

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-16-90002

No. DC-16-90003

No. DC-16-90004

A CHARGE OF JUDICIAL
MISCONDUCT OR DISABILITY

Before: HENDERSON, *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)(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).

KLH

Karen LeCraft Henderson, Circuit Judge
District of Columbia Circuit

Date: 4/22/2016

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

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. For the following reasons, the misconduct complaint will be dismissed.

The complainant mailed a judicial misconduct complaint against a Supreme Court justice to this circuit. The Circuit Executive returned the complaint and informed the complainant that the complaint was not being filed because it was not against a judge of this circuit. The complainant then filed a mandamus petition with the court of appeals seeking to direct the Judicial Council to file the misconduct complaint.

The Clerk's Office directed the complainant to prepay the filing fee within 30 days or face dismissal for lack of prosecution. On the 30th day, the complainant moved for reconsideration. A panel of the court of appeals gave the complainant an additional 30 days within which to prepay the filing fee. When no payment was made, the case was dismissed by Clerk's order. Forty-eight days later, the complainant filed what was construed as a motion to reconsider, merely addressing the substance of his mandamus petition alleging judicial misconduct. A second panel of the court of appeals denied the motion for reconsideration, stating that the complainant had been given ample time to pay the docketing fee but he failed to do so, and thus there was no cause for reconsideration.

The complainant has now filed a judicial misconduct complaint with allegations against the Supreme Court justice and the three court of appeals judges who denied the complainant's motion for reconsideration. Specifically, the complainant asserts that the justice and the judges obstructed his "access to Court, in violation of the First

Amendment Speech Rights.” The complainant challenges the judges’ order denying reconsideration, stating that “[t]here is no existent law requiring indigent person’s to pay filing fee to bring Complaint against judge’s misconduct.” The complainant further asserts that the judges “are on the take, accepting money bribes from the reactionary group that referred to itself in the 1970’s as The American Chosen.” He claims that the judges were paid money so that the complainant would not get a hearing that would allow the complainant to challenge false affidavits given in the complainant’s underlying criminal case.

First, the complaint will not be considered to the extent it alleges misconduct on the part of the justice as the justice is not a covered judge within the Rules. “A complaint under these Rules may concern the actions or capacity *only* of judges of the United States court of appeals, judges of United States district courts, judges of United States bankruptcy courts, United States magistrate judges, and judges of the courts specified in 28 U.S.C. § 363.” JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS 4 (emphasis added). The justice is not a judge on any of the listed courts and thus, to the extent the complaint alleges wrongdoing on the part of the justice, this portion of the complaint will not be considered. See JUDICIAL-CONDUCT RULE 8 Commentary (“Complaints against noncovered persons are not to be accepted for processing under these Rules.”) and JUDICIAL-CONDUCT RULE 8(d) (“If a complaint is received about a judge described in Rule 4 and a person not holding an office described in Rule 4, the clerk must accept the complaint for filing under these Rules only with regard to the judge and must inform the complainant of the limitation.”).

Second, to the extent the complainant is alleging wrongdoing on the part of the

subject court of appeals judges, those allegations must also be dismissed. The complainant asserts that these judges obstructed his access to the court and improperly required that he pay the filing fee. These allegations, however, are “directly related to the merits” of the judges’ order denying reconsideration, and therefore do not constitute “cognizable misconduct.” JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS 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 11(c)(1)(B); see 28 U.S.C. § 352(b)(1)(A)(ii).

Third, the complainant makes unsupported claims that the judges accepted bribes. The complaint proffers neither a description of the alleged bribes, nor any evidence thereof. Because the complaint is therefore “based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred,” the Judicial-Conduct Rules require that it “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).