

JUDICIAL COUNCIL
OF THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of
A Complaint of Judicial
Misconduct or Disability

Complaints No. DC-23-90024
No. DC-23-90025
No. DC-23-90026

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: December 28, 2023

No. DC-23-90024
No. DC-23-90025
No. DC-23-90026

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.

A government agency (“agency”) operates several international trusted traveler programs that provide expedited entry into the United States at designated ports of entry for certain pre-approved travelers. One such trusted traveler program called NEXUS, jointly administered by the United States and Canada, affords expedited processing for pre-approved, low-risk persons traveling between the United States and Canada.

In 2019, the complainant applied online for membership in the NEXUS program. After initial consideration, the agency conditionally approved the application and the complainant scheduled an interview. The agency reported that, during that interview, the complainant indicated that he had “been unemployed since 2012, [and] claim[ed] to be working for free to uncover cross border corruption” in a case worth two billion dollars. The next day, the complainant submitted to the agency several documents relating to his assertion that he had been tasked with uncovering the ostensible international scheme. The agency denied the complainant’s application because he “was unable to provide . . . an explanation as to his employment, how he was able to support himself financially or why he was seeking entry into the United States.” The complainant sought reconsideration, contending that the information he supplied to the agency “proves a massive government error that has been determined . . . by

the courts to be attributed to scandal, public mischief and homosexual misconduct and misbehaviour” and claimed that he was “the victim to very sick and heinous acts done by criminals within our justice system.” The agency denied reconsideration, and also denied a subsequent NEXUS application submitted by the complainant.

The complainant then filed an action in the district court, seeking \$25 million in damages based on the denial of his NEXUS application. The court construed the complaint to assert claims for injunctive relief and damages under the Administrative Procedure Act (APA) as well as common-law tort claims. The agency moved to dismiss, and the court granted the motion in part. The court dismissed the APA claim for damages as barred by the text of the statute and dismissed any tort claims for failure to exhaust administrative remedies. The court, however, permitted the case to proceed on the complainant’s APA claim for injunctive relief. Subsequently, the court granted summary judgment to the agency, concluding that the decision to deny the complainant’s application was not arbitrary, capricious, or an abuse of discretion. The complainant appealed.

The agency moved for summary affirmance. A panel of the court of appeals, consisting of the three subject judges, granted summary affirmance. The judges concluded that, assuming without deciding that the agency’s denials of the complainant’s applications were reviewable under the APA, the district court had properly granted summary judgment because the agency’s decisions were not arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

The complainant then filed the instant judicial misconduct complaint against the subject judges. The complainant argues that he was unable to properly defend himself during the agency's background investigation and that the court of appeals' decision thus "is a complete error and clearly a sign of the judges being remiss of their duties." The complainant attributes the error to "memory loss and a disability. Since the error is so severe; it is far beyond a normal mistake and therefore; it is possible that it could be from memory loss and the decline of cognitive function." The complainant further asserts that "the decisions in the Order that were made could also have been formed and attributed to partisan political activity, gifts and other personal favors and soliciting funds; as it is such an unusual decision at this stage, that technically it cannot occur due to the decisions made previously in Court."

The complaint, however, is entirely based on allegations challenging the propriety of the subject judges' order granting summary affirmance. Specifically, to the extent the complainant asserts that the "decision is a complete error," that allegation is a direct challenge to the merits of the judges' order. "Any allegation that calls into question the correctness of an official decision or procedural ruling of a judge – without more – is merits-related." JUD. CONF. RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY 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.* Rule 11(c)(1)(B); *see* 28 U.S.C. § 352(b)(1)(A)(ii).

To the extent the complainant alleges that the judges suffer from some sort of "memory loss and a disability" or rendered their decision based on "partisan political activity, gifts and other personal favors and soliciting funds," the complainant has failed to provide any support

for those allegations apart from his own unsubstantiated beliefs. These allegations, therefore, “lack[] sufficient evidence to raise an inference that misconduct has occurred.” *See* JUDICIAL-CONDUCT PROCEEDINGS RULE 11(c)(1)(D); 28 U.S.C. § 352(b)(1)(A)(iii).

Accordingly, because the complaint “is directly related to the merits of [the judges’] 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 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).