

THE JUDICIAL COUNCIL OF THE SEVENTH CIRCUIT
219 South Dearborn Street
Chicago, Illinois 60604

October 17, 2022

Chief Judge Diane S. Sykes

No. 07-22-90054

IN RE COMPLAINT AGAINST A JUDGE

MEMORANDUM AND ORDER

The complainant filed a misconduct complaint against the judge who dismissed as untimely his petition for habeas relief under 28 U.S.C. § 2254. He contends that the judge, who previously served as a state-court judge, should have recused herself from his habeas case because she presided over his criminal case in state court. He claims that her motive for not recusing was to “cover up her own corruption” regarding his “wrongful conviction.” He also challenges several rulings the judge made in the state criminal case and alleges that she exhibited bias, was not impartial, failed to follow the law, violated the constitution, and acted arbitrarily and capriciously.

These allegations are, for the most part, directly related to the merits of the judge’s decisions and thus are not proper grounds for a misconduct complaint. 28 U.S.C. § 352(b)(1)(A)(ii); RULES FOR JUD.-CONDUCT & JUD.-DISABILITY PROC. r. 4(b)(1). “Any allegation that calls into question the correctness of an official decision or procedural ruling of a judge ... is merits related.” RULES FOR JUD.-CONDUCT & JUD.-DISABILITY PROC. r. 4(b)(1) cmt. Complaints about a judge’s failure to recuse are generally considered merits related. *Id.* r. 4(b)(1). It’s true that under *Fowler v. Butts*, a federal judge “is disqualified from hearing a collateral attack on a judgment he or she entered or affirmed as a state judge.” 829 F.3d 788, 790 (7th Cir. 2016); *see also Weddington v. Zatecky*, 721 F.3d 456, 461–63 (7th Cir. 2013). But the complainant’s habeas case predates *Fowler* and *Weddington*—it was filed in 2010 and dismissed in 2011—and these cases confirm, in any event, that his allegations about the judge’s failure to recuse are largely merits related.

The allegations of bias and improper motive must be dismissed for another reason. They are completely unsupported; adverse rulings alone do not suggest bias or lack of

impartiality. 28 U.S.C. § 352(b)(1)(A)(iii); *see* RULES FOR JUD.-CONDUCT & JUD.-DISABILITY PROC. r. 11(c)(1)(D).

Finally, the allegations about the judge's conduct as a state-court judge are beyond the purview of the Judicial Conduct and Disability Act. 28 U.S.C. § 352(b)(1)(A)(i); *see also id.* § 351(d) (defining "judge" to include judges in the federal system); *In re Complaint of Jud. Misconduct*, 570 F.3d 1144, 1144 (9th Cir. 2009) (holding that it would be improper "to sanction a judge for conduct preceding confirmation" to the federal bench).

For the foregoing reasons, the complaint is dismissed pursuant to § 352(b)(1)(A)(i), (ii), and (iii). The complainant may petition the Judicial Council of the Seventh Circuit for review of this order in accordance with Rule 18(b) of the *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. 28 U.S.C. § 352(c); *see* RULES FOR JUD.-CONDUCT & JUD.-DISABILITY PROC. r. 11(g)(3). A petition for review must be filed in the clerk's office of the United States Court of Appeals for the Seventh Circuit not later than 42 days of the date of this order.