

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-15-90031
No. DC-15-90032
No. DC-15-90033
No. DC-15-90034
No. DC-15-90035
No. DC-15-90036
No. DC-15-90037
No. DC-15-90038
No. DC-15-90039
No. DC-15-90040
No. DC-15-90041
No. DC-15-90042
No. DC-15-90043
No. DC-15-90044
No. DC-15-90045
No. DC-15-90046
No. DC-15-90047

A CHARGE OF JUDICIAL
MISCONDUCT OR DISABILITY

Before: HENDERSON, *Circuit Judge**

ORDER

Upon consideration of the complaint herein, filed against a judge of the United States District Court for the District of Columbia and sixteen 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. See 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).

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).

KLH

Karen LeCraft Henderson, Circuit Judge
District of Columbia Circuit

Date: 4/22/2016

* Pursuant to JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS 25(f), the Judicial Council has voted to allow Judge Henderson to consider this complaint.

MEMORANDUM

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

The complainant filed a 77-page complaint asserting a host of constitutional, tort, discrimination, and other claims against more than 100 defendants. The district court dismissed the complaint without prejudice for failure to comply with Fed. R. Civ. P. 8(a). Complainant filed a notice of appeal, as well as a "motion for leave to amend original civil rights complaint," which remains pending in the district court. In that motion, the complainant contended that his complaint had been wrongly dismissed, but he also sought guidance from the district court and an extension of time to obtain legal assistance and file a new complaint.

On appeal, the complainant argued that the district court wrongly dismissed his complaint for failure to state a claim, the court had jurisdiction over all of the matters raised in the complaint, he stated valid claims, and all of his claims were within the applicable statutes of limitations. He also complained that the court did not allow him to amend his complaint with the assistance of court-appointed counsel or amicus curiae and the court ignored his motion for leave to amend his original complaint. The court of appeals affirmed the district court's dismissal order. The court's judgment noted that one judge would have remanded the case for reconsideration. The complainant then sought rehearing and rehearing en banc, both of which were denied.

The complainant has now filed judicial misconduct complaints against the district

court judge who handled the complainant's underlying case, and all of the court of appeals judges, except the judge who voted to remand the case for reconsideration. The complaint proffers neither a description of the district judge's wrongdoing, nor any evidence thereof. Because the complaint against the district court judge is therefore "based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred," the Judicial-Conduct Rules require that it "be dismissed." JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS, RULE 11(c)(1)(D); see 28 U.S.C. § 352(b)(1)(A)(iii).

The complaints against the court of appeals judges allege that these judges have committed "gross retaliation" and "gross judicial misconduct" and that they "collectively agreed' to wrongfully dismiss the . . . complaint." More specifically, the complainant asserts that the court's order denying rehearing en banc was not mailed to him until more than 40 days after it issued, "thus deliberately and intentionally denying [him] his allotted time to file his 'petition for writ of certiorari.'" The complainant asserts that the delay was racially motivated. The complainant, however, has failed to provide any support for these allegations and, thus, these portions of the complaints must also be dismissed as "lacking sufficient evidence." JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY RULE 11(c)(1)(D); see 28 U.S.C. § 352(b)(1)(A)(iii).

The complainant also asserts that none of the court of appeals judges "had even voted on whether or not to even consider granting [his] aforementioned 'petition for rehearing and rehearing en banc.'" The complainant appears to be confused about the meaning of the language in the order which stated, "[u]pon consideration of . . . the absence of a request by any member of the court for a vote, it is ordered that the

petition be denied.” The Court’s Handbook clearly states that “[i]f no judge asks for a vote within a specified time, and none requests more time to consider the matter, the Clerk will enter an order denying the petition.” *Handbook of Practice and Internal Procedures*, XIII. B. 2. In this instance, none of the judges called for a vote and thus the petition for rehearing en banc was denied. Contrary to the complainant’s assertion, this does not mean the judges did not consider the petition for rehearing en banc. Therefore, this portion of the complaint must also be dismissed as lacking sufficient evidence. JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY RULE 11(c)(1)(D); see 28 U.S.C. § 352(b)(1)(A)(iii).²

² Pursuant to 28 U.S.C. § 352(c) and JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS 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 dismissal order. *Id.* Rule 18(b).