

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-11-90031

A Charge of Judicial Misconduct or Disability

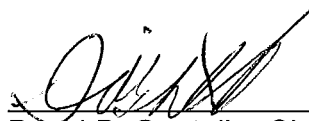
Before: SENTELLE, Chief Judge of the Circuit

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)(B) & (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).



David B. Sentelle, Chief Judge
District of Columbia Circuit

Date: 9/29/11

MEMORANDUM

Complainant alleges that a judge from the United States District Court for the District of Columbia has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts. Specifically, complainant alleges that the subject judge showed “callous disregard for [complainant] . . . by filing Minute Orders on behalf of the Government, in an effort to the dismiss the case.” Complainant also asserts that the subject judge deprived complainant of due process by failing to rule on a motion for a temporary restraining order before dismissing the case, ordering status conferences and then vacating that order, and failing to provide complainant with a copy of an order which directed the opposing party to file a supplement to their motion to dismiss and giving complainant an opportunity to respond. Complainant also alleges that in a second case the subject judge was improperly assigned to the case. Complainant's allegations, however, do not provide any grounds for action against the subject judge.

The allegations against the subject judge all appear to relate to rulings and actions taken by the subject judge. The subject judge was assigned complainant's original case after it had already been pending for several years. Initially the subject judge ordered that the court would hold a status conference but then subsequently vacated the order establishing the status conference. The subject judge then issued a subsequent procedural order directing the defendants to file a supplement to the pending motion to dismiss and giving complaint the option to file a response thereto. The record reflects that the Clerk's Office mailed a copy of the procedural order to complainant but that the mail was returned as undeliverable. The defendants filed a

supplement to the motion to dismiss. The subject judge then granted the motion to dismiss. Complainant is challenging the subject judge's decision to issue Minute Orders, to first hold a status conference and then cancel it, and to grant the motion to dismiss without first ruling on the motion for a temporary restraining order. These allegations, however, are directly challenging the merits of the subject judge's rulings in the underlying case. 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."). Complainant has already noted an appeal with the U.S. Court of Appeals for the D.C. Circuit and any challenges to the merits of the subject judge's orders can be raised there.

To the extent complainant is faulting the subject judge for the failure to provide notice of the order directing the filing of supplements to the motion to dismiss, that allegation is also without merit. It is the responsibility of the Clerk's Office, not the subject judge, to mail court orders. While it was evident that complainant had not received the order at the time the subject judge granted the motion to dismiss, a challenge to the granting of the motion to dismiss on that basis would be merits related and thus not appropriate for consideration here. *Id.*

Lastly, complainant asserts that the subject judge somehow manipulated the

filing of complainant's second case so that it would be assigned to the subject judge. The subject judge was assigned the second case in light of the fact that complainant filed a notice of related case indicating that the second case was related to the first. Complainant, therefore, has failed to provide any evidence to support the allegation that the subject district court judge acted improperly. Thus, this allegation must be dismissed. 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).

Thus, because the allegations either lack any evidence to raise an inference that misconduct has occurred or are directly related to the merits of a decision, the complaint must be dismissed.¹

¹ 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).