

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-12-90024

A Charge of Judicial
Misconduct or Disability

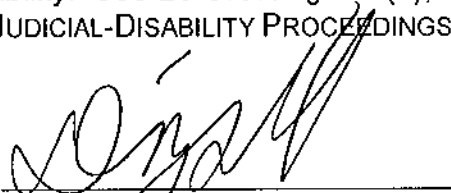
Before: SENTELLE, Chief Judge of the Circuit

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: 6/22/12

MEMORANDUM

Complainant alleges that a judge from the United States District Court 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 case which was an "improper use of the authority by the judge to over rule the court of appeals decision." Complainant asserts that the court of appeals sent the case back to the subject judge "for action not for further decision." Complainant also states that complainant "never received any documents or decision" from the subject judge. Complainant's allegations, however, do not provide any grounds for action against the subject judge.

A portion of complainant's underlying case was remanded to the subject judge for further proceedings. Complainant argues that it is improper for the subject judge to grant the motion to dismiss and that the subject judge's decision should be reviewed. Complainant's argument, however, is a direct challenge to the subject judge's order granting the motion to dismiss. The appropriate avenue to obtain relief from the 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."). Complainant filed an appeal of the subject judge's decision with the court of appeals however that appeal was dismissed for failure to prosecute.

Complainant also alleges that the subject judge failed to provide copies of "any documents or decision[s]" while the case was on remand. The record, however, suggests otherwise. Complainant filed motions in the district court after the case was remanded and responded to motions filed by the opposing parties. Although the record does not affirmatively show that complainant received a copy of the subject judge's dismissal order, that in and of itself is insufficient evidence of misconduct. An appearance of impropriety exists only when a reasonable person, "with knowledge of all the relevant circumstances disclosed by a reasonable inquiry, would conclude that the judge's honesty, integrity, impartiality, temperament, or fitness to serve as a judge is impaired." Code of Conduct for United States Judges Canon 2A commentary. The fact that complainant did not receive an order does not provide evidence that would cause a reasonable observer to believe that misconduct has occurred. Accordingly, this allegation must be dismissed as lacking sufficient 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 allegations are related to the merits of the subject judge's decision or lack 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).