

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-11-90024
DC-11-90025
DC-11-90026
DC-11-90027
DC-11-90028

**A Charge of Judicial
Misconduct or Disability**

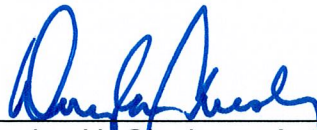
Before: GINSBURG, Acting Chief Judge of the Circuit

ORDER

Upon consideration of the complaint herein, and the supplement thereto, filed against two Judges of the United States District Court for the District of Columbia and three Judges of the United States Court of Appeals for the District of Columbia Circuit 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 4 and 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).



Douglas H. Ginsburg, Acting Chief Judge
District of Columbia Circuit

Date: _____

9/14/11

MEMORANDUM

Complainant alleges that two judges from the United States District Court for the District of Columbia and three judges from the United States Court of Appeals for the District of Columbia Circuit have engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts. Specifically, complainant alleges that the subject judges have engaged in a conspiracy to violate the constitution and have deprived complainant of due process. Complainant asserts that the underlying criminal case is “‘an actual fraud, both intrinsic and extrinsic,’ because each and every alleged criminal offense charged with and in and by the indictment ‘is actually false and fabrications.’” Complainant's allegations, however, do not provide any grounds for action against the subject judges.

The allegations against the subject judges can be separated in to two groups. First, the allegations against one of the District Court subject judges appear to concern decisions that subject judge made while working as a judge in the Superior Court of the District of Columbia while presiding over complainant's underlying criminal case. These arguments, however, cannot be raised in this judicial misconduct complaint as the actions complained about are not actions this subject judge took while acting as a judge in the United States District Court. See JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS 4 (“A complaint under these Rules may concern the action or capacity only of judges of the United States courts of appeals, judges of the United States district courts, judges of United States bankruptcy courts, United States magistrate judges, and judges of the court specified in 28 U.S.C. § 363.”). Moreover, even if complainant could raise these allegations now, they appear to relate

to the subject judge's rulings in complainant's underlying criminal 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."). Complainant has already challenged the underlying criminal conviction in the District of Columbia Court of Appeals.

The second set of allegations relate to a District Court subject judge's dismissal of complainant's petition for writ of habeas corpus and the Court of Appeals subject judges' denial of complainant's request for a certificate of appealability as it related to the petition for writ of habeas corpus. The complaint asserts that these judges have engaged in a conspiracy to "cover up, and conceal, hide and protect the corruption, dishonesty, fraud, judicial misconduct and 'crimes of [the first District Court subject judge]'". As evidence of this conspiracy, complaint simply argues that "the 'files and records in the District of Columbia Courts,' and the facts and evidence demonstrates and shows and proves 'the judges in the District of Columbia Courts 'knowingly and intentionally violates (Judicial Misconduct)' the Constitution and Laws (Statutes) of the United States and District of Columbia 'to (Obstruct Justice) deny and deprive [complainant] one (1) single full and fair post-conviction fact-finding evidentiary hearing on official court records'" (emphasis in original). Complainant, however, has failed to provide any specific evidence to support the conspiracy allegation or to demonstrate

that the subject judges acted improperly and the conspiracy 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).

Thus, because the allegations lack any evidence to raise an inference that misconduct, are not properly before this court, 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).