

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-18-90015

No. DC-18-90016

No. DC-18-90017

No. DC-18-90018

A CHARGE OF JUDICIAL
MISCONDUCT OR DISABILITY

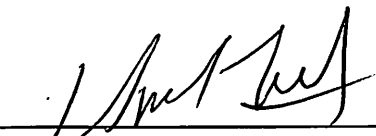
Before: TATEL, *Circuit Judge**

ORDER

Upon consideration of the complaints herein, filed against two judges of the United States Court of Appeals for the District of Columbia Circuit and two judges 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 judges, 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).



David S. Tatel, Circuit Judge
District of Columbia Circuit

Date: 7/12/18

* Pursuant to Rule 25(f) of the RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS, the Judicial Council has voted to allow Judge Tatel to consider these complaints.

MEMORANDUM

Complainant has filed complaints of judicial misconduct against two judges of the United States Court of Appeals for the District of Columbia Circuit and two judges of the United States District Court for the District of Columbia.¹ For the following reasons, these misconduct complaints will be dismissed.

In 2014, complainant was the respondent in an action in the United States District Court for the District of Columbia to confirm an arbitration award. Subject judge 17 issued a decision concluding that complainant failed to move to deny the award in the three months after the award was issued, as required by the Federal Arbitration Act, 9 U.S.C. § 12, and thus complainant's attempt to do so in response to the petition to confirm was time-barred. The complainant appealed that decision to the United States Court of Appeals for the District of Columbia Circuit, but subsequently voluntarily dismissed the appeal.

In October 2014, complainant filed a judicial misconduct complaint against subject judge 17, alleging that the judge had erred in the disposition of the petition to confirm the arbitration award, and calling into question the judge's physical fitness to discharge her judicial duties at the time of those proceedings. The misconduct complaint was presented to subject judge 15, who dismissed the complaint on the grounds that it was "directly related to the merits of a decision or procedural ruling," and that it "[did] not indicate a . . . physical disability resulting in the inability to discharge the

¹ In this memorandum, the subject judges will be identified by the last digits of the complaint number assigned to each.

duties of judicial office.” JUD. CONF. U.S., RULES FOR JUDICIAL CONDUCT AND JUDICIAL DISABILITY PROCEEDINGS, Rule 11(c)(1)(B), (A).

Complainant filed a second judicial misconduct complaint against subject judge 17, as well as a judicial misconduct complaint against subject judge 15. With respect to subject judge 17, the misconduct complaint largely repeated complainant’s previous allegations that the judge erred in the disposition of the petition to confirm the arbitration award, and that the judge was suffering from a physical condition at the time of those proceedings that raises a question about disability under Rule 3(e). With respect to subject judge 15, the judicial misconduct complaint alleged that the judge erred in the disposition of the previous misconduct complaint. These judicial misconduct complaints were presented to subject judge 16, who dismissed them on the grounds that allegations “directly related to the merits of a decision or procedural ruling” may not give rise to a finding of judicial misconduct, and the judicial misconduct complaint otherwise lacked sufficient evidence to raise an inference that misconduct had occurred. See JUD. CONF. RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS, Rule 11(c)(1)(B), (D); 28 U.S.C. § 352(b)(1)(A)(ii), (iii).

Complainant has now filed a judicial misconduct complaint against subject judges 15, 16, and 17, as well as subject judge 18, who has not previously been named in or involved with the disposition of any of complainant’s prior judicial misconduct complaints. Complainant largely repeats her previous arguments that subject judge 17 erred in the disposition of complainant’s district court case, and that subject judges 15 and 16 erred in the disposition of her prior judicial misconduct complaints. Because

these claims are “directly related to the merits of a decision or procedural ruling,” they cannot serve as the basis for a claim of misconduct, and they therefore must be dismissed. JUD. CONF. RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS, Rule 11(c)(1)(B); 28 U.S.C. § 352(b)(1)(A)(ii).

In an unrelated argument, complainant refers to allegations of sexual misconduct against subject judge 18 arising from alleged behavior taking place before that judge took the bench. Behavior predating a judge’s judicial term, however, generally may not serve as the basis for a finding of judicial misconduct. See, e.g., In re Charge of Judicial Misconduct, Nos. 10-90014 & 10-90015, Order at 3 (2d Cir. 2010) (“[A]ny actions by the Judge in the Judge’s former capacity as a federal prosecutor would not constitute *judicial* misconduct under the [Judicial Conduct and Disability] Act.”); In re Complaint of Judicial Misconduct, 570 F.3d 1144, 1144 (9th Cir. 2009) (concluding that it would be unconstitutional “to sanction a judge for conduct preceding confirmation”). The misconduct complaint against subject judge 18 is therefore dismissed.

Finally, complainant asserts that subject judge 16, in signing a certification of disability which allowed subject judge 18 to retire, was motivated by a desire to help subject judge 18 avoid a judicial misconduct inquiry and effectively participated in a cover-up of the sexual misconduct allegations. The U.S. Court of Appeals for the Tenth Circuit, however, has thoroughly investigated this claim and concluded that subject judge 18 did indeed suffer from a disability, and subject judge 16’s issuance of a certification of disability was not improperly motivated. Thus, complainant’s allegation lacks sufficient evidence to raise an inference that misconduct has occurred, and the

complaint must therefore be dismissed. JUD. CONF. RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS, Rule 11(c)(1)(D); 28 U.S.C. § 352(b)(1)(A)(iii).²

² Pursuant to 28 U.S.C. § 352(c) and JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY 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 of the date of the dismissal order. *Id.* Rule 18(b).