

JUDICIAL COUNCIL
OF THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of
A Complaint of Judicial
Misconduct or Disability

Complaint No. DC-20-90047
No. DC-20-90048
No. DC-20-90049

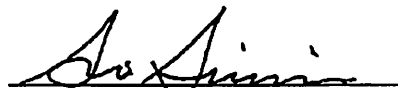
Before: Srinivasan, Chief Judge

ORDER

Upon consideration of the complaints herein, filed against three judges of the United States Court of Appeals for the District of Columbia Circuit, it is

ORDERED that the complaints 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).


Sri Srinivasan, Chief Judge

Date: 12/29/20

No. DC-20-90047

No. DC-20-90048

No. DC-20-90049

MEMORANDUM

The complainant has filed complaints 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 complaints will be dismissed.

The complainant was convicted by a jury of threatening a federal agent, in violation of 18 U.S.C. § 115(a)(1)(B). The charge stemmed from a 911 call the complainant made in which he threatened to kill the agent. The complainant appealed his conviction. The Court of Appeals affirmed the conviction and sentence, but remanded the case to the District Court (“trial judge”) to provide the complainant with access to the jury commission records. On remand, the complainant filed numerous motions, including a motion pursuant to 28 U.S.C. § 2255 for the court to vacate, set aside, or correct his sentence. The trial judge denied the complainant’s motions. The complainant then moved for a certificate of appealability and to amend or correct the record and the trial judge denied those motions as well. The complainant then filed in the Court of Appeals three motions for a certificate of appealability and a notice of appeal of the trial judge’s denial of a certificate of appealability. The three subject judges, who made up the Court of Appeals panel, denied the motions for a certificate of appealability, concluding that the complainant had “not ‘made a substantial showing of

the denial of a constitutional right' . . . or demonstrated that 'jurists of reason would find it debatable whether the district court was correct in its procedural ruling' that it did not have jurisdiction over [the] claims against the Bureau of Prisons' staff."

While the appeal of the denial of the certificate of appealability was pending, the complainant filed in the district court a motion to dismiss, or, in the alternative, motion to vacate, set aside, or correct the sentence pursuant to 28 U.S.C. § 2255. At this point, the case was reassigned to a second district court judge, following the trial judge's retirement. The government moved the court to transfer the motion to the Court of Appeals for treatment as a request to file a second or successive § 2255 motion. The second district court judge granted the government's motion, finding that because the claims in the successive motion could have been raised in the original motion, the district court had no jurisdiction to decide the matter absent certification from the Court of Appeals. The complainant then filed a motion to reconsider, which was denied. The complainant then noted an appeal of the order denying reconsideration and the order denying the admission of new evidence and to expand the record. The Court of Appeals ultimately denied the request to file a successive § 2255 motion.

The complainant then filed a complaint of judicial misconduct against the second district court judge alleging that he was unhappy with the trial judge's exclusion of evidence and with what he believes to be "prosecutorial misconduct." More specifically, the complainant argued that he informed the second district court judge of

prosecutorial misconduct in his motion for reconsideration of the trial judge's order denying his first § 2255 motion. He further claimed that the second district court judge "created an appearance of impropriety by her failure to act with credible evidence that Government Attorneys violated the DC Bar Rules of Professional Conduct" and that this demonstrated bias and favoritism. That misconduct complaint was dismissed as relating to the merits of a decision and lacking evidentiary support. *See* Judicial Misconduct Complaint No. DC-20-90032.

The complainant has now filed a judicial misconduct complaint against the three Court of Appeals judges who denied his motions for a certificate of appealability, making similar arguments to those dismissed in his misconduct complaint against the second district court judge, Judicial Misconduct Complaint No. DC-20-90032. Like in his complaint against the second district court judge, the complainant argues that the subject judges failed to take appropriate action after he brought allegations of prosecutorial misconduct in the district court to their attention. In addition, also like in his complaint against the second district court judge, the complainant alleges that the subject judges' "impartiality is questioned" due to their "failure to take any action on the government misconduct" and their failure to hold a hearing on the matter. The complainant goes on to claim that, even though "judicial decisions are not proper grounds for a Judicial Misconduct Complaint," the subject judges improperly "excluded requested evidence."

To the extent that the complainant is asserting that the subject judges failed to report “prosecutorial misconduct” to the District of Columbia Bar, this allegation must fail, as it did in Judicial Misconduct Complaint No. DC-20-90032. As the court noted in No. DC-20-90032, “one of the bases for the reconsideration motion [before the second district court judge] was prosecutorial misconduct, which the . . . judge rejected. These same allegations were also raised at trial and in the complainant’s first § 2255 motion considered by the trial judge.” Judicial Misconduct Complaint No. DC-20-90032 at 3-4. After both district court judges determined that there was no prosecutorial misconduct, the subject judges denied a certificate of appealability. The subject judges’ failure to report ostensible prosecutorial misconduct to the District of Columbia Bar or to hold a hearing directly relates to the merits of their denial of a certificate of appealability and does not constitute misconduct. *See* JUDICIAL-CONDUCT PROCEEDINGS RULE 4(b)(1) (allegations that “call[] into question the correctness of [the] judge’s ruling” do not constitute “[c]ognizable misconduct” under the Judicial-Conduct Proceedings Rules or the applicable statute); *see also* 28 U.S.C. § 352(b)(1)(A)(ii). The subject judges’ failure to make a report to the District of Columbia Bar similarly does not constitute evidence of bias, and the allegation of bias thus “lack[s] sufficient evidence to raise an inference that misconduct has occurred.” JUDICIAL-CONDUCT PROCEEDINGS RULE 11(c)(1)(D); *see* 28 U.S.C. § 352(b)(1)(A)(iii).

To the extent the complainant is challenging the subject judges' exclusion of evidence before them, this allegation is directly related to the merits of the Court of Appeals' consideration of the complainant's motions for a certificate of appealability and must be dismissed. *See* JUDICIAL-CONDUCT PROCEEDINGS RULE 4(b)(1).

Accordingly, because the allegations are "directly related to the merits of a decision or procedural ruling," and are "based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred," the complaint will be dismissed. JUDICIAL-CONDUCT PROCEEDINGS 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 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).