

JUDICIAL COUNCIL  
OF THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of  
A Complaint of Judicial  
Misconduct or Disability

Complaint No. DC-21-90003  
No. DC-21-90004  
No. DC-21-90005  
No. DC-21-90006

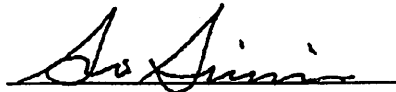
Before: Srinivasan, Chief Judge

**ORDER**

Upon consideration of the complaint herein, filed against a judge of the United States District Court for the District of Columbia 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).

  
Sri Srinivasan, Chief Judge

Date: 5/25/21

No. DC-21-90003

No. DC-21-90004

No. DC-21-90005

No. DC-21-90006

## MEMORANDUM

The complainant has filed a complaint of judicial misconduct against a judge 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. For the following reasons, the misconduct complaint will be dismissed.

The complainant sued the Office of National Drug Control Policy (“ONDCP”), the Department of Justice (“DOJ”), and other agencies and government officials. The lawsuit stemmed from a raid during which the West Sound Narcotics Enforcement Team (“WestNET”) allegedly seized and destroyed the complainant’s medical marijuana plants.

The complaint alleged that both DOJ and ONDCP had published policies regarding medical marijuana. The complainant further alleged that WestNET, acting at the behest of DOJ and ONDCP, conducted seizures and forfeitures of marijuana without providing required notices of intent to seize and without affording any post-deprivation due process. The complainant also claimed that WestNET collected fines, fees, restitution, and court costs related to the seizures and disbursed some of the resulting funds amongst parties to an interlocal agreement while keeping the rest. The complaint asserted violations of the Washington Criminal Profiteering Act, the Racketeer Influenced and Corrupt Organizations Act (“RICO”), and federal mail- and wire-fraud statutes based on the alleged conspiracy to use WestNET to seize and destroy marijuana (and to collect and distribute any funds resulting

therefrom). The complaint also asserted violations of the Fourth, Fifth, Tenth, and Fourteenth Amendments, as well as 42 U.S.C. § 1983 and 34 U.S.C. § 10228 (concerning anti-commandeering), based on the same alleged conduct and on the DOJ and ONDCP policies (“the constitutional claims”). According to the complaint, both the alleged lack of notice regarding the seizure and forfeiture of marijuana and the policies issued by DOJ and ONDCP violated the Administrative Procedure Act (“APA”) (“the APA claims”). Finally, the complaint sought mandamus and declaratory relief based on the above claims (“the equitable relief claim”).

The subject district court judge (No. DC-21-90003) granted the government’s motion to dismiss. First, the subject district court judge concluded that the complainant’s RICO claims were barred by sovereign immunity. Second, the subject district court judge concluded that the constitutional and APA claims were barred by 28 U.S.C. § 2401(a)’s six-year statute of limitations and that equitable tolling was unwarranted. Finally, the subject district court judge concluded that the claim for equitable relief failed both because it was premised on claims already subject to dismissal and because the complainant had not pleaded that he would likely be harmed in the future.

The complainant then moved for reconsideration, and for the subject district court judge to recuse herself pursuant to 28 U.S.C. § 455. The subject district court judge denied both motions.

The complainant timely appealed from the order dismissing his claims, and challenged the denial of his motions for reconsideration and recusal in his brief before the Court of

Appeals. The complainant also moved for appointment of counsel, to strike the motion for summary affirmance, and for sanctions.

The subject appellate judges (Nos. DC-21-90004, 90005, and 90006) denied the motions for appointment of counsel, to strike, and for sanctions. The subject appellate judges granted the government's motion for summary affirmance, finding that the subject district court judge correctly concluded that the claims were barred by either sovereign immunity or the statute of limitations. The subject appellate judges further found that the subject district court judge correctly concluded that the complainant has not shown that equitable tolling was warranted or that he was entitled to prospective equitable relief. Finally, the subject appellate judges determined that the subject district court judge did not abuse her discretion in denying the motion for reconsideration or the motion for recusal.

The complainant then filed a motion to recuse two of the subject appellate judges (No. DC-21-90005 and No. DC-21-90006) arguing that their service on the D.C. Circuit Judicial Council with the subject district court judge created an appearance of partiality. The two subject appellate judges (No. DC-21-90005 and No. DC-21-90006) denied the motion to recuse, finding that the complainant had not demonstrated that their impartiality might reasonably be questioned. The complainant then moved for publication of the Court of Appeals' summary affirmance order and petitioned for rehearing en banc. The motion to publish and the petition for rehearing en banc were denied.

The complainant has now filed a judicial misconduct complaint against the four subject judges. The complainant alleges that the subject district court judge "improperly made

arguments on behalf of the United States Department of Justice” and “fail[ed] to use the ‘Docket management tool’ and protect a ‘level playing field’ for litigants who ‘backhand issues’ and ‘doom their case.’” As to two of the subject appellate judges (No. DC-21-90005 and No. DC-21-90006), the complainant alleges that they improperly denied his motion to recuse. The complainant again asserts that their service on the D.C. Circuit Judicial Council with the subject district court judge creates an appearance of impropriety. And finally, the complainant claims that all three subject appellate judges “purposefully allowed new arguments to be able to save [the subject district court judge] from allowing persons served with a lawsuit, to avoid filing and legal briefs” and “allow[ed] new arguments and reverse circuit precedence to allow unaddressed arguments.”

To the extent the complainant is alleging that the subject district court judge made arguments on behalf of the defendants and failed to properly manage the case, and that the three subject appellate judges allowed the defendants to make “new” arguments and failed to follow circuit precedent, these allegations go to the merits of the orders dismissing the complaint and summarily affirming the district court’s order. Therefore, these 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).

Furthermore, to the extent the complainant is alleging that that two of the subject appellate judges (No. DC-21-90005 and No. DC-21-90006) improperly failed to recuse, that

allegation is also without merit. Allegations that a judge committed misconduct by failing to recuse are generally dismissed as merits related. See JUDICIAL-CONDUCT PROCEEDINGS RULE 4(b)(1) (“Cognizable misconduct does not include an allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse”). “A failure to recuse may constitute misconduct only if the judge failed to recuse for an improper purpose.” *In re Judicial Misconduct*, 605 F.3d 1060, 1062 (9th Cir. 2010). The complainant, however, has provided no evidence of a failure to recuse for an improper purpose. As the judges noted in the order denying the motion for their recusal, considering the totality of the circumstances, their impartiality could not be called into question. Consequently, because this allegation is “directly related to the merits of a decision or procedural ruling,” it also must be dismissed. See JUDICIAL-CONDUCT PROCEEDINGS RULE 11(c)(1)(B); see 28 U.S.C. § 352(b)(1)(A)(ii).

Accordingly, the complaint will be dismissed.<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).