

JUDICIAL COUNCIL
OF THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of
A Complaint of Judicial
Misconduct or Disability

Complaint No. DC-22-90026

Before: Srinivasan, Chief Judge

ORDER

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

MEMORANDUM

The complainant has filed a complaint of judicial misconduct against a judge 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 petitioned the Court of Appeals for a writ of mandamus directing the district court to order an employee of the North Carolina Governor's Clemency Office to grant him clemency and commute his sentences to time served, resulting in his unconditional release from prison. According to the complainant, such relief was warranted because the warden failed to comply with North Carolina's social distancing requirements, putting him in imminent danger of serious physical injury or death from COVID-19. In a supplement to the petition, the complainant challenged an order of the D.C. district court denying his in forma pauperis motion and dismissing a case which sought the same relief.

The Court of Appeals denied the mandamus petition, noting that even if this court could exercise authority over the Governor's Clemency Office, the decision to grant clemency is discretionary. Moreover, to the extent the complainant challenged the dismissal order, the court noted he may not use mandamus as a substitute for an appeal. The complainant then filed a "motion to amend pro se complaint," which the court construed as a petition for rehearing and denied. The complainant then sought reconsideration of the denial of rehearing, and that motion was also denied. In addition, the court directed the Clerk not to accept further filings from the complainant in the closed case.

The complainant has now filed a judicial misconduct complaint against one of the Court of Appeals judges, alleging that he “failed to find it appropriate to conduct an inquiry into whether [a] covered Judge . . . , is likely to have been involved in conspiracy with [a] N.C. legal author . . . to distribute incorrect statements.” The complainant further states that “[i]n addition to allegations of complainant calling into question correctness of subject judge’s decision, it also alleges conspiracy between him and [a publishing company] distributing incorrect law statement.”

To the extent the complainant is challenging the subject judge’s participation in a decision to deny mandamus relief, the allegation “calls into question the correctness of [the] judge[’s] ruling.” JUD. CONF. RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS (2019), Rule 4(b)(1). Such an allegation does 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). Moreover, to the extent the complainant is alleging a conspiracy between the subject judge and a publishing company, the complainant has failed to provide any support for this allegation. Consequently, this allegation “lack[s] sufficient evidence to raise an inference that misconduct has occurred.” JUDICIAL-CONDUCT PROCEEDINGS RULE 11(c)(1)(D). Accordingly, the complaint will be dismissed. *See* JUDICIAL-CONDUCT PROCEEDINGS RULE 11(c)(1)(B) & (D); 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).