

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-12-90025

**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: 7/23/12

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 had a “blatant, unwarranted, and demonstrated display of judicial bias” against the complainant. Complainant asserts that the subject judge’s bias is evidenced by the fact that the subject judge did not comply with the law but instead dismissed complainant’s case on an improper basis and treated a similarly filed complaint by a unrelated party differently. Complainant’s allegations, however, do not provide any grounds for action against the subject judge.

Complainant argues that “actual impropriety is evident merely from the dismissal.” The mere fact that the subject judge dismissed the complaint is not, however, evidence of wrong doing on the part of the subject judge. The argument is more appropriately categorized as a direct challenge to the subject judge’s order dismissing the complaint. 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 has noted an appeal of the subject judge’s decision with the court of appeals.

Complainant also alleges that the subject judge's bias is evidenced by the fact that the subject judge treated a similarly situated case differently. A review of the records of both cases reveals that complainant's case was not similarly situated to another case which the subject judge allowed "to go forward." In complainant's underlying case complainant had provided a trust account statement along with the motion to proceed in forma pauperis and, therefore, the subject judge had all the necessary information to rule on both complainant's motion to proceed in forma pauperis and the complaint. In the other case, however, the plaintiff had not provided the trust account information and, therefore, the subject judge ordered the plaintiff to provide that information so that the case could proceed. The difference in the subject judge's treatment of the cases was based on the different procedural posture of the cases and, therefore, does not provide any evidence of judicial misconduct.

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).

Complainant also argues that the recusal of the subject judge from complainant's subsequent motions demonstrated that the subject judge's bias "was clearly recognized by the rest of the Jurists of the district court." The complainant, however, has mischaracterized the assignment of complainant's case to a second judge. There was no recusal by the subject judge. Instead, complainant's case was not assigned to a specific judge but instead was handled by the motions judge on duty and thus different parts of complainant's case were handled by different motions judges. The motions judge assignments are published on the district court's web site. This allegation,

therefore, lacks any evidence to raise an inference that misconduct has occurred. *Id.*

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).