

The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint No. DC-12-90050

A Charge of Judicial Misconduct or Disability

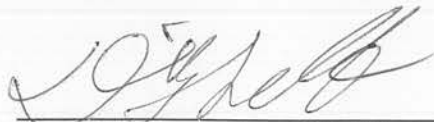
Before: SENTELLE, Chief Judge of the Circuit

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: 12/10/12

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 “consistently and maliciously acted against” complainant. Complainant argues that the subject judge summarily denied complainant’s motion for leave to file a section 2255 petition and this “reinforces a pattern of bias and vindictiveness.” Complainant’s allegations, however, do not provide any grounds for action against the subject judge.

Complainant alleges that the subject judge continues to decide cases in a manner unfavorable to complainant, thereby demonstrating that the subject judge is biased against complainant. The mere fact that the subject judge has ruled against the complainant in complainant’s underlying cases 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 denying leave to file complainant’s petition. 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.”).

Even if complainant’s allegation was not construed to be a challenge to the merits of the subject judge’s decision, complainant has failed to allege any facts or

evidence that would cause the average person to reasonably question the subject judge's impartiality. The allegations that the subject judge acted maliciously or was biased lack any evidence to raise an inference that judicial 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 either lack sufficient evidence to raise an inference that misconduct has occurred or are directly related to the merits of the subject judge's decision, 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).