

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-13-90032

**A Charge of Judicial
Misconduct or Disability**

Before: GARLAND, Chief Judge of the Circuit

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. *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 Clerk 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).


Merrick B. Garland, Chief Judge
District of Columbia Circuit

Date: 11/4/13

MEMORANDUM

The complainant alleges that a judge of the United States District Court for the District of Columbia engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts. The complainant's allegations arise out of a Freedom of Information Act complaint, filed in the district court, that was assigned to the subject judge. For the following reasons, this allegation does not warrant action against the subject judge.

The complainant asserts that the judge's summary judgment order mooted the complainant's motions to compel by stating "UNTRUE facts." This allegation constitutes a challenge to the merits of the judge's order, and a judicial misconduct proceeding is not the appropriate avenue to obtain relief from an allegedly erroneous ruling. *See* 28 U.S.C. § 352(b)(1)(A)(ii) (providing for dismissal of a complaint that is "directly related to the merits of a decision or procedural ruling"); JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS 11(c)(1)(B) ("A complaint must be dismissed in whole or in part to the extent that the chief judge concludes that the complaint . . . is directly related to the merits of a decision or procedural ruling."). One appropriate avenue may be to file an appeal of the decision with the court of appeals. It should be noted that the complainant has already filed a motion for reconsideration of the judge's order, and that the motion is pending before the district court.

The complainant also alleges that the judge made incorrect statements in a summary judgment order to “willfully CONCEAL Special FBI Agent[’s] . . . federal crimes,” and that the judge “willfully permitted [the] AUSA . . . to CONCEAL the USMS Agency’s Declaration Documents.” As noted above, to the extent this constitutes a challenge to the merits of the judge’s order this is not the appropriate avenue to obtain relief. Nor has the complainant provided any evidence that the judge acted inappropriately. The complainant has failed to proffer any evidence of an alleged conspiracy between the judge and the Assistant U.S. Attorney. These allegations therefore fail to provide specific evidence of wrongdoing on the part of the subject judge and thus lack sufficient evidence to raise an inference that judicial misconduct occurred. *See* U.S.C. § 352(b)(1)(A) (iii); JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS 11(c)(1)(D).

Because the complainant’s allegations are directly related to the merits of the subject judge’s decision and lack 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), 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 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).