

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-11-90006

**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); JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS 11(c)(1)(B).

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: 5/27/11

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 dismissed complainant's underlying case in order to protect the subject judge's colleagues. In addition, complainant asserts that the subject judge "stepped out of [the subject judge's] administrative role as trial judge to play defense attorney." Complainant's allegations, however, do not provide any grounds for action against the subject judge.

Complainant's allegations that the subject judge improperly dismissed complainant's underlying case so as to protect the subject judge's colleagues and acted as the defense attorney are direct challenges to the merits of the subject judge's ruling. The subject judge dismissed complainant's case prior to service on the defendants because the subject judge concluded that the court lacked subject matter jurisdiction to consider the complaint. The appropriate avenue to obtain relief from this alleged erroneous ruling, 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."). Any challenges to the merits of the subject judge's ruling should be made in an appeal of the underlying decision to the United States Court of Appeals for the D.C. Circuit.

Complainant also requests that the filing fee paid in the District Court be returned. A litigant, however, is not entitled to have the filing fee returned simply because he does not prevail before the District Court.

Thus, because the allegations are directly related to the merits of the subject judge's rulings, 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).