

JUDICIAL COUNCIL
OF THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of
A Complaint of Judicial
Misconduct or Disability

Complaint No. DC-20-90021


Before: Srinivasan, Chief 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 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: 9/22/20

MEMORANDUM

The 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.

The complainant, proceeding pro se, appealed an order of the district court denying her motion to recuse and transfer the case to a different venue, and dismissing her complaint against over 60 defendants. Her claims were based on her belief that all of the defendants -- including federal and state judges, elected officials, private attorneys, and Google and YouTube -- were participants in a conspiracy to deprive her of justice in her child custody case. The Court of Appeals, of which the subject judge was a panel member, granted a motion for summary affirmance filed by three of the appellees, and ordered the complainant to show cause why the district court's order should not be *sua sponte* summarily affirmed as to the remaining appellees. The court also denied or dismissed, in whole or in part, numerous motions filed by the complainant, including a motion to recuse the entire circuit and transfer her appeal to the Second Circuit. The court specifically noted that "Appellant has not demonstrated that the impartiality of any member of the court or the court staff might reasonably be questioned."

The complainant filed a response to the order to show cause, as well as a petition for rehearing of the court's order. In the petition, the complainant asserted that the order was void because it denied her motion to recuse the entire circuit but did not set out "all the relevant facts" involved in that decision. She also called specific attention to the subject judge, whom she claimed had a personal relationship with Chief Justice of the United States John Roberts

and thus should have been disqualified. In the response to the show cause order, the complainant asserted that the district court judge should have recused himself, that her due process rights were violated by the proceedings in the district court, and that summary affirmance would be procedurally improper in this case. She further argued that the court had demonstrated bias against her because errors in the court's electronic case filing system prevented her from receiving an email notification of the motion for summary affirmance; the complainant asserted that this error was actually intentional on the part of the Clerk's office, which she believed was participating in the conspiracy against her.

The Court of Appeals denied the petition for rehearing and noted that "[i]nsofar as the petition seeks to disqualify [the subject judge] on the basis of an alleged personal relationship with Chief Justice Roberts, appellant has provided nothing that would plausibly support such an allegation, and appellant has not otherwise demonstrated that [the subject judge's] impartiality can reasonably be questioned." The court further denied or dismissed, in whole or in part, numerous motions filed by the complainant, and *sua sponte* summarily affirmed the district court's order dismissing the complaint with respect to all remaining appellees.

The complainant then filed a second petition for rehearing or in the alternative to recuse the court and transfer the appeal. The court denied the petition for rehearing and denied the alternative motion to recuse and transfer, noting that "[a]s the court held in its [previous] order, appellant has not demonstrated that the impartiality of any member of the court or the court staff might reasonably be questioned."

Still unsatisfied, the complainant then filed a motion for reconsideration of the order denying the second petition for rehearing and a motion for judicial notice. The court denied the motion for reconsideration and granted the motion for judicial notice. After the mandate issued, the complainant then filed what was styled as a petition for rehearing and rehearing en banc and yet another motion for judicial notice. The court construed the filing as a motion for reconsideration and en banc reconsideration of the second order denying rehearing. The court granted the motion for judicial notice and denied the motion for reconsideration, stating that the complainant failed to “demonstrate[] that reconsideration [wa]s warranted.” The court further directed the Clerk to accept no further filings from the complainant in the closed case. The en banc court also denied reconsideration.

The complainant has now filed a judicial misconduct complaint against the subject judge. First, the complainant asserts that “[the subject judge] caused issuance of an irregular Order . . . En Banc per curiam that is suspected to be fraudulent.” Specifically, the complainant claims that it is suspicious that the en banc order denying reconsideration issued seven minutes after the special panel’s order denying reconsideration, and that the en banc order was the fourth time the subject judge “failed to lay out any facts regarding any and all issues raised for disqualification of the DC Circuit.” Second, the complainant argues that “[the subject judge] willfully violated the standard of adjudication for Petition for Rehearing three times, with a rebuttable presumption created that [the subject judge’s] knowing violation of these standards of adjudication was because of her conspiracy to suppress my right to appeal, to impartial

tribunal and to have reasonable access to the court.” Finally, the complainant claims that the subject judge improperly failed to recuse herself from the case.

It appears that the crux of the complaint is a challenge to the subject judge’s failure to recuse. Allegations that a judge committed misconduct by failing to recuse are generally dismissed as merits related. *See* JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS (2019), RULE 4(b)(1) (“Cognizable misconduct does not include an allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse”). “A failure to recuse may constitute misconduct only if the judge failed to recuse for an improper purpose.” *In re Judicial Misconduct*, 605 F.3d 1060, 1062 (9th Cir. 2010). The complainant, however, has provided no evidence of a failure to recuse for an improper purpose. As the court repeatedly noted in the orders denying the motions for recusal and the petitions for rehearing and reconsideration, considering the totality of the circumstances, the court and the subject judge’s impartiality could not be called into question. Consequently, because this allegation is “directly related to the merits of a decision or procedural ruling,” it must be dismissed. *See* JUDICIAL-CONDUCT PROCEEDINGS RULE 11(c)(1)(B); *see* 28 U.S.C. § 352(b)(1)(A)(ii).

Similarly, the complainant’s assertion that the subject judge failed to consider all of the complainant’s arguments and address them in the court’s orders “calls into question the correctness of [the] judge’s ruling[s].” JUDICIAL-CONDUCT PROCEEDINGS RULE 4(b)(1). This allegation therefore also does not constitute “[c]ognizable misconduct” under the Judicial-Conduct Proceedings Rules or the applicable statute, and should also be dismissed. *Id.*

Moreover, to the extent the complainant is claiming that the subject judge had a hand in the “suspicious” timing of the issuance of the special panel order and the en banc order, that claim is also without merit. The Clerk’s Office staff, not the judges themselves, enters orders on the court’s docket. Other than the timing of the issuance of the orders, the complainant has provided no support for the claim that the court’s en banc order was fraudulently issued. This allegation thus “lack[s] sufficient evidence to raise an inference that misconduct has occurred.” JUDICIAL-CONDUCT PROCEEDINGS RULE 11(c)(1)(D).

Accordingly, because the complainant’s allegations are “directly related to the merits of a decision or procedural ruling,” and are “based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred,” the complaint must 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).