

# The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

**In the Matter of**

**Judicial Council Complaint No. DC-19-90033**

**DC-19-90034**

**DC-19-90035**

**A Charge of Judicial  
Misconduct or Disability**

Before: GARLAND, *Chief Judge*.

## **ORDER**

Upon consideration of the complaint herein, filed against 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: 2/5/20

No. DC-19-90033  
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## MEMORANDUM

The complainant has filed a complaint of judicial misconduct against three judges of the United States Court of Appeals for the District of Columbia Circuit. For the following reasons, the misconduct complaint will be dismissed.

The complainant filed an action in the United States District Court that was dismissed for failure to comply with the Prison Litigation Reform Act (PLRA). A three-judge panel of the United States Court of Appeals denied the complainant's motion for leave to proceed in forma pauperis, finding that the complainant was ineligible for such status because he had "three strikes" under the Act, having brought at least three civil actions or appeals that were dismissed on the ground that they were frivolous, malicious, or failed to state a claim. *See* 28 U.S.C. § 1915(g).

In August 2019, the complainant filed a judicial misconduct complaint against one of the judges on the three-judge panel. That complaint was dismissed on the ground that its allegation "'call[ed] into question the correctness' of the judge's rulings, which does not constitute '[c]ognizable misconduct' under the Judicial-Conduct Proceedings Rules or the applicable statute." Judicial Misconduct Complaint No. DC-19-90028 (citations omitted).

Also in August 2019, the complainant filed a petition for a writ of mandamus in the United States Court of Appeals, alleging that the United States District Court refused

to file an “imminent danger complaint” that he had submitted, and that the government had continued a policy of “deliberate indifference.” Thereafter, another three-judge panel of the Court of Appeals, one of whose members was the subject judge in No. DC-19-90028, again determined that the complainant had previously filed three civil actions or appeals that were dismissed on the ground that they were frivolous, malicious, or failed to state a claim. Pursuant to the PLRA, the court ordered the complaint to pay the filing fee or risk dismissal of the case for lack of prosecution. *See* 28 U.S.C. § 1915(g).

In December 2019, the complaint filed the instant judicial misconduct complaint, this time against all three members of the appellate panel.

As in Judicial Misconduct Complaint No. DC-19-90028, the instant complaint again asserts that the “Judges are using Fraud on the Court to deprive [him] of all Constitutional Rights and to protect [the government.]” He also alleges that the judges “are aware of the Fraud and are deliberately using it again after being served with judicial complaint DC-19-90028.” The gravamen of these allegations appears to be that the court knowingly counted “false strikes” against him under the PLRA.

As was the case in Judicial Misconduct Complaint No. DC-19-90028, the complainant’s attack on the Court of Appeals’ order, which found that he had three PLRA “strikes” and directed him to pay the filing fee, “calls into question the correctness of [the court’s] ruling.” JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS (2019), RULE 4(b)(1). Such an allegation does not constitute

“[c]ognizable misconduct” under the applicable rules or statute. *Id.*; *see* 28 U.S.C. § 352(b)(1)(A)(ii). Accordingly, the complaint will be dismissed. *See* JUDICIAL-CONDUCT PROCEEDINGS RULE 11(c)(1)(B); 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 Proceedings 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 PROCEEDINGS RULE 18(b).