

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-19-90016

**A Charge of Judicial
Misconduct or Disability**

Before: GARLAND, *Chief Judge*.

ORDER

Upon consideration of the complaint herein, 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).



Merrick B. Garland, Chief Judge

Date: 7/31/2019

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 complaint arises out of two underlying Freedom of Information Act (FOIA) actions that the complainant brought in the district court. In the first case, the complainant alleged that an agency had failed to respond to his letters requesting all records pertaining to himself and another individual. The government moved for summary judgment, based primarily on a declaration by one of the agency's FOIA officers, which stated that the agency had run multiple searches for any requests matching the description of the complainant's letters and that the searches found no results matching the complainant's description of his letters. The subject judge granted the motion for summary judgment, stating: "The fact that plaintiff mailed his FOIA requests does not impose any obligation on [the agency]. Rather, the *receipt* of a request by the agency is the legally significant event that triggers the commencement of the FOIA request and that enables a requester . . . to seek recourse from federal courts."

The complainant appealed the dismissal of his case. The court of appeals granted summary affirmance, stating that the complainant's "unsupported and speculative allegations of bad faith on the part of the government [were] insufficient to overcome the presumption of good faith accorded the agency declarations." The court further

concluded that the complainant had failed to demonstrate that the judge's ruling showed bias.

With respect to the second underlying case, a government agency had rejected the complainant's disability claims. The complainant sent a FOIA request to the agency seeking "all document(s), phone record(s), emails, letters, copies, [and] all communications with respect to [complainant]." Six days later, the complainant sent a second FOIA request seeking "all record(s), Document(s) and information, that establishes the percentage of blacks who are awarded and rejected disability benefits, and the percentage of whites who are awarded and rejected disability benefits, and in addition to that, if you have any information regarding illegal immigrants awarded benefits." With respect to the first request, the agency ultimately sent the complainant a disk containing his medical records. The complainant responded by telling the district court that he "never requested his medical records," which "had nothing to do with the statistical records [he] was seeking." With respect to the second request, the agency's Acting FOIA Officer sent a determination letter to the complainant stating that the agency "do[es] not keep records of disability awards and denials based on race or immigration status." The letter also informed complainant of his right to file an administrative appeal. The complainant did not, however, file an administrative appeal.

The complainant then filed suit in the district court, seeking an injunction to compel "the disclosure and release of agency record(s) improperly withheld." The

subject judge granted summary judgment to the government. The court found in the agency's favor as to the first request because the complainant had represented that he had never requested the records produced by the agency. The court granted summary judgment to the government as to the second request, for statistical data, because the complainant had failed to file an administrative appeal of the agency's determination that no responsive records existed. Alternatively, the court noted that the government had submitted declarations from two agency officials stating that the agency did not maintain records based on race or immigration status, and thus the court could not order the agency to create records or to produce records which did not exist. The complainant timely appealed.

The court of appeals granted the government's motion for summary affirmance. The court found that the complainant had forfeited any challenge to the response to his first FOIA request by failing to raise it on appeal. As to the second FOIA request, the court found that the district court properly held that the complainant had failed to exhaust his administrative remedies before filing suit. The court also found that the complainant's allegation that the subject judge was biased in favor of the government was without merit.

The complainant has now filed the instant judicial misconduct complaint against the subject judge, alleging that the judge committed misconduct in both cases. The complainant asserts that "[n]umerous procedural violations were perpetrated against [him], along with obstruction of justice, failing to be impartial, and engaging in conduct

prejudicial to the proper administration of justice.” The complainant insists that his complaint “is not ‘merits-related.’” As evidence of wrongdoing, the complainant alleges that the subject judge blocked the cases from going forward and “issued an illegal dismissal order on both cases ignoring federal precedent and the constitution.” The complainant further asserts that the judge “fail[ed] to be impartial showing favor to Federal Defendant.” Complainant also alleges that the “intentional misconstruction of facts in order to dismiss this case illegally . . . establishes ulterior motives and misconduct.”

The crux of the complaint is that the judge committed procedural errors, wrongly dismissed the cases, and failed to rely on precedent. Those allegations “call[] into question the correctness of [the subject judge’s] ruling[s],” and thus do not allege cognizable misconduct under the Judicial Conduct Rules or the applicable statute. JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS, RULE 4(b)(1) (2019); *see* 28 U.S.C. § 352(b)(1)(A)(ii).

The complainant maintains that he is not challenging the “merits” of the judge’s decisions, but rather is alleging that the judge “fail[ed] to be impartial” and his “intentional misconstruction of facts . . . establishes ulterior motives.” But the complaint does not cite, identify, or reference any evidence in support of those allegations other than asserting that the decisions themselves are evidence of misconduct. And “judicial rulings alone almost never constitute a valid basis” for finding bias. *Liteky v. United States*, 510

U.S. 540, 555 (1994). Thus, the complaint will be dismissed because it “is based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred.” JUDICIAL-CONDUCT RULE 11(c)(1)(D); *see id.* 11(c)(1)(B); *see also* 28 U.S.C. § 352(b)(1)(A)(ii), (iii). It should also be noted that the complainant fully litigated his allegations of bias in his appeals of the underlying cases, and that the court of appeals determined that those allegations were without merit.¹

¹ Pursuant to 28 U.S.C. § 352(c) and Judicial-Conduct 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 RULE 18(b).