

JUDICIAL COUNCIL
OF THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of
A Complaint of Judicial
Misconduct or Disability

Complaint No. DC-20-90032

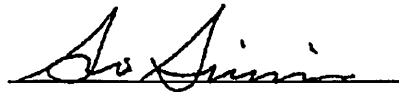
Before: Srinivasan, Chief Judge

ORDER

Upon consideration of the complaint herein, and the supplements thereto, filed against a judge of the United States District Court for the District of Columbia, 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: 12/28/20

MEMORANDUM

The complainant has filed a complaint of judicial misconduct against a judge of the United States District Court for the District of Columbia. For the following reasons, the misconduct complaint will be dismissed.

The complainant was convicted by a jury of threatening a federal agent, in violation of 18 U.S.C. § 115(a)(1)(B). The charge stemmed from a 911 call the complainant made in which he threatened to kill the agent. The complainant appealed his conviction. The Court of Appeals affirmed the conviction and sentence, but remanded the case back to the District Court (“trial judge”) to provide the complainant with access to the jury commission records. On remand, the complainant filed numerous motions, including a motion pursuant to 28 U.S.C. § 2255 for the court to vacate, set aside, or correct his sentence. The trial judge denied the complainant’s motions. The complainant then moved for a certificate of appealability and to amend or correct the record, and the trial judge denied those motions as well. The complainant then filed a notice of appeal of the denial of a certificate of appealability and moved the Court of Appeals for a certificate of appealability. The Court of Appeals denied the motions for a certificate of appealability.

While the motion for certificate of appealability was pending in the district court, the complainant filed in the district court a motion to dismiss, or, in the alternative, a

motion to vacate, set aside, or correct the sentence pursuant to 28 U.S.C. § 2255. At this point, the case was reassigned to the subject judge, following the trial judge's retirement. The government moved the court to transfer the motion to the Court of Appeals as a request to file a second or successive § 2255 motion. The subject judge granted the motion to transfer, finding that because the claims in the successive motion could have been raised in the original motion, the district court had no jurisdiction to decide the matter absent certification from the Court of Appeals. The complainant then filed a motion to reconsider, which the subject judge denied. The subject judge determined that the complainant repeated many of the arguments he made at trial, on appeal, and in his § 2255 motions, but failed to provide new arguments to support a motion to reconsider. The complainant then filed additional motions to admit evidence and expand the record, which the subject judge denied. The complainant then noticed an appeal of the order denying reconsideration and the order denying the admission of new evidence and to expand the record. The Court of Appeals ultimately denied the request to file a successive § 2255 motion.

The complainant has now filed a judicial misconduct complaint alleging that the subject judge has "violated Canon's 1, 2, 3." It appears that the complainant is unhappy with the trial court's exclusion of evidence and with what the complaint believes to be "government attorney misconduct." More specifically, the complainant argues he informed the subject judge of the prosecutorial misconduct in his motion for

reconsideration of the trial judge's order denying his first § 2255 motion. He also claims that the subject judge "created an appearance of impropriety by her failure to act with credible evidence that Government Attorneys violated the DC Bar Rules of Professional Conduct," and that she thereby demonstrated bias and favoritism.

To the extent the complainant is challenging the evidence that was presented or excluded during the trial, not only is this allegation directly related to the merits of the complainant's conviction, *see* JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS (2019), Rule 4(b)(1) (allegations that "call[] into question the correctness of [the] judge's ruling" do not constitute "[c]ognizable misconduct" under the Judicial-Conduct Proceedings Rules or the applicable statute); *see also* 28 U.S.C. § 352(b)(1)(A)(ii), but it also pertains to the trial judge's actions and not those of the subject judge. Accordingly, this allegation is "directly related to the merits of a decision or procedural ruling" and "lack[s] sufficient evidence to raise an inference that misconduct has occurred." JUDICIAL-CONDUCT PROCEEDINGS RULE 11(c)(1)(B), (D); *see* 28 U.S.C. § 352(b)(1)(A)(ii), (iii).

To the extent that the complainant is asserting that the subject judge failed to report "prosecutorial misconduct" to the District of Columbia Bar, this allegation is also without merit. Although the complainant asserts that "[t]his complaint against [the subject judge] is not for her denial or decision in [his] Rule 60(b) motions," one of the bases for the reconsideration motion was prosecutorial misconduct, which the subject

judge rejected. These same allegations were also raised at trial and in the complainant's first § 2255 motion considered by the trial judge. Because both district court judges determined that there was no prosecutorial misconduct, an allegation that it was judicial misconduct to fail to report the prosecutors to the District of Columbia Bar for their ostensible prosecutorial misconduct is directly related to the merits of a judicial decision. *See* JUDICIAL-CONDUCT PROCEEDINGS RULE 4(b)(1). Similarly, the subject judge's "failure" to make a report to the District of Columbia Bar is not itself evidence of bias or favoritism, but is "directly related to the merits of a decision or procedural ruling" and "lack[s] sufficient evidence to raise an inference that misconduct has occurred." JUDICIAL-CONDUCT PROCEEDINGS RULE 11(c)(1)(B), (D); *see* 28 U.S.C. § 352(b)(1)(A)(ii), (iii).

Finally, to the extent that the complainant is alleging that new charges against him, which are pending before a different district court judge, were filed in retaliation for his "exercise of First Amendment rights," that allegation does not claim that the subject judge had any involvement in that prosecution. Thus, this allegation also lacks evidence to suggest wrongdoing on behalf of the subject judge. JUDICIAL-CONDUCT PROCEEDINGS RULE 11(c)(1)(D).

Accordingly, because the allegations are "directly related to the merits of a decision or procedural ruling," and are "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).