

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-13-90029

**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 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) & (iii); JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS 11(c)(1)(B) & (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: 9/26/13

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. Specifically, the complainant alleges that the subject judge improperly dismissed the complainant's underlying case. For the following reasons, this allegation does not warrant action against the subject judge.

The complainant filed a complaint against three defendants alleging violations of section 1983 of the Civil Rights Act. The subject judge granted the defendants' motion for leave to file their motion to dismiss late or, in the alternative, for summary judgment and directed the complainant to respond to the motion to dismiss. The complainant did not file a response and the judge dismissed the complaint with prejudice for failure to state a claim. The complainant then filed a motion for reconsideration, which the judge denied. The judge noted that the case was not dismissed because the complainant had failed to respond to the motion to dismiss, but because the complaint failed to state a claim. The complainant then filed a "motion to reopen the case," which the court construed as a motion for a new trial or to alter or amend a judgment under Federal Rule of Civil Procedure 59 and a motion for relief from the dismissal order under Federal Rule of Civil Procedure 60. The judge denied the motions, finding that the complainant never had a trial and thus was not entitled to a new one. Moreover, the judge noted that the judgment of dismissal could not be amended because the request was filed over 11 years after entry of the judgment, and that the complainant was not entitled to Rule 60 relief

because the request was not made within a reasonable time. The complainant appealed the order denying the motion to reopen the case and the court of appeals affirmed the district court's decision.

The complainant then filed the instant judicial misconduct complaint against the subject judge. Although it is difficult to ascertain the true nature of the complaint, it appears that the complaint is alleging that the judge improperly dismissed the case. The complaint, however, lacks "sufficient evidence to raise an inference that judicial misconduct has occurred." 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). Moreover, the allegation constitutes a direct challenge to the merits of the judge's orders. A judicial misconduct proceeding is not the appropriate avenue to obtain relief from allegedly erroneous rulings. *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."). The appropriate avenue is an appeal, which the complainant did file but which the court of appeals denied.

Because the complainant's allegations lack sufficient evidence to raise an inference that misconduct has occurred and are directly related to the merits of the subject judge's decision, the complaint must be dismissed.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).