

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-16-90014

A CHARGE OF JUDICIAL
MISCONDUCT OR DISABILITY

Before: HENDERSON, *Circuit Judge**

ORDER

Upon consideration of the complaint herein, filed against a judge of the United States Court of Appeals for the District of Columbia Circuit, it is

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

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 11(g)(2).

KLH

Karen LeCraft Henderson, Circuit Judge
District of Columbia Circuit

Date: 5-26-2016

* Acting pursuant to Rule 25(f) of the RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS.

MEMORANDUM

The complainant has filed a complaint of judicial misconduct against a judge of the United States Court of Appeals for the District of Columbia Circuit. For the following reasons, the misconduct complaint will be dismissed.

The complainant sued a government agency and its chairman asserting that they breached a collective bargaining agreement, committed unfair labor practices, and violated her constitutional rights when they restricted her access to the federal building where the union offices were located and where she worked until her retirement. The subject judge, who was at that time a judge of the United States District Court for the District of Columbia, dismissed with prejudice the collective bargaining and unfair labor practice claims, and dismissed without prejudice the remaining claims for failure to exhaust administrative remedies.

The complainant filed a judicial misconduct complaint against the judge, asserting that he (1) "litigated against Complainant on behalf of the Defendant[s]," (2) "invalidated the case when he used inapplicable case law to dismiss the Complaint" and cited cases that "did not support his ruling," and (3) abused his discretion by not allowing the case to go to trial. That Judicial Complaint was dismissed on the grounds that complainant's allegations were "directly related to the merits of a decision or procedural ruling," and otherwise "lack[ed] sufficient evidence to raise an inference that misconduct had occurred." JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS, Rule 11(c)(1)(B), (D); see 28 U.S.C. § 352(b)(1)(A)(ii), (iii). Complainant filed with the Judicial Council a petition for review of the order

dismissing the prior complaint. The Judicial Council affirmed the disposition and denied the petition for review.

The instant judicial misconduct complaint includes similar allegations that the subject judge relied on inapplicable case law and incorrectly concluded that complainant needed to exhaust her administrative remedies. These allegations, however, are “directly related to the merits of a decision or procedural ruling,” and therefore cannot constitute “[c]ognizable misconduct” under the Judicial-Conduct Rules. JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS, 3(h)(3)(A); see also JUDICIAL-CONDUCT RULE 11(c)(1)(B) (requiring dismissal of a complaint “directly related to the merits of a decision”); 28 U.S.C. § 352(b)(1)(A)(ii). To the extent complainant alleges the subject judge “committed fraud on the court” by misconstruing the facts of a case cited in the dismissal order, this allegation lacks “sufficient evidence to raise an inference that misconduct has occurred.” JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS 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).