

JUDICIAL COUNCIL
OF THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of
A Complaint of Judicial
Misconduct or Disability

Complaint No. DC-21-90051

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: 11/16/2021

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 alleges that the subject judge's service as a member of the District of Columbia Judicial Nomination Commission ("Commission") constitutes "conduct prejudicial to the effective and expeditious administration of the business of the courts." JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS (2019), Rule 4(a); 28 U.S.C. § 351(a). The Commission identifies candidates for judgeships on the District of Columbia trial and appellate courts. District of Columbia Home Rule Act §§ 433-434, Pub. L. No. 93-198, 87 Stat. 774, 795-98 (1973) (codified as amended at D.C. Code §§ 1-204.33-.34). Under the governing statute, the President, in selecting a nominee for a seat on a District of Columbia court, must choose from among a list of three candidates identified by the Commission, and if the President does not timely select a nominee, the Commission itself nominates a candidate. D.C. Code § 1-204.34(d)(1). The statute specifies that one of the members of the Commission shall be an active or retired federal judge serving in the District of Columbia. *Id.* § 1-204.34(b)(4)(E). The subject judge serves on (and currently chairs) the Commission in that capacity.

The complainant asserts that the subject judge's service on the Commission is improper because, "[b]y selecting the slate of candidates – not to mention potentially nominating one for Senate Confirmation – the Commission exercises enormous political power." In the complainant's view, the subject judge's service on the Commission thus infringes Canons 4(F)

and 5 of the Code of Conduct for United States Judges (“Code of Conduct”). Those Canons, respectively, bar judges from accepting a governmental appointment if the duties “would tend to undermine the public confidence in the integrity, impartiality, or independence of the judiciary,” and prohibit judges from engaging in “political activity.” The complainant additionally alleges that “[a] federal judge on the Nominating Commission has an inherently improper influence over the lawyers appearing before him.”

After the complainant filed the misconduct complaint, the subject judge sought an advisory opinion from the Committee on Codes of Conduct of the Judicial Conference of the United States (“Committee”) addressing whether the subject judge can serve on the Commission consistent with the Code of Conduct. Specifically, the subject judge asked the Committee to address the following question:

Does service on the District of Columbia Judicial Nomination Commission (“Commission”) by an active or retired Federal judge serving on the United States District Court for the District of Columbia, pursuant to the District of Columbia Home Rule Act (Publ. L. No. 93-198, 87 Stat. 774, 795-98 (1973)), violate Canons 4(f) and 5 of the Code of Conduct for United States Judges (“Codes of Conduct”)?

The Committee has now issued its opinion and the subject judge has waived the confidentiality of that opinion. The Committee has determined that the subject judge’s service on the Commission does not run afoul of the relevant Canons of the Code of Conduct.¹ The Committee first addressed “whether serving on the Commission involves the prohibited exercise of political power.” The Committee examined the terms of the relevant Canons and

¹ The Committee’s opinion states that a “large majority” of the Committee agreed with the Committee’s disposition but that a “minority of Committee members disagreed.”

reviewed its previous opinions on related matters, concluding from that analysis that the subject judge's "service on the Commission does not appear to constitute prohibited political activity." The Committee next addressed "whether sitting on the Commission gives a judge improper influence over lawyers appearing before the judge." The Committee determined that "this argument does not have merit," reasoning that lawyers put clients' interests above their personal ambitions and that the rules of professional conduct require lawyers to monitor their conduct for personal conflicts of interest. "In conclusion," the Committee stated, "having considered the concerns raised about [the subject judge's] participation on the Commission, and evaluated these concerns and [the judge's] ethics inquiry under the relevant Code provisions, we cannot conclude that [the judge's] service on the Commission is contrary to the Code."

After the Committee issued its opinion, the complainant submitted correspondence stating that, "[d]espite the opinion issued by the Committee," the complainant wished to reiterate the contention that the subject judge's service on the Commission constitutes judicial misconduct. The complainant did so, however, "with the expectation that you [i.e. the undersigned] will dismiss [the] complaint[] in light of the [Committee's] opinion," which then "would give [the complainant] a basis to appeal," with the complainant expressing a desire ultimately to "challenge the Committee on Codes of Conduct opinion" before "the Judicial Conference." When, as here, a judicial misconduct complaint alleges misconduct in violation of the Code of Conduct, the resolution of the complaint at this stage is regularly guided by the Committee's opinions interpreting the Code. Here, the Committee has issued an opinion

directly addressing the subject matter of the complaint and has determined that the subject judge's conduct in question is not contrary to the Code. In light of the Committee's opinion, the complaint will be dismissed on the ground that the alleged conduct "is not prejudicial to the effective and expeditious administration of the business of the courts." JUDICIAL-CONDUCT PROCEEDINGS RULE 11(c)(1)(A).²

² 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).