

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-16-90012
No. DC-16-90013

A CHARGE OF JUDICIAL
MISCONDUCT OR DISABILITY

Before: TATEL, *Circuit Judge**

ORDER

Upon consideration of the complaint herein, 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. 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 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).



David S. Tatel, Circuit Judge
District of Columbia Circuit

Date: _____

5-17-16

* 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 two judges of the United States Court of Appeals for the District of Columbia Circuit 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 judges.

Complainant is an attorney who represented a party in a long-running dispute against a business partner, in a series of cases filed in the district, bankruptcy, and appellate courts of this circuit. Complainant filed a prior judicial misconduct complaint against a judge of the United States District Court for the District of Columbia who had presided over two cases in the series: an action filed by complainant's client that ultimately resulted in a multi-million dollar judgment against the client; and a tort action, filed in federal court in New York, transferred to the district court for the District of Columbia, and then dismissed. That Judicial Complaint was dismissed on the grounds that complainant's allegations were "directly related to the merits of a decision or procedural ruling," and otherwise "lack[ed] sufficient evidence to raise an inference that misconduct had 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 filed with the Judicial Council a petition for review of the order dismissing the prior complaint. The Judicial Council affirmed the disposition and denied the petition for review.

Complainant now asserts that the subject judges engaged in misconduct by not transferring the prior complaint to the Judicial Council of another circuit. Complainant

alleges the judges of this court have personal knowledge of the misconduct committed by the district court judge who was the subject of the prior complaint due to their involvement in prior appeals involving the complainant. Participating in prior merits cases does not, without more, disqualify a judge from participating in a complaint proceeding. See In re Complaint of Judicial Misconduct, 591 F.3d 638, 647-48 (U.S. Jud. Conf. 2009). Misconduct proceedings are administrative in nature, and not subject to the recusal standards that apply to judicial proceedings. Id. Personal knowledge of relevant facts does not necessarily disqualify a judge from participating in a misconduct matter. Id. at 648. The appropriate inquiry is whether, “under all of the circumstances, including prior knowledge of the case and even a previously held opinion, the judge believes that he or she can be fair-minded in his or her participation,” and if so, “recusal is not warranted and the judge should fulfill his or her duty to participate.” Id. (internal quotation omitted). Thus, to the extent complainant alleges the subject judge who disposed of his prior judicial complaint engaged in misconduct simply by handling that matter, complainant’s unsupported and speculative allegations are insufficient to call into question the propriety of the judge’s decision to resolve the complaint. And to the extent complainant alleges the subject judges have assisted in covering up the misconduct of the district court judge who was the subject of the prior complaint, these allegations are unsupported by any specific evidence.

Complainant next claims the subject judges engaged in misconduct by improperly affirming certain district court orders. Because these allegations are “directly related to the merits of a decision or procedural ruling,” they are not cognizable misconduct under the governing statute and rules. JUD. CONF. U.S., RULES FOR

JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS, Rule 3(h)(3)(A). Accordingly, this part of the judicial misconduct complaint must be dismissed. JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS, Rule 11(c)(1)(B).

Finally, complainant alleges the subject judges engaged in misconduct by delaying the resolution of his previous judicial complaint, but he provides nothing to show the delay was intentional. Therefore, this allegation also lacks “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)(D).

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).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).