coworker. Following the employer's investigation into the dispute, the complainant was required to undergo a mental health evaluation in order to retain his security clearance. The complainant refused to be evaluated without a union representative present. The employer closed its investigation into the workplace dispute with an "inconclusive" determination. Because of the complainant's refusal to undergo a mental health examination, however, the employer suspended his security clearance and placed him on administrative leave. The employer subsequently revoked the complainant's security clearance and, because of his failure to maintain a security clearance, placed him on an unpaid indefinite suspension.

The complainant then filed a lawsuit in district court alleging three claims under Title VII: (1) discrimination on the basis of race, (2) retaliation for engaging in protected activity, and (3) hostile work environment. The subject judge granted the employer's motion to dismiss, reasoning that the complainant had failed to exhaust his administrative remedies on his discrimination claim. The subject judge further explained that, to the extent the complainant's retaliation claim challenged the revocation of his security clearance, that claim was barred by the Supreme Court's decision in *Department of Navy v. Egan*, 484 U.S. 518

(1988). Lastly, the subject judge concluded that the complainant's hostile work environment claim was devoid of any allegation that he had been subjected to a hostile work environment on the basis of his race. The subject judge, however, permitted the complainant to file an amended complaint with respect to his claims that he had been subject to a hostile work environment and had suffered retaliation and discrimination in connection with his indefinite suspension.

The complainant then filed an amended complaint alleging two counts of discrimination. The first count alleged that the employer discriminated against him based on his race in violation of Title VII when the employer suspended him indefinitely and revoked his security clearance due to his refusal to meet with medical personnel without his union representative present. The second count alleged that the employer subjected him to a hostile work environment in violation of Title VII because he endured "pervasive," "regular," and "severe" discrimination in the form of "emails, phone calls, and letters threatening [his] employment."

The employer then filed a second motion to dismiss. Because the complainant did not respond to the motion to dismiss, the subject judge granted the employer's motion to dismiss as conceded and dismissed the case without prejudice. However, the complainant later moved to reopen the case and the subject judge granted that motion.

Ultimately, the subject judge granted the employer's second motion to dismiss. The judge construed the complainant's discrimination claim to be based on several allegedly adverse employment actions, including the requirement that he undergo a mental health evaluation and the suspension and revocation of his security clearance. The subject judge

reasoned that the discrimination claim failed because a mental health evaluation requirement was not an adverse employment action, and even if it were, the complainant had not exhausted his administrative remedies. The subject judge concluded that the complainant's other adverse employment action allegations, concerning the suspension and revocation of his security clearance, were "insufficient . . . because none of [those actions] were alleged to have occurred 'because of' [the complainant's] race, as Title VII requires." The subject judge also noted that, to the extent the complainant alleged that the suspension and revocation of his security clearance was based on his race, Supreme Court precedent barred review of such a claim. Lastly, the subject judge explained that the complainant's amended complaint did not allege sufficient facts to support a hostile work environment claim. The complainant noted an appeal, and the Court of Appeals affirmed the subject judge's order.

The complainant has now filed a judicial misconduct complaint against the subject judge, alleging that the subject judge "unjustly dismissed" his suit. He further asserts that the subject judge improperly granted the employer's motions for extension of time, failed to provide for an "in-person appearance," failed to "follow established case law," and "failed to review and consider" evidence in the case.

The complainant's allegations that his case was wrongly dismissed, that he was denied an opportunity to appear in person, that the subject judge did not properly apply case law or consider evidence, and that the subject judge improperly granted the employer's motions for extension of time, are all direct challenges to the subject judge's procedural rulings and her decision to dismiss the complaint. Those 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 about the merits of a judge’s decision do not involve “[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 complainant’s allegations are “directly related to the merits of a decision or procedural ruling,” the complaint will be dismissed. JUDICIAL-CONDUCT PROCEEDINGS RULE 11(c)(1)(B); see 28 U.S.C. § 352(b)(1)(A)(ii).<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).