

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-17-90019

No. DC-17-90020

No. DC-17-90021

A CHARGE OF JUDICIAL
MISCONDUCT OR DISABILITY

Before: MILLETT, *Circuit Judge**

ORDER

Upon consideration of the complaint herein, filed against three 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).



Patricia A. Millett, Circuit Judge
District of Columbia Circuit

Date: 9/8/17_____

* Pursuant to Rule 25(f) of the RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS, the Judicial Council has voted to allow Judge Millett to consider this complaint.

MEMORANDUM

The complainant has filed a complaint of judicial misconduct against three judges of the United States Court of Appeals for the District of Columbia Circuit. The allegations arise from the subject judges' involvement in the disposition of earlier misconduct complaints. For the following reasons, this misconduct complaint will be dismissed.

In 2013, complainant filed an appeal from a decision of the United States Tax Court. A merits panel affirmed the Tax Court decision in an unpublished judgment. Complainant filed a petition for rehearing and rehearing en banc, which was denied. Complainant then filed a judicial complaint against a judge who was a member of the merits panel in his Tax Court appeal. The complaint was dismissed on the ground that the allegations were "purely speculative and [did] not remotely constitute evidence of misconduct." Complainant filed a petition for review by the Circuit Judicial Council. The petition for review was denied.

Complainant then filed a judicial complaint against six judges of the D.C. Circuit. He alleged that because five of those judges participated in review of his Tax Court appeal – either as members of the merits panel or as members of the en banc court – they should not have participated in review of the first judicial complaint because they were in effect reviewing their own conduct. That complaint was dismissed because the allegations were "directly related to the merits of a decision or procedural ruling" or otherwise "lack[ed] sufficient evidence to raise an inference that misconduct has occurred." JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS 11(c)(1)(B), (D). To the extent the complaint named the judge who had been the subject of the first misconduct complaint, the complaint was dismissed

because it contained no allegations against that judge. Complainant filed a petition for review by the Circuit Judicial Council, and the petition was denied.

Complainant filed a third judicial misconduct complaint alleging that six judges of the D.C. Circuit should not have participated in the prior misconduct matters. That complaint also named the judge who had been the subject of the first complaint. The third complaint was dismissed on the ground that it contained no allegations of misconduct against the judge who had been the subject of the first complaint, and “lack[ed] sufficient evidence to raise an inference that misconduct has occurred” on the part of the other judges. JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS 11(c)(1)(D); see 28 U.S.C. § 352(b)(1)(A)(iii). A fourth judicial misconduct complaint filed by complainant, containing similar allegations, was also dismissed on ground that it “lack[ed] sufficient evidence to raise an inference that misconduct has occurred.” JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS 11(c)(1)(D); see 28 U.S.C. § 352(b)(1)(A)(iii). The Circuit Judicial Council denied complainant’s petitions for review of the dismissal of the third and fourth complaints.

Complainant has now filed a fifth judicial misconduct complaint. Complainant alleges that the judicial misconduct review process “violate[] due process,” based on the fact that only a small percentage of complaints filed nationwide against federal judges result in corrective action, and the subject judges have knowingly engaged in unconstitutional behavior merely by participating in such a process. Complainant, however, has provided nothing that suggests the subject judges have engaged in misconduct. The remainder of this complaint is similar to the prior complaints and

alleges that the three subject judges should not have participated in the prior misconduct matters. Again, complainant does not present anything that calls into question the judges' decisions to participate in those matters. As the complaint "lack[s] sufficient evidence to raise an inference that misconduct has occurred," it must be dismissed. JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS 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 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).