

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-13-90037

**A Charge of Judicial
Misconduct or Disability**

Before: GARLAND, Chief Judge of the Circuit

ORDER

Upon consideration of the complaint herein and the supplement thereto, 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)(iii); JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS 11(c)(1)(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: 11/16/2014

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 allegations arise out of three appeals by the complainant from Bankruptcy Court decisions. The appeals were assigned to the subject judge. For the following reasons, the allegations do not warrant action against the judge.

In one of the appeals, the subject judge declined to proceed to the merits of the complainant's case unless and until the complainant paid the appropriate filing fees. The judge found that the complainant was not entitled to *in forma pauperis* status, both because he had the ability to pay the fee and because his previous litigation history (in 38 cases and appeals over five years) showed that he had abused the privilege of filing *in forma pauperis* by filing "frivolous" and "vexatious" motions and cases.

In the second appeal, the complainant paid the filing fee and the case proceeded on the merits. Although that case remains pending, the complainant suspects that the subject judge will deny the claims stated therein.

In the third appeal, the complainant also paid the filing fee. After briefing on the merits was completed, the complainant attempted to file a "superseding" brief. The subject judge struck the brief and directed that the complainant "shall refrain from filing additional documents without first seeking leave of the Court." Thereafter, the complainant continued to file documents without seeking leave; filed an appeal from the

denial of a motion, which was dismissed for lack of jurisdiction; filed a motion for a stay pending resolution of another bankruptcy matter, and then filed a supplement to the motion to stay. The subject judge struck the supplement, stating that “[g]iven the toll of his conduct on the Court and his opposing parties, as well as his apparent failure to understand the consequences of his actions, the Court hereby warns the debtor that further abuses may result in sanctions, including dismissal with prejudice.” Thereafter, the judge denied the stay motion without prejudice.

The complainant maintains that he is not challenging the “merits” of the subject judge’s decisions. Instead, he alleges that the “underlying purpose of [the judge’s] actions was to curry favor” with an individual who might be able to assist the judge’s future professional advancement.

The complainant does not offer any direct evidence that the judge acted from an improper motive. Indeed, he emphasizes that he is *not* alleging that the judge and the individual whose favor he allegedly sought have any kind of “agreement.” Rather, he contends that judge acted “*unilaterally* to curry favor.” But that assertion of motive is without foundation. The individual in question is only tangentially connected to the complainant’s cases: he is neither a party to any of the cases nor an attorney for a party to any of the cases; instead, he is alleged to be a lobbyist for the law firm that represents a party. Both that individual’s connection to the parties, and the claim that the subject judge thought that individual could assist him, are purely speculative. Accordingly, the

complaint “is based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred,” and it must therefore be dismissed. JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS 11(c)(1)(D); *see* U.S.C. § 352(b)(1)(A) (iii).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).