

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-12-90010

**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 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 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: 4/19/12

MEMORANDUM

Complainant alleges that a judge from the United States Court of Appeals has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts. Specifically, complainant alleges that the subject judge knew that the prosecutor threatened a witness but hid that information from complainant and took no steps to report the misconduct. Complainant's allegation, however, does not provide any grounds for action against the subject judge.

Complainant asserts that a lawyer for a witness in complainant's underlying criminal trial in Superior Court filed a motion with the subject judge notifying the subject judge that the prosecutors in the criminal trial had threatened the witness. The issue of prosecutorial misconduct was an issue in complainant's pleading, which was construed as a certificate of appealability and filed with the court of appeals. The court reviewed complainant's pleading and denied the certificate of appealability. Complainant's allegation that the subject judge failed to properly report allegations of prosecutorial misconduct appears more to be a challenge to the merits of the subject judge's decision to deny the certificate of appealability. 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, complainant has failed to provide any specific evidence to

demonstrate that the subject judge acted improperly. The alleged prosecutorial misconduct supposedly occurred during complainant's criminal trial in the Superior Court, not during the proceedings before the subject judge. Furthermore, the motion filed by the witness's lawyer alleging prosecutorial misconduct was before a Superior Court judge and not the subject judge. The allegation that the subject judge somehow failed to turn over information about the prosecutorial misconduct to complainant or otherwise report it is, therefore, baseless. Complainant has not provided any evidence which shows that the subject judge had any special knowledge of prosecutorial misconduct beyond that raised in the certificate of appealability. 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).