

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-18-90013

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: 10/25/18

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 filed four separate lawsuits, on his own behalf and on behalf of other plaintiffs, against federal government agencies and officials challenging government electronic surveillance programs. The subject judge dismissed the first two cases because of jurisdictional defects, including lack of standing, mootness, and sovereign immunity. The judge dismissed the third case for failure to prosecute and the fourth for lack of standing and subject matter jurisdiction, and because the documents requested under the Privacy Act were exempt from disclosure.

During the course of the litigation in the third and fourth cases, the complainant asked the subject judge to disclose “whether [he] had been contacted by the FBI and the intelligence agencies.” The complainant alleged that “[i]t now appears that your Honor too has been coopted by the so called ‘Deep State,’ through threats or other forms of coercion, direct, indirect or subliminal.” The judge did not directly respond to these inquiries, but he noted in the order dismissing the third case that, “[u]nfortunately for plaintiffs, such baseless accusations are no substitute for a well-pleaded complaint.”

The complainant has filed the instant judicial misconduct complaint against the subject judge, alleging that the judge’s handling of the four cases “has raised clear

questions and concerns over improper *ex parte* communications with the FBI, DOJ, and the intelligence agency Defendants, if not coercion.” He asserts that the judge’s “refusal to provide even a simple ‘no,’ . . . is strong evidence that this improper *ex parte* communication, if not . . . coercion . . . did, in fact, occur.” The complaint, however, proffers no evidence of the judge’s alleged wrongdoing (or of improper influence) beyond the fact (1) that the judge failed to respond to the plaintiffs’ allegations (other than to describe them as “baseless”), and (2) that he ruled against the complainant. The first proffer is insufficient “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). And the second, that the judge wrongly ruled against the complainant, is likewise insufficient because a “complaint is not cognizable to the extent that it attacks the merits” of a decision or procedural ruling. JUDICIAL-CONDUCT RULE 3(h)(3)(A).

The complainant’s further charge, that the judge’s dismissal of his third and fourth lawsuits with prejudice reflects the “tell-tale signs of being influenced,” suffers the same defect. According to the complainant, those tell-tale signs include the dismissal of two of the lawsuits “with prejudice despite having no basis in law or fact to do so,” and other rulings that “constitute a total abdication of judicial responsibility.” Those allegations, like the others, are “not cognizable” because they “attack the merits” of the judge’s orders. JUDICIAL-CONDUCT RULE 3(h)(3)(A).

For the foregoing reasons, the complaint must 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).