

JUDICIAL COUNCIL
OF THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of
A Complaint of Judicial
Misconduct or Disability

Complaint Nos. DC-22-90023
DC-22-20024
DC-22-90025

Before: Srinivasan, 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).



Sri Srinivasan, Chief Judge

Date: January 11, 2023

No. DC-22-90023
No. DC-22-90024
No. DC-22-90025

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 suit in the District Court for the District of Columbia against a federal judge in North Carolina, the governor of North Carolina, and the State of North Carolina, asking the court to order the North Carolina judge to declare North Carolina's habitual felon statute unconstitutional and seeking monetary damages. The district court dismissed the suit without prejudice, finding that the complainant was barred from proceeding in forma pauperis under the Prison Litigation Reform Act's "three strikes" provision and he had failed to show that he was "under imminent danger of serious physical injury" so as to excuse his failure to pay the filing fee. The complainant appealed, and because the Court of Appeals had previously determined the complainant to be a "three-striker," the Clerk issued an order to show cause why he should not be required to pay the full appellate filing fee.

After the complainant responded to the order to show cause, the Court of Appeals concluded that the complainant had not demonstrated a nexus between his allegations of imminent danger of serious physical injury and his claims for relief. The court noted that the complainant's claims did not seek "to obtain a judicial remedy for an imminent danger." The complainant was, therefore, ordered to pay the filing fee or risk dismissal for lack of prosecution. The complainant then sought reconsideration, arguing that his circumstances had

changed because he had tested positive for COVID-19. The court determined that the complainant “cannot rely on an illness contracted months after he noted his appeal to qualify for the imminent danger exception to proceed in forma pauperis.” Thus, the complainant was again ordered to pay the filing fee or risk dismissal.

The complainant then sought reconsideration for a second time, this time asserting that he should be granted in forma pauperis status because he is a veteran. The court denied reconsideration, finding that the complainant’s veteran status did not overcome the three strikes bar in the Prison Litigation Reform Act. The court dismissed the appeal for lack of prosecution. The complainant then filed a motion to recall the mandate, which was denied. The complainant subsequently filed a motion to vacate the order denying his motion to recall the mandate, arguing that his motion to recall the mandate should have been construed as a petition for a writ of mandamus and that he should be released from prison. The court denied the motion to vacate and directed the Clerk to accept no further filings from the complainant in the closed case.

The complainant has now filed a judicial misconduct complaint against the three court of appeals judges who considered his appeal. The complainant alleges that the judges were involved “in a conspiracy [to] compel[] complainant to serve 2nd 168 month to 211 month sentence, in midst of deadly coronavirus pandemic.” As “supporting facts,” the complainant states that the “court denied complainant’s request for reconsideration.”

The complainant has failed to provide any support for his allegation of a conspiracy, and the fact that the court denied his motion for reconsideration is not in and of itself not evidence

of a conspiracy. Consequently, the complaint “lack[s] sufficient evidence to raise an inference that misconduct has occurred” and will be dismissed. JUD. CONF. RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS (2019), Rule 11(c)(1)(D); *see* 28 U.S.C. § 352(b)(1)(A)(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).