

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-15-90010

A CHARGE OF JUDICIAL
MISCONDUCT OR DISABILITY

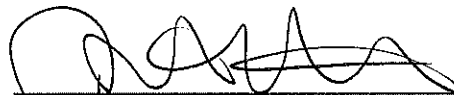
Before: MILLETT, *Circuit Judge**

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. 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 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).



Patricia A. Millett, Circuit Judge
District of Columbia Circuit

Date: 5/4/16

* Acting pursuant to Rule 25(f) of the RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS.

MEMORANDUM

Complainant has filed a Judicial Complaint alleging 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. For the following reasons, complainant's allegations do not warrant action against the subject judge.

The present complaint is the third filed by this complainant against the subject judge. Each is grounded in complainant's assertions that the judge harbors bias against him, and has improperly refused to disqualify herself from presiding over actions in which the complainant has been counsel or a party. Additionally, the present complaint asserts that "new evidence" contained in a journalist's book demonstrates that the judge committed misconduct in her capacity as a judge of the Foreign Intelligence Surveillance Court ("FISC"). Complainant also asserts that this new evidence informs and validates the allegations in his prior complaints.

Complainant represented a plaintiff who sued government officials, claiming, among other things, First and Fourth Amendment violations, including illegal surveillance in various forms, allegedly in response to innocent comments regarding airline security. The subject judge dismissed the claims for lack of standing, finding the surveillance and retaliation allegations too conjectural to support standing. The court of appeals ultimately affirmed, on the ground that these claims were patently insubstantial. Complainant argues, however, in light of revelations in the journalist's book and by whistleblowers such as Edward Snowden, that the subject judge knew that surveillance of the sort claimed by complainant's client was occurring, to others as well as to the client himself. According to complainant, the subject judge was biased against the

client because of her own involvement in approving surveillance activities, as well as her grudge against complainant. Complainant provides no non-speculative evidence, however, that the judge's knowledge of other surveillance activities confirms she knew that his client's claims were legitimate. As in similar assertions made in his prior complaints, these allegations are thus subject to dismissal as "directly related to the merits of a decision or procedural ruling," and otherwise "lacking sufficient evidence to raise an inference that misconduct has occurred." JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS, Rule 11(c)(1)(B), (D); see 28 U.S.C. § 352(b)(1)(A)(ii), (iii).

Complainant also asserts that the subject judge committed misconduct when she "rubber-stamped" illegal surveillance activities during her tenure on the FISC. This general claim fails for lack of evidence raising an inference of misconduct, as the Chief Judge has concluded when reviewing similar complaints against members of the FISC. See, e.g., In re Charge of Judicial Misconduct or Disability, No. DC-14-90042 (Feb. 4, 2015) (Garland, C.J.). Further, although complainant does not identify any particular approval action as the basis for his allegations, any such charge would fail as directly related to the merits of the judge's ruling, even if such approval is not taken in the judge's Article III capacity, and not subject to appellate review. See In re Charge of Judicial Misconduct or Disability, 137 F.3d 650 (D.C. Cir. 1998) (Edwards, C.J.) (dismissing complaint alleging misconduct in approval of warrants for electronic surveillance); RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS, Commentary on Rule 3 at 5-6 (noting that "merits-related" exclusion applies to, e.g., the dismissal of a judicial complaint, or the approval of a CJA voucher).

In another allegation taken from the journalist's book, complainant alleges that the subject judge committed misconduct when she "turned in" a whistleblower who called the judge's chambers to report allegedly illegal government surveillance activities. Complainant provides no support, however, for his assertion that referring the matter to the Department of Justice was in any way improper.

In the remaining portion of the complaint, complainant repeats the charges of bias and retaliation previously considered and dismissed in his prior complaints. Nothing in the new complaint warrants revisiting those charges.

In summary, complainant's allegations are "directly related to the merits of a decision or procedural ruling," or otherwise "lack[] sufficient evidence to raise an inference that misconduct has occurred." JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS, Rule 11(c)(1)(B), (D). Accordingly, the complaint must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii), (iii).¹

¹ 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).