

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-12-90009

**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) & (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 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: 3/28/12

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 wrongfully dismissed complainant's underlying case because the subject judge is a friend of the defendant in complainant's case. Complainant's allegation, however, does not provide any grounds for action against the subject judge.

In a prior case filed by complainant, a judge dismissed the action concluding that complainant must first exhaust all local remedies. Complainant alleges that after exhausting all local remedies complainant filed a new complaint, the one before the subject judge. The subject judge then dismissed that complaint as barred by res judicata. Complainant argues that because all local remedies were exhausted, the second case should have been considered on the merits. Complainant's allegation that the subject judge wrongly dismissed complainant's underlying case as being procedurally barred by res judicata 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."). Moreover, it should be mentioned that the subject judge explicitly noted that "the

dismissal of this civil action does not foreclose plaintiff from seeking habeas relief through a properly styled and supported petition under 28 U.S.C. § 2254.” Thus, complainant is not prohibited from filing a habeas claim and the subject judge has not impeded complainant’s ability to raise an ineffective assistance of counsel claim.

To the extent complainant alleges that the subject judge dismissed the complaint because of a relationship with the defendant in complainant’s underlying case, that allegation is without merit. Complainant has failed to provide any specific evidence to demonstrate that the subject judge acted improperly. Thus, this allegation lacks 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 complainant’s allegation is either directly related to the merits of the subject judge’s decision or lacks sufficient evidence to raise an inference that misconduct has occurred, 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).