

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-19-90022

**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: 8/2/2019

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 complainant, a federal prisoner, sought the release of records about himself maintained by three federal government agencies. Two of the agencies did not release any records, while the third ultimately released 22 pages in full and 165 pages in part, and withheld in full 109 pages pursuant to various Freedom of Information Act (FOIA) exemptions. In 2012, the complainant filed a FOIA action, which was assigned to the subject judge.

The subject judge granted the complainant leave to proceed *in forma pauperis* (IFP). The defendants filed a motion to dismiss or, in the alternative, for summary judgment. The judge granted the motion in part and denied it in part. The defendants then sought to vacate the judge's order granting the complainant leave to proceed IFP, asserting that pursuant to the Prison Litigation Reform Act (PLRA), 28 U.S.C. § 1915(g), the complainant was statutorily ineligible to proceed IFP because he had filed three actions or appeals that were dismissed as frivolous or malicious or for failure to state a claim upon which relief could be granted. In 2013, the subject judge determined that the complainant had accumulated "three strikes" for purposes of the PLRA and that he could

not show that he was under imminent danger of serious physical injury. Accordingly, the judge vacated his previous order granting IFP and directed the complainant to pay the filing fee or risk the court dismissing the action. In November 2013, after the complainant failed to pay the filing fee or request additional time to do so, the judge dismissed the action.

In 2017, the complainant filed a motion to clarify, asserting that he had been granted IFP status in one of the cases that was counted as a “strike.” The subject judge denied the motion for clarification, finding that “[n]othing about the resolution of that case calls into question this Court’s analysis of [the complainant’s] prior litigation history and whether that history warranted revoking his in forma pauperis status pursuant to the Prison Litigation Reform Act.”

In June 2019, the complainant filed the instant judicial misconduct complaint against the subject judge. The complainant asserts that the judge “dismissed my FOIA civil suit based off a lie on 9/3/13 (Document 32) to help cover up my second superseding indictment not being submitted to a federal grand jury for a true bill.” The allegation that the judge improperly dismissed the complainant’s FOIA case “calls into question the correctness of [the subject judge’s] 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). Nor

does the misconduct complaint explain, or cite any information in support of, the allegation that the judge intended “to help cover up” anything relating to the complainant’s indictment. Accordingly, because the misconduct complaint “is based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred,” it will be dismissed. JUDICIAL-CONDUCT PROCEEDINGS RULE 11(c)(1)(D); *see id.* RULE 11(c)(1)(B); 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).