

JUDICIAL COUNCIL
OF THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of
A Complaint of Judicial
Misconduct or Disability

Complaint Nos. DC-22-90021
DC-22-20022

Before: Srinivasan, Chief Judge

ORDER

Upon consideration of the complaint herein, filed against two 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: January 11, 2023

No. DC-22-90021
No. DC-22-90022

MEMORANDUM

The complainant has filed a complaint of judicial misconduct against two 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 brought what he characterized as a civil rights action under 42 U.S.C. §1983 against the United States, a federal judge in North Carolina, the State of North Carolina, a former Governor of North Carolina, and a publishing company, for the defendants' alleged conspiracy to unlawfully put criminal provisions into the North Carolina habitual felon statute, which apparently is the statute under which the complainant was convicted and sentenced. The complainant sought punitive damages and the repeal of the ostensibly invalid statute. The district court dismissed the complaint on the ground that it contained only vague allegations of conspiracy.

The complainant then filed a petition for a writ of mandamus in the Court of Appeals, seeking an order directing the district court to vacate the dismissal of his closed district court case. The Court of Appeals directed the complainant to pay the docketing fee or risk dismissal, as he had failed to allege that he was in imminent danger of serious physical injury as would be required to avoid paying the filing fee. The Court of Appeals deferred consideration of the complainant's mandamus petition. The complainant then sought to amend his petition to instead seek the issuance of an order directing the Attorney General to initiate an investigation into the publishing company and then to recommend that the complainant be released. The Court of Appeals denied the amended petition, determining that the complainant had not

shown a right to the relief requested. The complainant then sought rehearing, which was denied.

The complainant has now filed a misconduct complaint against two of the Court of Appeals judges who considered his mandamus petition, alleging that they failed “to liberally construe pro-se emergency writ of mandamus application” and should have determined that his underlying health conditions and the conditions in his prison concerning his risk of being infected with COVID-19 are evidence that he was in imminent danger of serious physical injury. That allegation is a direct challenge to the judges’ participation in a decision to require the complainant to pay the filing fee, and thus “calls into question the correctness of [the] judge[s]’ ruling.” JUDICIAL-CONDUCT PROCEEDINGS 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). Accordingly, the complaint will be dismissed.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).