

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-13-90015

**A Charge of Judicial
Misconduct or Disability**

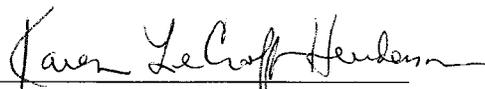
Before: HENDERSON, Acting Chief Judge of the Circuit

ORDER

Upon consideration of the complaint herein, filed against a Judge of the United States Court of Appeals for the District of Columbia Circuit pursuant to the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 and the Judicial Conference of the United States Rules for Judicial-Conduct and Judicial-Disability Proceedings, it is

ORDERED, for the reasons stated in the attached Memorandum, that the complaint be dismissed. *See* 28 U.S.C. § 352(b)(1)(A)(iii); JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS 11(c)(1)(D).

The Clerk is directed to send copies of this Order and accompanying Memorandum to 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 11(g)(2).



Karen LeCraft Henderson, Acting Chief Judge
District of Columbia Circuit

Date: 3/18/13

MEMORANDUM

Complainant alleges that a judge from the United States Court of Appeals for the District of Columbia Circuit has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts. Specifically, complainant alleges that the subject judge committed “fraud on the court” by failing to disclose conflicts of interest and biases towards complainant before ruling on complainant’s case.

Complainant asserts that the subject judge should have been recused from the case on account of the subject judge’s past employment. Complainant alleges that because the subject judge was once a partner in a law firm and an attorney in the Department of Justice, and the underlying complaint listed the Attorney General and the law firm as defendants, the subject judge necessarily has a conflict of interest or bias against complainant and should not have considered complainant’s case. Complainant also alleges that the subject judge had improper ex parte communications with the law firm defendant, has a relative working in another law firm that is a named defendant, failed to disclose a close personal relationship with the district court judge who handled complainant’s case, has a personal friendship with a lawyer who represents one of the defendants, “rigged” the panel to protect the Attorney General, and has received compensation from a defendant in the “past and perhaps at present.” Complainant further contends that the subject judge delayed ruling on pleadings and is aware that the court has improperly labeled pleadings and has failed to file emergency motions, but has failed to take action in order to “hide [the subject judge’s] biases and conflicts towards

[complainant]”. Complainant's allegations, however, do not provide any grounds for action against the subject judge.

Complainant has simply failed to provide a factual basis to support the claims of bias or conflict of interest and thus has not raised an inference that misconduct has occurred. Complainant is merely presenting speculation of bias and conflict of interest based on the subject judge’s “past and present ties” to the Department of Justice and the subject judge’s former law firm. Similarly, other than the unsupported allegations, complainant has failed to provide any evidence of any ex parte communications, improper financial interests, or an effort to somehow select the panel members that considered complainant’s case. Complainant has also failed to provide any evidence that the subject judge’s friendship with the district court judge would cause a reasonable person “with knowledge of all the relevant circumstances disclosed by a reasonable inquiry, [to] conclude that the judge’s honesty, integrity, impartiality, temperament, or fitness to serve as a judge is impaired.” Code of Conduct for United States Judges Canon 2A commentary. Moreover, because the pleadings in complainant’s case were filed just over a month ago, there is no evidence of delay, let alone an improper motive for the delay. Furthermore, complainant has failed to provide any evidence that the court has failed to file pleadings in the case or that the labeling of the pleadings raises any inference of misconduct on the part of the subject judge. Finally, the allegation that a family member of the subject judges is an attorney for a law firm, which is a party in the case, is

simply not true as is the allegation that a close friend of the judge's is a lawyer for one of the parties. Although complainant has noted a laundry list of alleged misdeeds, complainant has simply failed to provide any evidence that would cause a reasonable observer to doubt the subject judge's impartiality. Accordingly, the allegation must be dismissed as lacking sufficient evidence to raise an inference that misconduct has occurred. *See* U.S.C. § 352(b)(1)(A)(iii) and Jud. Conf. U.S., Rules for Judicial-Conduct and Judicial-Disability Proceedings 11(c)(1)(D).

Because complainant's allegations lack any sufficient evidence to raise an inference that misconduct has occurred, the complaint must be dismissed.¹

¹ Pursuant to 28 U.S.C. § 352(c) and JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL -DISABILITY PROCEEDINGS 18(a), 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 Clerk of the Court of Appeals within 35 days of the date of the Clerk's letter transmitting the dismissal Order and this Memorandum. *Id.* R. 18(b).