

# The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-13-90004

## A Charge of Judicial Misconduct or Disability

Before: GARLAND, Chief Judge of the Circuit

### ORDER

Upon consideration of the complaint herein, 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)(C) & (D).

The Clerk is directed to send copies of this Order and accompanying Memorandum to 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: 2-27-13

## MEMORANDUM

Complainant alleges that a judge of the United States District Court has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts. Specifically, complainant alleges that the subject judge: created an “imaginary rule” to impose procedural burdens on complainant; imposed higher pleading standards on the complainant; threatened complainant with sanctions if responses to motions were not timely filed; ruled on motions before responses were filed by the defendants; and denied a motion that was not frivolous. For the following reasons, those allegations do not warrant action against the subject judge.

The complainant’s first allegation, that the subject judge created an “imaginary rule,” is without merit. Local Civil Rule 15.1 does require that a motion for leave to file an amended complaint must accompany an original of the proposed pleading as amended. The subject judge did not err in denying complainant leave to file the amended complaint as no motion for leave to amend was attached. Complainant could have refiled the proposed amended complaint with a motion for leave to file.

Second, there is no evidence that the subject judge has unfairly imposed procedural burdens on complainant while treating the opposing counsel more leniently. Local Civil Rule 7(m) requires that, before filing a nondispositive motion, a party must make a “good faith effort to determine whether there is any opposition to the relief sought.” If complainant made a good faith effort to consult with the opposing counsel but was still unable to get a response, that information should have been included in the motion.

Third, Local Civil Rule 7(b) states that, if a party does not file an opposition to a

motion within the prescribed time, “the Court may treat the motion as conceded.” The subject judge, therefore, was not acting inappropriately when establishing deadlines within which the complainant was to file responses to motions and making complainant aware of the consequences of not filing a response. The fact that the subject judge ruled on some motions when no opposition was filed does not demonstrate misconduct. Rule 7(b) simply states that, if an opposition is not filed, the court *may* treat the motion as conceded; the court is not required to do so. Moreover, the allegation that the subject judge was biased against complainant because the judge ruled on motions without a response from the defendants is without support. Complainant also asserts that the subject judge erred in denying complainant’s motion to impose the costs of repetitive service on the defendants. Complainant simply states that the motion was not frivolous and, therefore, should have been granted. The fact that a motion is not frivolous does not, in and of itself, mean that the motion should automatically be granted.

In sum, none of these claims alleges any facts or evidence that would cause the average person to reasonably question the subject judge's impartiality. Therefore, these allegations against the subject judge lack any credible evidence to raise an inference that judicial misconduct has occurred. See 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). Moreover, the allegations are more appropriately categorized as direct challenges to the subject judge's decisions. The appropriate avenue to obtain relief from alleged erroneous rulings, however, is not a judicial misconduct proceeding. 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.”).

Thus, because complainant’s allegations lack sufficient evidence to raise an inference that misconduct has occurred and are directly related to the merits of the subject judges’ decisions, the complaint must be dismissed.<sup>1</sup>

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<sup>1</sup> Pursuant to 28 U.S.C. § 352(c) and JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL -DISABILITY PROCEEDINGS 18(a), 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).