

JUDICIAL COUNCIL
OF THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of
A Complaint of Judicial
Misconduct or Disability

Complaint No. DC-21-90002

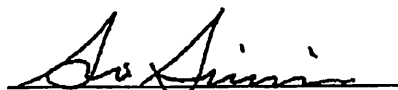
Before: Srinivasan, Chief Judge

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 (2019), RULE 11(g)(2).


Sri Srinivasan, Chief Judge

Date: 3/19/21

No. DC-21-90002

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 a complaint against the Department of Justice, the company which ran the prison where complainant was incarcerated, and two individuals from the prison company, seeking to relitigate the amount of a monthly compensation award he received pursuant to the Inmate Accident Compensation Act (IACA), 18 U.S.C. § 4126 et seq., for a back injury he sustained while incarcerated. The complainant also challenged the termination of the award under IACA and its implementing regulations. The case was assigned to the subject judge.

The defendants moved to dismiss the suit. The complainant moved to disqualify the subject judge, for default judgment, and for judgment on the pleadings. The subject judge denied the motion to disqualify, finding that the complainant had failed to establish a basis for the judge's recusal. The subject judge noted that the act of advising the complainant to respond to the defendants' motion to dismiss was appropriate, that he was not ignoring the complainant's motions but that he simply had not yet ruled on them, and that the dismissal of the motion for default judgment is not grounds for disqualification. The subject judge also denied the motion for default judgment and for judgment on the pleadings. In addressing the merits of the motion to dismiss, the subject judge concluded that the doctrines of res judicata and collateral estoppel barred the complainant's claim pertaining to the calculation of his

award under IACA, or, in the alternative, that the time period in which he could have litigated the amount had elapsed and thus his claims were time-barred. The subject judge noted that another district court judge had previously entered, and the Court of Appeals affirmed, a ruling on the merits on the same issue. As to the claims regarding the termination of the award, however, the subject judge denied the motion to dismiss, as that issue had not been previously litigated.

The complainant noted an appeal of the order denying his motions for default judgment, for judgment on the pleadings, to disqualify the judge, and granting in part the motion to dismiss. The defendants moved to dismiss the appeal for lack of jurisdiction. The Court of Appeals dismissed the appeal for lack of jurisdiction because the district court's order was not a final, appealable decision and the complainant had not identified a valid basis for the court to exercise jurisdiction over the interlocutory appeal. The subject judge now has pending before him the defendants' motion to dismiss the remaining claim (that the award was wrongfully terminated) for lack of subject matter jurisdiction because the complainant has failed to exhaust his administrative remedies.

The complainant has now filed a judicial misconduct complaint against the subject judge alleging that "the Lower Court's judicial proceedings show deep-seated favoritism." As evidence of the alleged favoritism, the complainant points to the subject judge's failure to grant his motion for default judgment, which he asserts "created a conundrum with the hardship consequences of inevitable delay of dubious finality." He further alleges that the subject judge's direction that he file a response to the defendants' motion to dismiss was a "bizarre apparent

procedural judicial departure.” Lastly, the complainant asserts that the subject judge failed to properly apply the Administrative Procedure Act and “instead . . . made independent determinations of facts and law, repeatedly shield[ing] overt act[s] of discriminatory practice of the [defendants’] fraud policy.”

It appears that the complainant is primarily challenging the subject judge’s decision to deny the complainant’s motions for default judgment and for judgment on the pleadings, as well as the judge’s procedural direction that the complainant file a response to the motion to dismiss. These allegations, however, go to the merits of the subject judge’s decisions and procedural ruling. Therefore, the allegations merely “call[] into question the correctness of [the] judge’s rulings.” JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS (2019), Rule 4(b)(1). Such allegations do not constitute “[c]ognizable misconduct” under the Judicial-Conduct Proceedings Rules or the applicable statute. *Id.*; see 28 U.S.C. § 352(b)(1)(A)(ii).

To the extent the complainant is alleging that the subject judge has exhibited bias or favoritism, those claims must also be dismissed. The complainant has failed to provide any evidence to support his claim of bias or to demonstrate an extrajudicial source of prejudice, relying instead on his own beliefs or the subject judge’s rulings in the case. The subject judge’s decisions, however, do not “display a deep-seated favoritism or antagonism” that would warrant recusal. See *Liteky v. United States*, 510 U.S. 540, 555 (1994). Thus, these allegations “lack[] sufficient evidence to raise an inference that misconduct has occurred,” JUDICIAL-CONDUCT PROCEEDINGS RULE 11(c)(1)(D), and must also be dismissed.

Finally, to the extent the complainant is asserting a claim of excessive delay, or a failure to take action, that claim is also without merit. “Cognizable misconduct does not include an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.” JUDICIAL-CONDUCT PROCEEDINGS RULE 4(b)(2). The complainant does not allege an improper motive or habitual delay in unrelated cases, and the claim is too conclusory to support a finding of misconduct. The allegation of delay 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).

Accordingly, because the complaint “is directly related to the merits of [the judge’s] decision[s]” and is “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). To the extent the complainant sought to expedite consideration of the complaint and to “rescind the Clerk of Court’s inadvertence in its denial of Appellant an expedited Appeal,” those requests are dismissed as moot in light of the dismissal of the complaint.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).