

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-11-90007

**A Charge of Judicial
Misconduct or Disability**

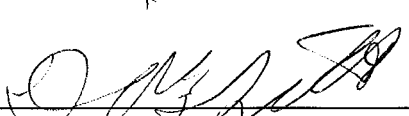
Before: SENTELLE, Chief Judge of the Circuit

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: 6/6/11

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 improperly denied a motion to reassign a case, a motion for preliminary injunction, and a motion to disqualify the judge as a result of the subject judge's "extra-judicial political and personal bias" towards complainant who was both representing a client before the subject judge and was a plaintiff in a case before the subject judge. Complainant's allegations, however, do not provide any grounds for action against the subject judge.

Complainant's allegations that the subject judge improperly denied the motions, filed on behalf of a client, to reassign the underlying case, for preliminary injunction, and to disqualify the judge appear to be direct challenges to the merits of the subject judge's rulings. The appropriate avenue to obtain relief from these 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."). See *also* JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS 3(h)(3) ("An allegation that calls into question the correctness of a judge's ruling, including a failure to recuse, without more, is merits-related."). A review of the statement of the case in the appeal

complainant filed with the United States Court of Appeals for the D.C. Circuit on behalf of a client shows that these rulings are being challenged on appeal.

To the extent that complainant is asserting that the subject judge improperly denied the motions as a result of political and personal bias against the complainant, this aspect of the complaint is not merits-related. See Commentary on Rule 3 (“An allegation that a judge ruled against the complainant . . . because the judge dislikes the complainant personally . . . is . . . not merits-related.”). This part of the complaint, however, lacks sufficient evidence to raise an inference that misconduct has occurred. The fact that the subject judge ruled against both complainant and complainant’s client does not in and of itself demonstrate bias. “Judicial rulings alone almost never constitute a valid basis for a bias or partiality motion.” *Liteky v. United States*, 510 U.S. 540, 555 (1994). Here complainant has failed to show “a deep-seated favoritism or antagonism that would make fair judgment impossible.” *Id.*

Complainant also cites as evidence of bias “my involvement in cases against Bill and Hillary Clinton”, the fact that the subject judge was appointed by President Clinton and the subject judge’s spouse worked with President Clinton, and the fact that complainant wrote a book that is critical of the subject judge, along with other politicians, jurists, and media figures. These factors, however, do not constitute evidence of the subject judge’s bias, as bias cannot be demonstrated based only on a judge’s supposed political affiliations and connection to the President that appointed the subject judge. *Karim-Pananhi v. U.S. Congress*, 105 Fed. Appx. 270, 274-75 (D.C. Cir. 2004). Furthermore, this case is even more tenuous than another case decided by this court which held that a judge need not recuse themselves even when the President

who nominated the judge was a party to the litigation. The court determined that “[h]earing a case involving the conduct of the President who appointed me will not ‘create in reasonable minds, with knowledge of all the relevant circumstances that a reasonable inquiry would disclose, a perception that [my] ability to carry out judicial responsibilities with integrity, impartiality, and competence [would be] impaired.’” *In re Executive Office of President*, 215 F.3d 25, 25 (D.C. Cir. 2000) (internal citation omitted). See also *Baker & Hostetler LLP v. U.S. Dept. of Commerce*, 471 F.3d 1355 (D.C. Cir. 2006) (judge need not recuse in case as result of his previous employment in the executive branch when judge did not have any personal knowledge of any disputed evidentiary facts). Here complainant has failed to allege any facts or evidence that would cause the average person to reasonably question the subject judge’s impartiality. The bias allegation, therefore, lacks any evidence to raise an inference that judicial misconduct has occurred. 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 are directly related to the merits of the subject judge’s rulings or lack sufficient evidence to infer that misconduct has occurred, 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).