

# The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-17-90024

## 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: 11/10/18

**MEMORANDUM**

The complainant has filed a complaint of judicial misconduct against a judge of the United States District Court for the District of Columbia. For the following reasons, the misconduct complaint will be dismissed.

The complainant represented a litigant in a civil action before the subject judge. During the course of the litigation, the judge dismissed the action for lack of subject-matter jurisdiction. He also imposed sanctions on the complainant for “intentionally and maliciously disregard[ing] his professional duties,” for the “harassing and repeated nature of [his] filings,” and for “his open disregard of the Court’s repeated and clear orders to cease such behavior.” On appeal, the U.S. Court of Appeals for the District of Columbia Circuit dismissed a challenge to the dismissal of the civil action as untimely filed. At the same time, the Court of Appeals summarily affirmed the sanctions order against the complainant.

The complainant has now filed a judicial misconduct complaint against the subject judge for “numerous failures to apply well settled law” and for “repeated acts of dishonesty.” The gravamen of the former charge is that the judge knew that there was case law upholding subject-matter jurisdiction in cases like his client’s and nonetheless dismissed the case for lack of jurisdiction. Because this claim is “directly related to the merits” of the judge’s dismissal of the case, it does not constitute a ground for “cognizable misconduct” under the Judicial-Conduct Rules, and the allegation must

therefore be dismissed. JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS, RULES 3(h)(3)(A), 11(c)(1)(B); *see* 28 U.S.C. § 352(b)(1)(A)(ii).

The gravamen of the charge of “dishonesty” is the complainant’s assertion that the judge knowingly sought to cover up his jurisdictional error in a number of ways. The judge did so, the complainant alleges, by falsely stating that there was no case that granted the court jurisdiction over a claim like that of the complainant’s client, striking an amended complaint that cited such a case, denying the complainant’s request for a transcript of a hearing that showed that the judge “lied” about there being no such supporting case; and “ignor[ing] the facts” in imposing sanctions against the complainant. These allegations, too, are “directly related to the merits” of the judge’s decisions and procedural rulings and, therefore, do not constitute “cognizable misconduct.” JUDICIAL-CONDUCT RULES 3(h)(3)(A), 11(c)(1)(B); *see* 28 U.S.C. § 352(b)(1)(A)(ii). Moreover, because the complainant proffers no evidence of wrongful motive other than the decisions and orders themselves, the allegations “lack[] sufficient evidence to raise an inference that misconduct has occurred” and must be dismissed. JUDICIAL-CONDUCT RULE 11(c)(1)(D); *see* 28 U.S.C. § 352(b)(1)(A)(iii).<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 42 days after the date of the dismissal order. JUDICIAL-CONDUCT RULE 18(b).