

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-12-90043

A Charge of Judicial Misconduct or Disability

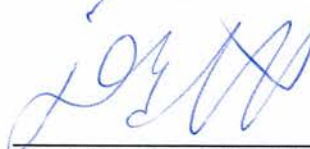
Before: SENTELLE, Chief Judge of the Circuit

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: 11/14/12

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 has “acted with bias and prejudice towards [complainant] as part of a concerted effort to prevent criminal actions by [defendants in the underlying cases] from coming into light.” Complainant's allegation, however, does not provide any grounds for action against the subject judge.

Complainant filed a motion for sanctions in the Bankruptcy Court for the District of Columbia. The Bankruptcy Judge granted summary judgment in the case and denied the motion and complainant appealed those decisions to the subject judge. The subject judge stated that the issue was simply whether the attorneys had acted in bad faith in making allegations against the complainant and thus whether the Bankruptcy judge erred in finding that the attorneys had not acted in bad faith. Complainant, however, argues that the subject judge's failure to examine the merits of the underlying cases which took place in another jurisdiction, are evidence of the subject judge's personal bias against complainant and an improper motive to protect the judges in another jurisdiction. The mere fact that the subject judge characterized and limited the issues in a manner with which complainant disagrees is not, however, evidence of wrong doing on the part of the subject judge. The complainant has failed to allege any facts or evidence that would cause the average person to reasonably question the subject judge's impartiality. The bias allegation, therefore, lacks any evidence to raise an inference that judicial misconduct has occurred. See 28 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).

A challenge to the subject judge's characterization of the issues and legal analysis is more appropriately categorized as a direct challenge to the subject judge's order. Similarly, the complainant further alleges that the subject judge's bias is evidenced by the fact that the subject judge ignored the case law discussed by complainant and instead followed the case law cited by one of the judges who handled complainant's underlying case in another jurisdiction. These challenges, however, are direct challenges to the substance of the subject judge's order affirming the order of the Bankruptcy Court. 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."). It should be noted that complainant has already filed a notice of appeal of the subject judge's order with the U.S. Court of Appeals for the D.C. Circuit.

Because complainant's allegations are directly 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).