

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-12-90045

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); JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS 11(c)(1)(B).

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: _____

11/26/12

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 intentionally violated the law by improperly using confidential information when imposing a fine and making a restitution determination, by ordering complainant to turn over assets that did not belong to complainant or were outside complainant's control, and by not believing that complainant lacked the means to pay the fine and the restitution amounts and improperly holding complainant in contempt for failure to pay. Complainant's allegations, however, do not provide any grounds for action against the subject judge.

Complainant's challenges appear to be direct challenges to the substance of the subject judge's imposition of a fine and restitution and the contempt orders that followed. 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 appealed the conviction and sentence, which included the imposition of the fine and restitution, with the U.S. Court of Appeals for the D.C. Circuit. The Court of Appeals affirmed complainant's conviction

and sentence, including the fine and restitution obligations. Complainant then filed a petition for writ of habeas corpus in the jurisdiction in which complainant was incarcerated. That court determined that because complainant did not appeal the contempt order, its review was limited to the propriety of complainant's continued incarceration for contempt, and that relief was not warranted because complainant did not contend an inability to comply with the underlying orders. Complainant then filed a habeas petition with the subject judge, once again challenging the underlying criminal conviction and sentence and the continued incarceration for civil contempt. The petition was dismissed both because it was procedurally infirm and on the merits. Complainant, however, has continued to challenge the continued incarceration for civil contempt. After complainant filed the instant complaint, the subject judge issued another order continuing to hold complainant in civil contempt. Complainant may challenge that order before the Court of Appeals but may not do so through this judicial misconduct action.

Because complainant's allegations are directly related to the merits of the subject judge's decisions, 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).