

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-18-90073
DC-18-90074
DC-18-90075
DC-18-90076
DC-18-90077
DC-18-90078
DC-18-90079
DC-18-90080
DC-18-90081

**A Charge of Judicial
Misconduct or Disability**


Before: GARLAND, *Chief Judge*.

ORDER

Upon consideration of the complaint herein, filed against six judges of the United States District Court for the District of Columbia and three judges of the United States Court of Appeals for the District of Columbia Circuit, 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 (2019), RULE 11(g)(2).


Merrick B. Garland, Chief Judge

Date: 4/30/19

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No. DC-18-90075
No. DC-18-90076
No. DC-18-90077
No. DC-18-90078
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No. DC-18-90080
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MEMORANDUM

The complainant, a Mississippi state prisoner, has filed complaints of judicial misconduct against six judges of the U.S. District Court for the District of Columbia and three judges of the U.S. Court of Appeals for the D.C. Circuit. For the following reasons, the misconduct complaints will be dismissed.

I

The complaints arise out of three cases that the complainant and a co-plaintiff filed in the U.S. District Court for the District of Columbia, as well as the ensuing appeals. The complainant described those cases as raising federal tort claims.

A. The District Court Cases

In 2012, the complainant filed the first case (Case I) against federal and Mississippi state government officials, as well as federal district and appellate judges of the Fifth Circuit, focusing on the Prison Litigation Reform Act (PLRA), the Anti-Terrorism and Effective Death Penalty Act, and post-conviction proceedings in that Circuit. The subject district court judge in Misconduct Complaint No. DC-18-90076 issued an order directing the complainant to pay the filing fee or seek leave to proceed in

forma pauperis (IFP). On the same day, the complainant filed a motion for leave, which the subject district judge in No. DC-18-90073 denied, simultaneously dismissing the complaint without prejudice for failure to comply with 28 U.S.C. § 1915. The complainant then filed a motion for reconsideration of the dismissal order, which the subject district judge in No. DC-18-90074 denied because the complainant had neither submitted his financial information nor paid the filing fee. Later, the complainant filed a motion to vacate the previous judgments, which the subject district judge in No. DC-18-90077 denied in 2018, noting that the “[c]ases are closed.”

Meanwhile, in 2012 the complainant filed a second case (Case II) in a federal district court in a different jurisdiction, which that court ultimately transferred to the U.S. District Court for the District of Columbia. The complaint in that case was virtually identical to the complaint in Case I, except that it also named as a defendant a judge of the U.S. District Court for the District of Columbia, alleging that the judge had engaged in discrimination, retaliation, and other misconduct. The subject district judge in No. DC-18-90075 granted the complainant’s motion for leave to proceed IFP, dismissed the complaint with prejudice for failure to state a claim, and assessed a “strike” against the complainant under the “three strikes” provision of the PLRA.

The complainant also filed a third case (Case III) in 2012 in yet another federal district court, which that court also transferred to the U.S. District Court for the District of Columbia. That complaint was virtually identical to the complaint in Case II. The

subject district judge in No. DC-18-90078 then granted the complainant's motion for leave to proceed IFP, but dismissed the complaint with prejudice for failure to state a claim upon which relief could be granted. Thereafter, the subject district judge denied the complainant's motion to vacate the judgment as well as his second motion to vacate, which the complainant had filed nearly four years after the denial of the first motion to vacate.

B. The Court of Appeals Cases

The complainant filed appeals of the dismissals of the complaints in Cases I, II, and III in the U.S. Court of Appeals for the District of Columbia Circuit. In 2015, the circuit consolidated all of the appeals.

A panel composed of the subject appellate judges in Misconduct Complaint Nos. 18-DC-90079, 18-DC-90080, and 18-DC-90081 granted the federal appellees' motion for summary affirmance of the dismissal of the complaint in Case III. The panel agreed that the district court had properly concluded that the complaint failed to state a claim. Sua sponte, the panel also summarily affirmed the orders at issue in Cases I and II, concluding that the underlying claims at issue in those cases were the same as those at issue in Case III.

