

# The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-11-90023

**A Charge of Judicial  
Misconduct or Disability**

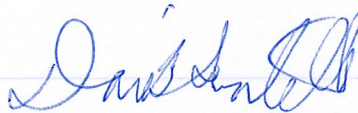
Before: SENTELLE, Chief Judge of the Circuit

## ORDER

Upon consideration of the complaint herein, filed against a Judge of the United States District Court for the District of Columbia 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)(ii); JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS 11(c)(1)(B).

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).



David B. Sentelle, Chief Judge  
District of Columbia Circuit

Date: 7/21/11

## MEMORANDUM

Complainant alleges that a judge from the United States District Court for the District of Columbia has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts. Specifically, complainant alleges that the subject judge is denying complainant the right to accept or reject the presentence investigation report filed in complainant's case. Complainant's allegation, however, does not provide any grounds for action against the subject judge.

Complainant's allegation that the subject judge is somehow causing complainant to waive the right to challenge the presentence investigation report filed in complainant's underlying case appears to be a direct challenge to the merits of the subject judge's decision. Complainant's counsel filed a motion to continue the sentencing hearing based on complainant's desire to more fully review the record and the motion was granted. The subject judge subsequently held a status conference in complainant's case and set a new date for complainant to file a sentencing memorandum, if complainant wished to file one. The appropriate avenue to obtain relief from this alleged erroneous ruling, however, is not a judicial misconduct proceeding. 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."). Any challenges to complainant's sentence or the process which led up to complainant's sentence can be raised before the Court of Appeals.

Thus, because the allegations are directly related to the merits of a decision, the complaint must be dismissed.<sup>1</sup>

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<sup>1</sup> 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).