

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-18-90009

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. For the following reasons, the misconduct complaint will be dismissed.

The complainant was charged with a misdemeanor offense in the Superior Court for the District of Columbia for the theft of a bicycle. In an attempt to bar that prosecution, he filed two separate petitions for a writ of habeas corpus in the United States District Court. The cases were assigned to the subject judge.

In the first case, the complainant challenged the jurisdiction of the Superior Court, asserting that he had to file the petition “in order to bar the local court from compelling [him] to submit physically to the local court.” The subject judge dismissed the petition under the abstention doctrine of *Younger v. Harris*, 401 U.S. 37 (1971). After the complainant noted an appeal in the United States Court of Appeals, the subject judge determined that a certificate of appealability (COA) was not warranted. This court then construed the notice of appeal as an application for a COA and denied the certificate because the complainant did not address the basis for the district court’s dismissal of the action.

In the second habeas case, the complainant sought to block the competency exam that the Superior Court had ordered in his criminal misdemeanor case. The subject judge again dismissed the petition under the abstention doctrine. The complainant noted an

appeal, which was dismissed as untimely.

The complainant has now filed the instant complaint, alleging that it was improper for the judge to rule in the two habeas cases. The complainant asserts that, because the judge had once worked as a supervisor in the civil division of the Office of the U.S. Attorney for the District of Columbia, the judge “can only be seen as the supervising attorney of” the Assistant U.S. Attorney who prosecuted the complainant’s criminal case in Superior Court.

The subject judge, who served in the U.S. Attorney’s Office’s civil division, left that office two years before the complainant was charged in a criminal case in Superior Court. The complainant has proffered no evidence that the subject judge had anything to do with the complainant’s case while serving in that office and no evidence that the matter was even in that office before he became a judge. The judge’s prior employment in that office, standing alone, is insufficient to raise an inference of misconduct. *Cf.* JUD. CONF. U.S., CODE OF CONDUCT FOR UNITED STATES JUDGES, CANON 3(C)(1)(e) (requiring disqualification where, inter alia, “the judge has served in governmental employment and in that capacity participated as a . . . counsel [or] advisor . . . concerning the proceeding”); *United States v. Dorsey*, 829 F.3d 831, 836 (7th Cir. 2016) (holding that, for “judges who were formerly AUSAs [Assistant U.S. Attorneys],” the federal recusal statute “requires some level of actual participation in a case to trigger disqualification”). There is, therefore, no evidence “to raise an inference that misconduct

has occurred.” JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS, RULE 11(c)(1)(D). Accordingly, this part of the complaint must be dismissed. JUDICIAL-CONDUCT RULE 11(c)(1)(D); *see* 28 U.S.C. § 352(b)(1)(A)(iii).

The complaint also appears to allege that the judge is racially biased because the complainant is African American and the judge is the “son of Cuban immigrants.” Other than the fact of the subject judge’s ethnicity, the complainant has failed to provide any support for the allegation of bias. And “[c]ourts have repeatedly held that matters such as race or ethnicity are improper bases for challenging a judge’s impartiality.” *MacDraw, Inc. v. CIT Group Equipment Financing, Inc.*, 138 F.3d 33, 37 (2d Cir. 1998). Thus, this allegation, too, is insufficient “to raise an inference that misconduct has occurred,” JUDICIAL-CONDUCT RULE 11(c)(1)(D), and this part of the complaint must be dismissed as well, 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).