

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-12-90044

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 two cases in the District Court that were assigned to the subject judge. Complainant alleges that at a hearing before the subject judge, the subject judge “constantly interrupt[ed]” complainant and “chose to ignore [complainant’s] cases rather than disagreeing with them.” Complainant also argues that the subject judge’s responses were “clearly made in bad faith” and that the subject judge made “absurd argument[s].” Complainant further asserted that the subject judge’s “flip-flopping regarding discovery and [the subject judge’s] total disregard of the Federal Rules of Civil Procedure is not mere error.... [The subject judge] was in cahoots with the defendant.” The mere fact that the subject judge ruled against the complainant or even changed positions or “ignored” arguments made by complainant, however, is not 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 decisions and legal analysis, however, is more appropriately categorized as a direct challenge to the merits of the subject judge's rulings. The complainant is challenging the subject judge's handling of discovery, the case law followed by the subject judge, and the procedural handling of the case. Complainant's challenges, however, are direct challenges to the substance of the subject judge's rulings about discovery and the motion for summary judgment, and the procedural posture of the case leading up to those decisions. The appropriate avenue to obtain relief from the alleged erroneous rulings, 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 notices of appeal with the U.S. Court of Appeals for the D.C. Circuit in both of the cases before the subject judge. One appeal is pending while a motion for summary affirmance was granted in the other.

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).