

OFFICE OF THE CIRCUIT EXECUTIVE
UNITED STATES COURTS OF THE
DISTRICT OF COLUMBIA CIRCUIT

Elizabeth H. Paret
202.216.7340 Phone

E. Barrett Prettyman U.S. Courthouse
333 Constitution Avenue, N.W.
Washington, D.C. 20001

February 5, 2020

Grant Smith
P.O. Box 32041
Washington, DC 20007

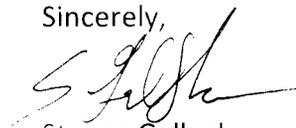
Re: Judicial Complaint No. DC-20-90002

Dear Mr. Smith:

The Chief Judge of the District of Columbia Circuit has dismissed Judicial Council Complaint No. DC-20-90002. The Order and Memorandum dated February 5, 2020, are enclosed.

You may file a petition for review by the Judicial Council of the District of Columbia Circuit under Rule 18 of the *Rules for Judicial-Conduct and Judicial-Disability Proceeding*. Any such petition must be received in the Office of the Circuit Executive at the above address within 42 days of the date of the Chief Judge's order.

Sincerely,



Steven Gallagher
Deputy Circuit Executive

Enclosures

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-20-90002

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 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).


Merrick B. Garland, Chief Judge

Date: 2/5/20

No. DC-20-90002

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 filed a Freedom of Information Act (FOIA) suit against the Treasury Department and Office of Personnel Management, seeking production of certain documents. The case was assigned to the subject judge. On March 31, 2019, the judge issued an order granting the government's motion for summary judgment and denying the complainant's motion. The order further noted that "[t]he court's reasoning will be provided in a Memorandum Opinion to be issued shortly, absent unforeseen circumstances." On January 6, 2020, complainant filed a "Memorandum - Judicial Misconduct" with the district court, objecting to the judge's failure to issue a memorandum opinion and raising objections to the judge's ruling in his and other FOIA cases.

On January 23, 2020, the subject judge issued the promised memorandum opinion, which provided the court's reasoning and slightly altered the disposition of the motions for summary judgment in the complainant's FOIA case. "Upon further consideration of the record and for the reasons" detailed in the memorandum, the court granted in part and denied in part without prejudice the defendants' motion for summary judgment. The judge also denied the complainant's motion for summary judgment, without prejudice.

Finally, the judge construed the complainant's January 6, 2020 Memorandum - Judicial Misconduct as a motion for disqualification and denied it. The judge expressed "regret[for the] delay in issuing [the court's] reasoning," but noted that mere "delay in rendering decisions or trying a case is not a basis for disqualification." The judge further concluded that the complainant's "displeasure with the substance of the court's rulings is not sufficient to support disqualification." The "unsupported allegations of 'vindictiveness' in the court's opinions." the judge determined, "do not establish that the court's 'impartiality might reasonably be questioned.'"

On January 9, 2020, the complainant filed this complaint of judicial misconduct, attaching a copy of the "Memorandum - Judicial Misconduct" that he had filed with the district court. The misconduct complaint objected to the subject judge's failure (as of that date) to issue a memorandum opinion in the complainant's FOIA case. It further alleged that a local rule of the United States District Court, mandating that "a case filed by a *pro se* litigant with a prior case pending shall be deemed related and assigned to the judge having the earliest case." Local Civil Rule 40.5(a)(3), was unfair. Finally, it asserted that "[s]ome of the [subject judge's] rulings issued in 2019 appear to be hastily written, vindictive and did not appear to properly weigh or even correctly cite the evidence presented."

The allegation regarding the subject judge's delay in issuing the Memorandum Opinion is insufficient to constitute misconduct. Under the Rules for Judicial-Conduct

proceedings. “[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 (2019), RULE 4(b)(2). Because the complainant has failed to provide any evidence of improper motive or habitual delay, the allegation in this “single case is excluded as merits-related.” *Id.* at JUDICIAL-CONDUCT PROCEEDINGS RULE 4 Commentary. *See* 28 U.S.C. § 352(b)(1)(A)(ii) (providing for dismissal of a complaint that is “directly related to the merits of a decision or procedural ruling”); JUDICIAL-CONDUCT PROCEEDINGS RULE 11(c)(1)(B).

To the extent the complainant challenges the assignment of his case to the subject judge, that charge, too, “is based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred.” JUDICIAL-CONDUCT PROCEEDINGS RULE 11(c)(1)(D). As the complainant notes, the assignment of pro se cases is determined by United States District Court rule. The subject judge had no part in the case assignment, and the complainant does not suggest otherwise.

Also insufficient are the complainant’s allegations that the subject judge’s rulings were “hastily written, vindictive and . . . not . . . properly weigh[ing] or even correctly cit[ing] the evidence presented.” Those allegations “call[] into question the correctness of [the] judge’s ruling[s].” JUDICIAL-CONDUCT PROCEEDINGS RULE 4(b)(1), and such

allegations do not constitute “[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 misconduct complaint “is directly related to the merits of a decision or procedural ruling,” and “is based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred,” it 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).

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UNITED STATES COURTS
FOR THE
DISTRICT OF COLUMBIA CIRCUIT
E. BARRETT PRETTYMAN U.S. COURTHOUSE
333 CONSTITUTION AVE., N.W., ROOM 4826
WASHINGTON, DC 20001-2866
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Grant Smith
P.O. Box 32041
Washington, DC 20007