

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-12-90006

**A Charge of Judicial
Misconduct or Disability**

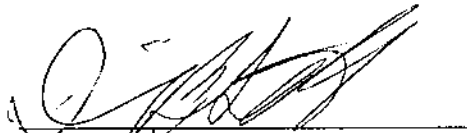
Before: SENTELLE, Chief Judge of the Circuit

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

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: 2/29/12

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 dismissed complainant's suit on the improper basis that complainant failed to file a motion to recall the mandate in the D.C. Court of Appeals. Complainant asserts that the subject judge's erroneous statement that complainant failed to file a motion to recall the mandate is evidence that the subject judge has "committed a conspiracy, retaliation, obstruction of access to the court by helping [the subject judge's] friends in [complainant's] civil matter." Complainant's allegations, however, do not provide any grounds for action against the subject judge.

Complainant's allegation that the subject judge wrongly dismissed part of complainant's underlying case for failure to file a motion to recall the mandate appears to be a challenge to the merits of the subject judge's decision. 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 decision should be made before the U.S. Court of Appeals for the D.C. Circuit.

Complainant also alleges that the subject judge's erroneous statement that

complainant failed to file a motion to recall the mandate demonstrates that the subject judge is involved in a conspiracy and is somehow retaliating against complainant by helping the subject judge's "friends." Complainant, however, has failed to provide any specific evidence to support the conspiracy and retaliation allegations or to demonstrate that the subject judge acted improperly. Thus, these allegations lack any evidence to raise an inference that misconduct has occurred. 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).

Because the allegations are either directly related to the merits of the subject judge's decision or lack any evidence to raise an inference of misconduct, 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).