

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-17-90003
No. DC-17-90004

**A Charge of Judicial
Misconduct or Disability**

Before: GARLAND, *Chief Judge*.

ORDER

Upon consideration of the complaint herein, and the supplement thereto, filed against two judges of the United States Court of Appeals for the District of Columbia Circuit, 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 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).



Merrick B. Garland, Chief Judge

Date: 7/28/17

MEMORANDUM

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

I

In 2011, the complainant sued the Postal Service and Pitney Bowes in the United States District Court for the Eastern District of Pennsylvania, contending that they had engaged in several kinds of misconduct. The district court granted the Postal Service's motion to dismiss the claims against it and granted Pitney Bowes' motion for judgment on the pleadings. After the court denied several motions for reconsideration, the United States Court of Appeals for the Federal Circuit affirmed.

In 2015, the complainant filed complaints against the Postal Service, the Postal Service Office of Inspector General, and Pitney Bowes with the Postal Regulatory Commission (PRC), alleging violations of the Postal Accountability and Enhancement Act, criminal violations under U.S. Code Title 18, antitrust violations under Title 15, and several torts. The PRC ultimately dismissed the complaint against the Office of Inspector General and Pitney Bowes, holding that those parties were not within the PRC's jurisdiction. The PRC also dismissed the tort, criminal, and antitrust claims against the Postal Service, holding that those claims were not within the PRC's jurisdiction and that jurisdiction instead "lies with the District Courts." The PRC dismissed the Postal

Accountability and Enhancement Act claims against the Postal Service on substantive grounds.

The complainant then filed a petition for review of the PRC's order in this Circuit. Pitney Bowes and the Postal Service subsequently intervened in support of the PRC. The Clerk of the Court granted the complainant's unopposed motion to hold that case in abeyance pending resolution of a Federal Rule of Civil Procedure 60(b) motion that he had filed in the District Court for the Eastern District of Pennsylvania. After that court denied his Rule 60(b) motion, the complainant filed in this court a motion for summary remand "to the District Courts with instructions" and a motion to continue holding this case in abeyance, pending additional district court litigation. The PRC and Pitney Bowes filed motions to establish a briefing schedule.

In August 2016, the two Circuit judges who are the subject of the instant judicial misconduct complaint denied the complainant's motion for summary remand and his motion to continue holding the case in abeyance and granted the motions to establish a briefing schedule. The order denying the motion for summary remand states, *inter alia*: "The merits of petitioner's positions are not so clear as to warrant summary action, *see Cascade Broadcasting Group, Ltd. v. FCC*, 822 F.2d 1172, 1174 (D.C. Cir. 1987) (*per curiam*), and he has not shown that a remand to a district court is an appropriate remedy in any event."

The complainant then moved for reconsideration of the judges' order and for expeditious consideration of his motions for reconsideration. He also moved for judicial notice of "new evidence" and for sanctions. The subject judges denied the complainant's motions for reconsideration and for sanctions and dismissed as moot his motions for expeditious consideration and judicial notice, and a new briefing schedule was entered. The complainant then filed a motion to recuse the two judges and to suspend the briefing schedule, and the briefing schedule was suspended pending further order of the court. The subject judges subsequently denied the motion for recusal and dismissed the motion to terminate the briefing schedule as moot. The Clerk has since entered a new briefing schedule.

II

In his misconduct complaint and supplement thereto, the complainant alleges that the two Circuit judges committed "conduct prejudicial to the effective and expeditious administration of the business of the courts, by creating unnecessary delay and needlessly increasing the cost of litigation." They did this, he continues, by "ordering the clerk to schedule briefing" rather than by granting "summary affirmance," which the complainant believes was plainly warranted. The allegation that summary affirmance rather than briefing was appropriate is "directly related to the merits" of the judges' procedural ruling not to grant summary disposition, and it therefore does not constitute "cognizable misconduct" under the Rules for Judicial Conduct. JUD. CONF. U.S., RULES FOR

JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS, RULE 3(h)(3)(A).

Accordingly, that part of the judicial misconduct complaint must be dismissed. JUDICIAL-CONDUCT RULE 11(c)(1)(B); *see* 28 U.S.C. § 352(b)(1)(A)(ii).

The complainant also alleges, “as additional evidence of judicial misconduct or even disability,” that the subject judges’ August 2016 order “cited to an inapposite DC Circuit case law to explain why they denied Petitioner’s Motion for Summary Disposition / Remand”: to wit, the case of *Cascade Broadcasting Group, Ltd. v. FCC*, 822 F.2d 1172, 1174 (D.C. Cir. 1987) (*per curiam*). This allegation -- that the judges erroneously cited Circuit case law -- is likewise directly related to the merits of their ruling. Therefore, it must also be dismissed. JUDICIAL-CONDUCT RULES 3(h)(3)(A), 11(c)(1)(B).

The complainant further alleges that the subject judges treated him and his filings “in a demonstrably egregious and hostile manner.” They did so, he alleges, “by denying Petitioner’s motions and ordering the clerk to schedule briefing.” Once again, however, the challenge to the denial of motions and the ordering of briefing is directly related to the merits of those rulings and must be dismissed. *Id.*

Finally, the complainant alleges that the subject judges did all of the above “for the improper motives of using the judge’s office to obtain special treatment for the [Postal Regulatory] Commission,” whose members the complainant describes as “fellow government employees.” The only evidence the complaint offers in support is that, “since there are no possible lawful reasons or proper motives, the answer is revealed by the

process of elimination, improper actions for improper motives.” Because the complaint offers no evidence of misconduct other than the complainant’s view that the judges must have been acting improperly since they ruled against him, and because the validity of the judges’ rulings is a merits issue, this contention “is based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred” and must also be dismissed. JUDICIAL-CONDUCT RULE 11(c)(1)(D); *see* 28 U.S.C. § 352(b)(1)(A)(iii).¹

¹ 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 of the date of the Circuit Executive’s letter transmitting the dismissal Order and this Memorandum. JUDICIAL-CONDUCT RULE 18(b).