

# The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-15-90027

## A Charge of Judicial Misconduct or Disability

Before: GARLAND, *Chief Judge*.

### 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.

The Circuit Executive 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

Date: 12/9/15

## MEMORANDUM

The complainant has filed a complaint of judicial misconduct against a judge of the United States District Court for the District of Columbia. The allegations rise out of a lawsuit the complainant filed that was assigned to the subject judge. For the following reasons, the complaint will be dismissed.

The complainant filed a civil lawsuit in the United States District Court for the District of Columbia seeking to recover funds from a trust account. The case was assigned to the subject judge, who dismissed the complaint on the ground that the complainant's claims were barred by res judicata. The subject judge also denied the complainant's motion to recuse the judge, finding that the complainant had failed to establish that the judge had a personal bias against him. Finally, the subject judge determined that the complainant was "a vexatious litigant" and enjoined him from filing future lawsuits in the district court without prior authorization from that court. The judge based that determination on its finding "that the plaintiff has filed at least 19 separate civil actions in this Court," many involving "duplicitous" claims "and the majority of which have been dismissed for lack of jurisdiction . . . or transferred to another district for lack of proper venue." The judge also based his determination on the fact that the Joint Panel on Multidistrict Litigation had enjoined the complainant from filing further lawsuits without its permission, based on the Joint Panel's review of the complainant's litigation "history in other U.S. Courts," including "96 separate civil actions . . . since 1999" and the "patently frivolous nature" of the case then before the Joint Panel.

The misconduct complaint's first allegation is that the subject judge improperly had the complainant's cases assigned to him. The complainant made the same allegation in an earlier judicial misconduct case that he filed against the same subject judge when one of his previous cases was assigned to that judge. In September 2012, the preceding Chief Judge of this Circuit rejected that allegation for the following reason:

Pursuant to the Rules of the District Court for the District of Columbia . . . , "a case filed by a pro se litigant with a prior case pending shall be deemed related and assigned to the judge having the earliest case." LcvR 40.5(a)(3). Therefore, when complainant filed subsequent cases, they were automatically assigned to the subject judge who had a prior pending case filed by complainant. This allegation, therefore, lacks any specific evidence to demonstrate that the subject judge acted improperly and must be dismissed. *See* 28 U.S.C. § 352(b)(1)(A)(iii) and JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS 11(c)(1)(D).

Mem. Op., Jud. Council Compl. No. DC-12-90040 (Sept. 12, 2012). The same reasoning applies to this part of the instant misconduct complaint, which must therefore also be dismissed.

The misconduct complaint also challenges the subject judge's decision to enjoin the complainant from filing new cases absent leave of court, contending that this "amounts to a prejudicial error and denies me access to the courtroom." In particular, the complainant complains that, in issuing the injunction, the subject judge "cites cases in other forums without even knowing what those cases were and about their outcomes." In fact, he contends, the record shows that he "received favorable outcomes" in many of those cases. But a judicial misconduct complaint is not the appropriate avenue to obtain

relief from an allegedly erroneous ruling. That is the role of an appeal. A judicial misconduct complaint, by contrast, “must be dismissed . . . to the extent that . . . the complaint . . . is directly related to the merits of a decision or procedural ruling.” JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS, RULE 11(c)(1)(B); *see* 28 U.S.C. § 352(b)(1)(A)(ii). This part of the instant complaint must therefore be dismissed.

Finally, the complainant requests that his cases not be assigned to the subject judge because the judge “has shown consistent bias and vindictiveness against me going back to 2009.” The complainant made the same allegation in another judicial misconduct case that he filed against the same subject judge in November 2012. There, as here, the complainant proffered no evidence of bias or vindictiveness other than the fact that the subject judge had repeatedly ruled against him. In 2012, the preceding Chief Judge of this Circuit rejected the claim of a pattern of bias and vindictiveness for the following reason:

The mere fact that the subject judge has ruled against the complainant in complainant’s underlying cases is not . . . evidence of wrong doing on the part of the subject judge. . . . [C]omplainant has failed to allege any facts or evidence that would cause the average person to reasonably question the subject judge’s impartiality. The allegations that the subject judge acted maliciously or was biased lack any evidence to raise an inference that judicial misconduct has occurred. *See* 28 U.S.C. § 352(b)(1)(A)(iii) and JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS 11(c)(1)(D).

Mem. Op., Jud. Council Compl. No. DC-12-90050 (Dec. 10, 2012). The same reasoning applies to this aspect of the instant misconduct complaint, which again must be dismissed.<sup>1</sup>

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<sup>1</sup> Pursuant to 28 U.S.C. § 352(c) and Judicial-Conduct 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. JUDICIAL-CONDUCT RULE 18(b).