

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-15-90025
No. DC-15-90026

A CHARGE OF JUDICIAL
MISCONDUCT OR DISABILITY

Before: HENDERSON, *Acting Chief Judge of the Circuit*

ORDER

Upon consideration of the complaints herein, filed against judges of the United States District Court for the District of Columbia, it is

ORDERED that the complaints 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 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).

KLH

Karen LeCraft Henderson, Acting Chief Judge
District of Columbia Circuit

Date: 2-18-16

MEMORANDUM

Complainant has filed Judicial Complaints, docketed as No. DC-15-90025, against the former chief judge of the United States District Court for the District of Columbia, and DC-15-90026, against the district judge who presided over complainant's criminal trial. For the following reasons, complainant's allegations do not warrant action against the subject judges.

Complainant alleges that the government committed various acts of "fraud" in obtaining the indictment against him, both with respect to the timing of the grand jury proceedings, and the substance of the matters presented to it. He alleges that the subject judges, as then-chief judge of the district court with supervisory responsibility for the grand jury, and as trial judge, respectively, knew or should have known of this fraud, and that it is "reasonable to allege" that the subject judges conspired with government counsel to violate his rights. Complainant also alleges that the trial judge "demonstrated continuous prejudice" during his trial, "hastily denied" his "due process request[s]," and has ignored a post-conviction motion to inspect grand jury records.

The bulk of complainant's allegations are "directly related to the merits of a decision or procedural ruling," and therefore "must be dismissed." See JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS Rule 11(c)(1)(B); 28 U.S.C. § 352(b)(1)(A)(ii). The former chief judge granted a motion by the government to extend the grand jury's term, and stayed a magistrate judge's order dismissing the case prior to the filing of the indictment. The trial judge denied a number of motions filed by complainant, including one asserting allegations of grand jury fraud, and currently has before him a motion to vacate complainant's convictions on similar grounds, as well as the motion to inspect the grand jury records. These rulings cannot be challenged by resort to the judicial

complaint process.

As for complainant's more general allegations, that the subject judges knew or should have known of, and should have corrected, improprieties in the grand jury process, and that they conspired with the government to violate complainant's rights, these assertions are entirely speculative and without evidentiary foundation, and thus also must be dismissed. See JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS Rule 11(c)(1)(D); 28 U.S.C. § 352(b)(1)(a)(iii).

In summary, complainant's allegations are "directly related to the merits of a decision or procedural ruling," and otherwise "lack[] sufficient evidence to raise an inference that misconduct has occurred." JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS Rule 11(c)(1)(B), (D). Accordingly, the complaint must be dismissed as to each of the subject judges. See 28 U.S.C. § 352(b)(1)(A)(ii), (iii).¹

¹ 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 35 days of the date of the Circuit Executive's letter transmitting the dismissal Order and this Memorandum. *Id.* Rule 18(b).