

JUDICIAL COUNCIL  
OF THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of  
A Complaint of Judicial  
Misconduct or Disability

Complaint No. DC-20-90051

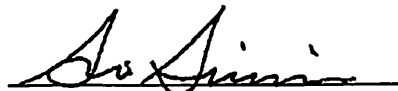
Before: Srinivasan, Chief Judge

**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: 3/19/21

**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 is an attorney who was charged with violating Indiana Professional Conduct Rule 3.1, which prohibits an attorney from bringing a proceeding or asserting an issue unless there is a basis in law and fact for doing so that is not frivolous. The Indiana Supreme Court concluded that the complainant had violated Rule 3.1 in four separate lawsuits and, therefore, suspended him from the practice of law in the state for 180 days, without automatic reinstatement.

The complainant petitioned the Supreme Court for a writ of certiorari, which was denied, as was a subsequent petition for rehearing. Over two years later, the complainant attempted to file another request for rehearing in the Supreme Court. The Court Clerk's Office, however, sent a letter to the complainant noting that it was returning the papers to him because his case was considered closed and no further consideration by the Court was possible.

Proceeding pro se, the complainant filed a complaint in the Western District of Washington against two individuals employed by the U.S. Supreme Court and the United States, alleging, among other things, that the Clerk's Office's refusal to file his motion for rehearing amounted to "collusion" with the Indiana Supreme Court to retaliate against him as "an aggrieved person with a disability," in violation of the Americans with Disabilities Act. The Washington district court granted him leave to proceed IFP, and ordered him to show cause

why the case should not be dismissed for lack of personal jurisdiction or as barred by sovereign immunity. After receiving the complainant's response, the Washington district court dismissed without prejudice any claim against the United States as barred by sovereign immunity. As for the individual defendants, the court concluded that it lacked personal jurisdiction over them and ordered that the complainant's claims against them be transferred to the District Court for the District of Columbia. The Washington district court subsequently denied the complainant's motion for reconsideration, and the case was transferred to the D.C. district court.

The D.C. district court *sua sponte* dismissed without prejudice the case for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(h)(3), and for failure to state a claim upon which relief may be granted under 28 U.S.C. § 1915(e)(2)(B)(ii). The complainant then timely filed a motion for reconsideration under Rule 59, which was ultimately denied. Prior to issuance of the ruling on the motion for reconsideration, the complainant noted an appeal of the dismissal order. The complainant did not appeal the later order denying reconsideration.

The Court of Appeals, of which the subject judge was a panel member, issued an order informing the complainant that the court was going to dispose of his appeal on the basis of the record and presentations in the briefs under D.C. Circuit Rule 34(j). The complainant then filed a motion seeking the subject judge's recusal because of his prior employment in various capacities in the Department of Justice. The subject judge denied the motion for recusal, noting that, "[i]n those capacities, I neither worked on this case, which was filed in the district court in 2020, nor acquired any information about it nor expressed any opinion about it.

Accordingly, the motion to recuse is without merit.” The Court of Appeals then affirmed the district court’s order, finding that the district court properly dismissed the case for failure to state a claim upon which relief can be granted and for lack of subject-matter jurisdiction.

The complainant has now filed a judicial misconduct complaint against the subject judge challenging his impartiality. The complainant attached his recusal motion as the basis for his misconduct complaint. Specifically, the motion noted that the subject judge’s employment prior to taking the bench caused the subject judge to be biased. The motion further states that “[t]he most glaring problem here is [the subject judge] serving as an attorney in the same office that represents this defendant-appellee in *this* case before *this* panel.... The conflict of interest in the case of [the subject judge] is strongly apparent from his facts, his background.” (emphasis in original).

The complaint, however, is ultimately a challenge to the subject judge’s decision not to recuse. Allegations that a judge committed misconduct by failing to recuse are generally dismissed as merits related. See JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS (2019), Rule 4(b)(1) (“Cognizable misconduct does not include an allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse”). “A failure to recuse may constitute misconduct only if the judge failed to recuse for an improper purpose.” *In re Judicial Misconduct*, 605 F.3d 1060, 1062 (9th Cir. 2010). The complainant, however, has provided no evidence of a failure to recuse for an improper purpose. Consequently, because the complaint is “directly related to the merits of a decision or

procedural ruling," it will be dismissed. *See* JUDICIAL-CONDUCT PROCEEDINGS RULE 11(c)(1)(B); *see* 28 U.S.C. § 352(b)(1)(A)(ii).<sup>1</sup>

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<sup>1</sup> 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).