

# The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

**In the Matter of**

**Judicial Council Complaint No. DC-13-90017**

**A Charge of Judicial  
Misconduct or Disability**

Before: GARLAND, 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)(C) & (D).

The Clerk is directed to send copies 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).



Merrick B. Garland, Chief Judge  
District of Columbia Circuit

Date: 5/23/13

## MEMORANDUM

The complainant alleges that a judge of the United States District Court for the District of Columbia engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts. Specifically, the complainant alleges that the subject judge denied the complainant's motion to vacate the judgment pursuant to 28 U.S.C. § 2255 and is continuing to commit "this act of fraud." For the following reasons, these allegations do not warrant action against the subject judge.

The complainant was convicted and sentenced and that conviction was affirmed by the Court of Appeals. The complainant then filed a motion to vacate the judgment, which the subject judge denied. The complainant appealed that decision, but the appeal was dismissed for failure to prosecute. The complainant then filed a second motion to vacate the judgment, which the subject judge denied, noting that the successive motion had to be certified first by the Court of Appeals. The complainant sought permission from the Court of Appeals to file his successive motion, but the petition was denied. The complainant then filed the instant judicial misconduct complaint against the subject judge, asserting that the subject judge denied his motion to vacate and "had the audacity to sentence [one of the complainant's co-defendants]." The complainant went on to argue that the subject judge "continues this act of fraud to this very day, by refusing to notify [the complainant] of the unethical acts that are being committed against him."

Other than stating that the subject judge denied his motion to vacate and committed fraud, the complainant has failed to provide any specific evidence of

wrongdoing on the part of the subject judge. The allegations against the subject judge therefore lack sufficient evidence to raise an inference that judicial misconduct has occurred. *See* 28 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).

Moreover, the allegations are appropriately characterized as a direct challenge to the merits of the subject judge's order denying the complainant's motion to vacate the judgment. The appropriate avenue to obtain relief from allegedly erroneous rulings 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."). It should be noted that the complainant filed an appeal from the denial of the motion to vacate, which was ultimately dismissed for failure to prosecute, and subsequently sought to file a successive motion to vacate, which was also denied by the Court of Appeals.

Accordingly, because the complainant's allegations lack sufficient evidence to raise an inference that misconduct has occurred and is directly related to the merits of the subject judge's decisions, the complaint must be dismissed.<sup>1</sup>

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<sup>1</sup> 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).