

# The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

**In the Matter of**

**Judicial Council Complaint No. DC-18-90019**

## **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 was convicted of mail fraud and sentenced to prison. Almost five years after his conviction, the complainant filed a complaint in district court, alleging that the United States Department of Justice and the federal judges and prosecutors involved in his criminal case and post-conviction proceeding were conspirators whose racketeering activity violated the Racketeer Influenced and Corrupt Organizations (RICO) Act. The complainant sought a judgment deeming him innocent of the crimes of which he had been convicted and damages of \$5 million per day. The case was assigned to the subject judge.

The subject judge denied the complainant's motion for summary judgment, holding that the judges and prosecutors were immune from suit and that the government had not waived immunity with respect to the RICO claims. The judge further noted that, to the extent the complainant was challenging his criminal conviction and sentence, the district court lacked jurisdiction because the complainant had to seek relief from the sentencing court pursuant to 28 U.S.C. § 2255. Accordingly, the judge dismissed the complaint pursuant to 28 U.S.C. § 1915(e)(2)(B)(iii), 1915A(b)(2).

The complainant then moved for reconsideration of the order dismissing the case, and that motion was handled by a second district judge. In his motion for reconsideration,

the complainant asserted that the subject judge had engaged in the practice of law and demonstrated bias. The complainant further alleged that the subject judge improperly dismissed the case prior to the issuance of summonses and “backdated” the order, which was signed on April 10, 2018 but not filed until April 11, 2018. The district court judge denied the motion for reconsideration because the complainant “has not identified a valid basis to question [the subject judge’s] conduct or impartiality,” but rather “objects to the content and effect of the order itself, and ‘judicial rulings alone almost never constitute a valid basis for a bias or partiality motion.’” (quoting *Liteky v. United States*, 510 U.S. 540, 555 (1994)).

The complainant has now filed a judicial misconduct complaint against the subject judge, alleging that “[b]y backdating the memorandum opinion and order of dismissal, and delaying the mailing until 4/20/18, the judge was attempting to prevent Plaintiff’s opportunity to respond and protect his first amendment rights according to the First and Fifth Amendment of the Constitution.” Contrary to the complainant’s assertion, there is no evidence that the subject judge acted improperly or interfered with the complainant’s prosecution of his case. The judge signed the dismissal order on April 10, 2018. The Clerk of Court then filed the order on April 11, 2018, but did not enter it on the docket until April 16, 2018. Even if the order were not mailed until April 20th, the mailing was handled by the Clerk’s Office. Thus, even if some delay occurred, it was not because of actions taken by the subject judge. Accordingly, this part of the complaint must be

dismissed because there is insufficient 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); *see* 28 U.S.C. § 352(b)(1)(A)(iii).

The complainant further asserts that: “[t]he arguments in the [subject judge’s] Memorandum Opinion are also false;” the judge “did not allow the parties to litigate their proceedings”; “the court sent copies of the complaint to the defendants, even though they did not serve them, extra-judicial actions”; and the judge “intentionally misstated the law related to these proceedings.” Because these contentions are “directly related to the merits” of the judge’s order dismissing the action, they do not constitute “cognizable misconduct” under the Judicial-Conduct Rules and must also be dismissed.

JUDICIAL-CONDUCT RULES 3(h)(3)(A), 11(c)(1)(B); *see* 28 U.S.C. § 352(b)(1)(A)(ii).<sup>1</sup>

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<sup>1</sup> 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).