II

In his misconduct complaints, the complainant alleges that all nine subject judges showed "personal 'bias' and 'prejudice' and the 'judicial animus.'" He further alleges

that the judges ruled against him because he and his co-plaintiff “are ‘pro se prisoners’ and ‘African American’ or ‘black’ incarcerated U.S. citizens.” The complainant asserts that the erroneous decisions “demonstrate[] ‘the Judges propriety of arriving at rulings with an illicit or improper motive [and] thus goes beyond a mere attack on the correctness of the ruling itself.’” However, although the complainant alleges that the judges’ decisions are “the result of improper motive,” the allegations are “not cognizable to the extent [they] call[] into question the merits of [those] decision[s].” JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS (2019), RULE 4(b)(1). And because the complainant proffers no other evidence to support those allegations “that misconduct has occurred,” they will be dismissed. JUDICIAL-CONDUCT RULE 11(c)(1)(D); *see* JUDICIAL-CONDUCT RULE 11(c)(1)(B); *see also* 28 U.S.C. § 352(b)(1)(A)(ii), (iii).

The complainant also asserts that the judges’ “collegiative ‘acts’ or collegiative ‘actions’ demonstrate an ‘extraordinary-abuse-of-judicial power’ and ‘usurpation of judicial power,’ . . . interfer[ing] with the parties right to sue and right to ‘due process.’” He further alleges that the judges “arriv[ed] at ruling with an illicit or improper motive to interfere with, and totally stop, a viable and meritorious Federal Tort Claim Act complaint.” Like the allegations addressed above, these claims are also “directly related to the merits” of the judges’ decisions and will therefore be dismissed. JUDICIAL-CONDUCT RULE 11(c)(1)(B); *see* 28 U.S.C. § 352(b)(1)(A)(ii).

Beyond the above-described generally applicable allegations, the complainant makes no specific allegations against three of the subject district judges (those named in Nos. DC-18-90073, DC-18-90074, and DC-18-90076). Hence, the complaints against those subject judges will be dismissed. JUDICIAL-CONDUCT RULE 11(c)(1)(D); *see* 28 U.S.C. § 352(b)(1)(A)(iii)

The complainant does make specific allegations against three of the subject district judges (the subjects of Nos. DC-18-90075, DC-18-90077, and DC-18-90078). The complainant states that the judge in No. DC-18-90075 issued a decision that was “clearly erroneous” and “in conflict with congressionally enacted statutes.” He alleges that the judge in No. DC-18-90077 issued a decision, denying his motion for leave to file a motion to vacate the judgment, that “lacked integrity” and was a “denial of ‘due process’” because it was “clearly established” that leave to file was not required. The complainant alleges that the judge in No. DC-18-90078 issued an order that denied his motion to vacate the judgment as an attempt to “knowingly, wilfully, deliberately and intentionally misappl[y] the law.” And he further alleges that the same judge’s order dismissing the case was “clearly erroneous” and in conflict with the law. Because the complainant proffers no evidence to support these allegations other than the judges’ decisions themselves, the allegations are “directly related to the merits” of those decisions and will be dismissed. JUDICIAL-CONDUCT RULE 11(c)(1)(B); *see* 28 U.S.C. § 352(b)(1)(A)(ii).

The complainant also makes specific allegations against the three subject appellate

judges collectively (those named in Nos. DC-18-90079, DC-18-90080, and DC-18-90081). The complainant asserts that the judges' rulings provide the "infallible proof" that they "perpetrate[d] 'fraud' . . . and a obvious instance of 'injustice' and 'misapplied law,' . . . thereby constituting a conspiracy . . . to protect and show favor to their colleagues." The complainant further asserts that "the Panel's unfavorable predisposition is so extreme that it displays clear inability to render fair judgment, can also deserve to be characterized as personal 'bias' and 'prejudice.'" Once again, because these allegations fail to provide any evidence of misconduct beyond the merits of the decisions themselves, they will be dismissed as well. JUDICIAL-CONDUCT RULE 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).