

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-18-90007

A Charge of Judicial Misconduct or Disability

Before: GARLAND, *Chief Judge*.

ORDER

Upon consideration of the complaint herein, and the supplement thereto, 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 judges, 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: 10/4/18

MEMORANDUM

The complainant has filed a complaint of judicial misconduct against a judge of the United States District Court for the District of Columbia. The complainant alleges that the judge's rulings "deliberately denied [him] relief . . . while showing his bias."

The complainant was convicted of multiple weapons-related counts in the Superior Court for the District of Columbia, which convictions the District of Columbia Court of Appeals affirmed. The complainant subsequently filed a pro se petition for a writ of habeas corpus in the United States District Court, challenging the effectiveness of his appellate counsel. The case was assigned to the subject judge, who denied the petition "[b]ecause [the complainant's] lawyers did in fact take many of the actions he mentions in his Petition, and because their decisions not to take the others did not make them ineffective." The complainant appealed, and the United States Court of Appeals denied his motion for a certificate of appealability (COA).

The complainant then filed a motion with the subject district judge, seeking reconsideration of the denial of his petition. The judge denied the motion, finding that the complainant "explain[ed] neither why [the] information [was] new nor why it [was] significant." The judge also declined to issue a COA with respect to the denial of reconsideration. The complainant again appealed and sought a COA from the Court of Appeals.

Meanwhile, the complainant filed a motion with the subject judge requesting “an evidence hearing for recusal.” The judge denied the motion. The judge also denied complainant leave to file a renewed motion to reconsider the denial of his habeas petition, finding that the “motion to reconsider [was] already denied.” The complainant appealed, and the Court of Appeals dismissed the appeal

The complainant also filed a petition for leave to file a second or successive habeas petition in the United States Court of Appeals for the Fourth Circuit. The Fourth Circuit transferred that petition to Court of Appeals (for the D.C. Circuit), which denied it. The Court of Appeals found that the complainant’s claim of conspiracy to deny him effective assistance of appellate counsel was raised in his prior petition and that he had not shown that any of his claims were based on facts that “could not have been discovered previously through the exercise of due diligence.”

The complainant has now filed the instant complaint, alleging that, in denying his first habeas motion, the subject judge had “deliberately den[ied] me relief.” The complainant further asserts that, when he sought reconsideration, the judge “again den[ied my motion] while showing his bias and partiality by claiming I was only trumpeting new evidence while claiming counsel he (well respects) was ineffective placing attorney . . . on a ped[e]stal above any claim of ineffectiveness.” He also asserts that the judge improperly denied his motion for reconsideration, “shutting me out on a clear constitutional issue” and “showing a willful [indifference] to clear prevailing law and

facts.”

These challenges to the merits of the subject judge’s decisions do not constitute “cognizable conduct” under the Judicial-Conduct Rules. JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS, RULE 3(h)(3)(A). Nor can bias be shown merely by an attack on the merits of the judge’s decisions. *Id.*

Accordingly, this part of the complaint must be dismissed. JUDICIAL-CONDUCT RULES 11(c)(1)(B), (D); *see* 28 U.S.C. § 352(b)(1)(A)(ii), (iii).

The complainant also alleges that he “sought [the judge’s] recusal which motion he ignored and fail[ed] or refuse[d] to respond to.” But the judge did not ignore or refuse to rule on the motion; instead, he denied the motion. Accordingly, this part of the complaint must also be dismissed. JUDICIAL-CONDUCT RULES 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 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).