

JUDICIAL COUNCIL
OF THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of
A Complaint of Judicial
Misconduct or Disability

Complaint No. DC-24-90020

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).

A handwritten signature in blue ink, appearing to read 'Sri Srinivasan', is written over a horizontal line.

Sri Srinivasan, Chief Judge

Date: July 3, 2024

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 pled guilty in state court to custodial interference and sexual misconduct. His guilty plea was part of a pretrial diversion agreement. The complainant successfully completed the diversion program, and the court dismissed-diverted his charges. The complainant then filed a habeas petition in a district court outside of the District of Columbia. The matter was referred to a magistrate judge, who recommended that the motion to dismiss the habeas petition be granted because the complainant was not “in custody” when he filed his petition. The magistrate judge also recommended that the court should decline to issue a certificate of appealability because the court plainly lacked jurisdiction over the petition.

The subject judge, then a district court judge in the district in which the complainant filed his habeas petition, adopted the magistrate judge’s report and recommendation, denied the habeas petition, and granted the motion to dismiss. The complainant had challenged the magistrate judge’s finding that he was not “in custody,” arguing that he was “in custody” because he is still “subject to sex offender laws and registration even after completing the diversion program.” The subject judge overruled the complainant’s objection to the report’s finding that he was not “in custody,” concluding that compliance with the sex offender laws and registration did not render the complainant “in custody.” Finally, the subject judge denied a certificate of appealability, concluding that “no reasonable jurist would find the jurisdictional

question debatable.” The Court of Appeals in that circuit denied a certificate of appealability and then denied a petition for review of the order denying a certificate of appealability.

The complainant has now filed a judicial misconduct complaint against the subject judge. Although the alleged misconduct occurred when the subject judge was serving on a court outside of this circuit, the complaint was properly filed here because the judge now serves in this circuit. See JUD. CONF. RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS, Rule 7(a)(1) (“[A] complaint against a judge of a United States court of appeals, a United States district court, a United States bankruptcy court, or a United States magistrate judge must be filed with the circuit clerk in the jurisdiction in which the subject judge holds office.”). The complainant makes two allegations of wrongdoing. First, the complainant alleges that the subject judge suffers from a disability, as evidenced by the judge’s ostensible “inability” to recognize case-related matters, falsified documents, plea materials, and the absence of a criminal record. Second, the complainant claims that the judge engaged in *ex parte* communications with the complainant’s lawyer and the magistrate judge.

As to the claim that the subject judge is suffering from a disability, the complainant has failed to detail the nature of the supposed disability. In any event, the allegations are more appropriately characterized as direct challenges to the merits of the subject judge’s order denying habeas. “Any allegation that calls into question the correctness of an official decision or procedural ruling of a judge – without more – is merits-related.” JUDICIAL-CONDUCT PROCEEDINGS RULE 4(b)(1) Commentary ¶ 12. Such an allegation does not constitute “[c]ognizable misconduct” under the Judicial-Conduct Proceedings Rules or the applicable

statute. *Id.* Here, the complainant does nothing more than challenge the correctness of the subject judge's decisions. Thus, these allegations "lack 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).

As to the allegation that the subject judge engaged in *ex parte* communications, the complainant has failed to provide any evidence or information about how and when the subject judge supposedly engaged in *ex parte* communications. This allegation, therefore, also "lack[s] sufficient evidence to raise an inference that misconduct has occurred," and must be dismissed. 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 a decision" 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).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 of the District of Columbia Circuit. Any petition must be filed in the Office of the Circuit Executive of the D.C. Circuit within 42 days after the date of the dismissal order. JUDICIAL-CONDUCT PROCEEDINGS RULE 18(b).