

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-11-90029
DC-11-90030

**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 and a Magistrate 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 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).



David B. Sentelle, Chief Judge
District of Columbia Circuit

Date: 9/14/11

M E M O R A N D U M

Complainant alleges that a judge and a magistrate judge from the United States District Court for the District of Columbia have engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts. Specifically, complainant alleges that the subject magistrate judge exceeded the scope of the referral without the consent of the district court judge, misinterpreted complainant's motions, improperly allowed military attorneys to proceed in civilian court, improperly allowed witnesses to appear and attorneys to argue without properly noting their appearance, failed to file transcripts of court proceedings, and improperly refused to file complainant's "notices". Complainant also alleges that the subject district court judge failed to properly supervise the subject magistrate judge. Complainant's allegations, however, do not provide any grounds for action against the subject judges.

The allegation against the subject district court judge is simply that the judge failed to properly supervise the magistrate judge. Complainant fails, however, to provide any specific evidence to support the allegation or to demonstrate 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).

The allegations against the subject magistrate judge appear to relate to actions taken by the subject judge. The subject judge denied complainant's motion to compel the court reporter to produce a transcript, directed complainant to refile "notices" as motions, suspended hearings to allow counsel to properly note their appearance, and denied complainant's motion to compel attendance of witnesses. All of complainant's

allegations therefore appear to directly relate to the subject judge's rulings in complainant's 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."). To the extent complainant wishes to challenge the merits of the magistrate judge's pretrial rulings it appears those challenges could be made with the district court judge. See 28 U.S.C. § 636(b)(1)(A) ("A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law.").

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).