

JUDICIAL COUNCIL
OF THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of
A Complaint of Judicial
Misconduct or Disability

No. DC-21-90033

Before: Pillard, Circuit Judge*

ORDER

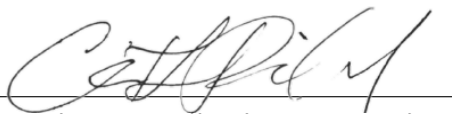
Upon consideration of the complaint herein, filed against a judge of the United States Court of Appeals for the District of Columbia Circuit, it is

ORDERED that the complaint be dismissed for the reasons stated in the attached Memorandum. It is

FURTHER ORDERED that complainant show cause why he should not be enjoined from filing further repetitive, conclusory, and frivolous complaints of judicial misconduct against judges of this Circuit. *See* JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL DISABILITY PROCEEDINGS 10(a). Complainant is directed to file an answer with the Circuit Executive within 30 days of the date of this order. Failure to respond to this order will result in complainant being so enjoined.

The Circuit Executive is directed to send a copy 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).

Date: February 15, 2022



Cornelia T. L. Pillard, Circuit Judge

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

MEMORANDUM

Complainant has filed a complaint of judicial misconduct against a judge of the United States Court of Appeals for the District of Columbia Circuit. For the following reasons, the 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 A merits panel affirmed the Tax Court decision in an unpublished judgment.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 misconduct 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, which denied the petition.

Complainant then filed a judicial misconduct 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 misconduct 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, which denied the petition.

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 judges 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 one of the subject judges, and “lack[ed] sufficient evidence to raise an inference that misconduct has occurred” as to the remaining subject 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, containing similar allegations, was also dismissed on the same grounds. The Circuit Judicial Council denied complainant’s petitions for review of the dismissals of the third and fourth complaints.

In a fifth judicial misconduct complaint, complainant alleged that the judicial misconduct review process “violate[s] due process,” based on his observation that only a small percentage of complaints filed nationwide against federal judges result in corrective action. Complainant asserted that the judges named in the fifth complaint had knowingly engaged in unconstitutional behavior merely by participating in such an unconstitutional process. Complainant further repeated several of the arguments previously raised in his earlier misconduct complaints. The complaint was dismissed because it failed to allege that any subject had engaged in conduct cognizable as judicial misconduct. Complainant filed a petition for review by the Circuit Judicial Council, which denied the petition.

Complainant then filed a sixth judicial misconduct complaint against three judges of the D.C. Circuit, in which he asserted that two of the subject judges committed misconduct merely by participating in his prior misconduct matters, the third subject judge had erred in their disposition of one of complainant's prior misconduct matters, and one of the subject judges had rendered decisions in unrelated cases demonstrating a lack of "fair-mindedness." The complaint was dismissed on the grounds that it was "directly related to the merits of a decision or procedural ruling," and 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, Rule 11(c)(1)(B), (D); 28 U.S.C. § 352(b)(1)(A)(ii), (iii).

Complainant has now filed a seventh judicial misconduct complaint, against one judge of the D.C. Circuit. Complainant repeats his prior argument that the low rate of successful misconduct complaints indicates that the misconduct complaint review process is inconsistent with due process. He further asserts that the judiciary as a whole uses a standard for evaluating recusals that is inconsistent with governing law. Neither of these allegations indicates that the subject judge has engaged in conduct cognizable as judicial misconduct, and the complaint therefore "lack[s] sufficient evidence to raise an inference that misconduct has occurred" with respect to these allegations. See JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL DISABILITY PROCEEDINGS 11(c)(1)(D); 28 U.S.C. § 352(b)(1)(A)(iii). Complainant also argues that the subject judge failed to remain impartial in their rulings in complainant's underlying Tax Court appeal. This allegation, however, is "directly related to the merits of a decision or procedural ruling," and it is therefore not a

proper ground for a finding of judicial misconduct. See JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL DISABILITY PROCEEDINGS 11(c)(1)(B); 28 U.S.C. § 352(b)(1)(A)(ii). The complaint will therefore 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, 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).