

JUDICIAL COUNCIL
OF THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of
A Complaint of Judicial
Misconduct or Disability

Complaint No. DC-20-90052
No. DC-20-90053
No. DC-20-90054

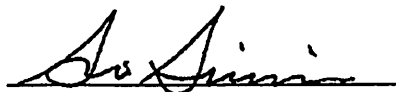
Before: Srinivasan, Chief Judge

ORDER

Upon consideration of the complaints herein, filed against three judges of the United States Court of Appeals for the District of Columbia Circuit, it is

ORDERED that the complaints 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: 3/19/21

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MEMORANDUM

The complainant has filed complaints 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 complaints will be dismissed.

The complainant is a prisoner and this court previously determined that he has accumulated three strikes under the Prison Litigation Reform Act (“PLRA”). Since then, the complainant has filed nearly two dozen mandamus petitions in this court. In the mandamus petition at issue here, the complainant alleges that the Department of Justice (“DOJ”) withheld prescription medication that was due him on November 8, 2019, thereby “placing [his] life in danger.” He sought an order compelling DOJ to refill that prescription. The Clerk of Court ordered the complainant to show cause why, as someone who has accumulated three strikes, he should not be required to pay the full appellate filing fee under the PLRA. In response, the complainant invoked the PLRA’s “imminent danger” exception to the three-strikes bar, asserting that he had “suicidal and homicidal ideas due to medication being withheld.” He also asserted that “[t]he 3-strikes clause . . . does not apply because the strikes are fraudulent.” The court discharged the order to show cause and ordered the government to file a response to the complainant’s response to the order to show cause.

The government filed a timely response and a motion for leave to submit a supporting declaration and exhibits under seal. The government argued that the complainant may not relitigate his prior three strikes and that his “generalized assertions of imminent danger do not

satisfy the standards for permitting an abusive filer to sidestep the requirement that he pay the filing fee when bringing a new suit.” In support of its response, the government lodged a sealed declaration from a Bureau of Prisons’ (“BOP”) medical officer at the complex where the complainant is incarcerated. According to the medical officer, the medical records confirmed that the complainant regularly received his prescribed medication, and that any gaps in refills may have been attributed to the complainant’s failure to timely request refills.

After the government filed its response, the complainant filed a 126-page supplement to his mandamus petition containing numerous exhibits, including, among other things, administrative grievances against the BOP and copies of his prescription refills. He argued that the government should be sanctioned because it has “consistently demonstrated deliberate indifference for every medical issue that [he] [has] had for more than two decades and has falsified numerous records each time to deny or justify the misconduct.” He also mentioned additional instances of the government’s alleged withholding of medical treatment, including a three-week period in March 2020 in which it allegedly failed to distribute certain medications to him. The complainant has also filed an additional supplement requesting that he be granted *in forma pauperis* status and that the district court be ordered to file an unidentified imminent-danger complaint that the complainant had allegedly submitted.

The complainant then filed a reply to the government’s response to his response to the order to show cause. In that reply, the complainant acknowledged that “[o]n Wed. 11-27-19 the Meds were finally given to me which was an 18-day gap that caused ‘. . . a parade of withdrawal symptoms.’”

The complainant had also raised nearly identical allegations regarding withdrawal symptoms from the same medication in another mandamus petition, and the court in that case had concluded that the complainant had “sufficiently alleged that he faced imminent danger of serious physical injury.” Accordingly, in light of that prior decision, a panel consisting of the subject judges in the instant case granted the complainant’s request to proceed *in forma pauperis*, finding that he “has sufficiently alleged that he faced imminent danger of serious physical injury at the time he brought his petition for writ of mandamus.” Nevertheless, the subject judges dismissed the complainant’s mandamus petition as moot because the complainant had acknowledged that the government had since refilled the prescription medication that were ostensibly due on November 8, 2019, which was the only relief requested in his petition. The court explained that the complainant “has therefore obtained all of the relief he seeks in his mandamus petition.”

The complainant has now filed the instant judicial misconduct complaint against the subject judges. The complainant asserts that the subject judges “committed fraud on the court, mail/wire fraud, etc., when they transmitted a false statement in their . . . Order.” Specifically, the complainant alleges that the statement in the order that he “has therefore obtained all the relief he seeks in his mandamus petition” is false, as he claims that he also requested that the court direct the district court to file his “imminent danger” complaint. He further asserts that he was challenging “the pattern and practice of deliberate indifference” and that the government continues to commit perjury in subsequent cases. The complainant goes on to state that the judges are “conspiring with the Executive Branch to suppress evidence of

Constitutional violations at the Supermax Prison.” The complainant further states that his allegations are “not ‘merits-related.’”

Despite the complainant’s assertion that his allegations are not merits-related, most of the complaint is just that. The complainant’s allegation that the subject judges erroneously determined that he had obtained all the relief he sought “calls into question the correctness of [the judges’] ruling.” JUD. CONF. U.S., 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). To the extent the complainant alleges that the subject judges conspired with the Executive Branch, the complainant has provided no support for that claim other than his own beliefs. Thus, this allegation “lack[s] sufficient evidence to raise an inference that misconduct has occurred.” JUDICIAL-CONDUCT PROCEEDINGS RULE 11(c)(1)(D). Accordingly, because the allegations are “directly related to the merits of a decision or procedural ruling” or 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).