

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-17-90016

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 11(g)(2).



Merrick B. Garland, Chief Judge

Date: 11/10/18

MEMORANDUM

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

The complainant filed a Federal Tort Claims Act case against the United States, alleging that medical malpractice at Walter Reed Army Medical Center caused him serious knee injury and prolonged pain and suffering. The case was assigned to the subject judge. The United States moved to dismiss the case for lack of subject-matter jurisdiction, alleging that the complainant had failed to provide it with 90-days' notice prior to filing suit, as required by the District of Columbia's Medical Malpractice Proceedings Act. In the alternative, the United States moved to dismiss for failure to state a claim. The subject judge denied the motion, finding that the complainant had provided sufficient notice to the United States of his intention to file suit and had sufficiently stated a claim. The case proceeded to a bench trial and, in 2015, the judge entered judgment in favor of the United States. The complainant did not appeal.

The complainant has now filed a judicial misconduct complaint against the subject judge, stating: "I complained of difficulty hearing defense attorneys. Nothing was done about it." The complainant made a similar complaint in an attached letter he had sent to the Chief Judge of the District Court (and in one to the Clerk of the District Court), stating: "I am hearing impaired and made that known, but nothing was done about it.

The only person I was clearly hearing was my attorney at our table and the judge.”

The complainant sent the above-described letter almost two years after the trial ended and the case closed. The pleadings and other records of the case do not reflect that a similar complaint was made to the subject judge during the time the case was open on the court’s docket. In light of the lack of substantiation of the complaint, and in light of the lack of context regarding the presentation of any such complaint to the subject judge, this complaint “is based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred” and must be dismissed. JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS, RULE 11(c)(1)(D); *see* 28 U.S.C. § 352(b)(1)(A)(iii).

Also included in the complainant’s letter to the chief judge were complaints about the factual and legal basis for the subject judge’s decision regarding the complainant’s medical malpractice claim. Those complaints are “directly related to the merits” of the subject judge’s decision and, accordingly, do not constitute “cognizable misconduct” under the Judicial-Conduct Rules and must be dismissed. JUDICIAL-CONDUCT RULES 3(h)(3)(A), 11(c)(1)(B); *see* 28 U.S.C. § 352(b)(1)(A)(ii). The complainant also attached to his misconduct complaint a letter he wrote to the subject judge after the malpractice trial was over. Although the letter to the judge did not mention the complainant’s hearing problem, it did complain about several elements of the factual presentation during the trial, including problems he saw in the testimony of the government’s witnesses. Those

complaints do not, however, address conduct by the subject judge. Hence, they do not “raise an inference that misconduct has occurred” and must also be dismissed. JUDICIAL-CONDUCT RULE 11(c)(1)(D); *see* 28 U.S.C. § 352(b)(1)(A)(iii).¹

¹ 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).