

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-15-90003

A CHARGE OF JUDICIAL
MISCONDUCT OR DISABILITY

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

ORDER

Upon consideration of the complaints 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 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 a Judicial Complaint alleging 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. For the following reasons, complainant's allegations do not warrant action against the subject judge.

Complainant is an attorney who represented a party in a long-running dispute against a business partner, in a series of cases filed in the district, bankruptcy, and appellate courts of this circuit. The subject judge presided over two cases in the series: an action filed by complainant's client that ultimately resulted in a multi-million dollar judgment against the client; and a tort action, filed in federal court in New York, transferred to the district court for the District of Columbia, and dismissed by the subject judge. The judgments were affirmed by the court of appeals. A petition for writ of mandamus seeking the subject judge's recusal was denied. Complainant and his client were sanctioned on more than one occasion by the courts of the circuit.

Complainant asserts that the subject judge committed misconduct in the course of the litigation. The gravamen of the complaint against the subject judge seems to be that the judge allowed the party opposing complainant's client, and his attorneys, to commit various frauds upon the court during the lengthy course of the litigation, and "covered up" these "crimes." Much of the supporting documentation, however, has little or no direct relevance to the judge's actions. Complainant does allege three specific forms of misconduct – that the judge engaged in ex parte contacts, that the judge retaliated against complainant, and that the judge should have been disqualified. None of these allegations warrant further proceedings.

Complainant asserts that the subject judge had ex parte contacts regarding the opposing party's competency and monies the district court was holding at the conclusion of the initial case. As the judge explained in denying a motion to recuse in the subsequent, transferred case, the inquiry the judge made was not extrajudicial but instead was information necessary to complete the administrative task of releasing the funds already adjudged to have belonged to the party. Because the allegation of ex parte contacts is based on the judge's actions taken to release the funds in the court registry, it "lack[s] sufficient evidence to raise an inference that misconduct has occurred" and so "must be dismissed." JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS Rule 11(c)(1)(D).

Complainant also alleges that "[i]n response to my efforts to expose the fraud (and, potentially, [the judge's] role in it), [the subject judge] has retaliated against me harshly." Complainant further speculates that the judge might have intervened in his attorney grievance case. He cites as "circumstantial evidence" of this interference in the grievance case the fact that a deputy clerk told him that the committee would speak with the judge as the grievance related to a case that was pending in the judge's court. Like the earlier allegation, this speculative claim must be dismissed as "lacking sufficient evidence to raise an inference that misconduct has occurred." *Id.*

Complainant also challenges the judge's decision to retain the transferred case rather than recuse. "An allegation that calls into question the correctness of a judge's ruling, including a failure to recuse, without more, is merits-related." JUDICIAL-CONDUCT RULE 3(h)(3)(A). Here, complainant raised the issue of the case assignment both with the subject judge and with the court of appeals and in both instances the claim was found to be meritless. Complainant has failed to present any non-conclusory evidence that the

judge failed to recuse for an improper purpose; he simply disagrees with the judge's decision not to recuse. This allegation is “directly related to the merits of a decision or procedural ruling” and therefore cannot constitute “[c]ognizable misconduct” under the Judicial-Conduct Rules. *Id.*

Finally, complainant’s allegations regarding fraud, cover-up, and bias have been raised and exhaustively litigated in numerous proceedings in the district court, bankruptcy court, and court of appeals, and have found to be meritless. There is no basis to pursue them anew in the context of a judicial complaint.

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. 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).