The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

In the Matter of

Judicial Council Complaint Nos. DC-13-90005
DC-13-90006
DC-13-90007

A Charge of Judicial Misconduct or Disability

Before: GARLAND, Chief Judge of the Circuit

ORDER

Upon consideration of the complaint herein, filed against three Judges of the United States Court of Appeals for the District of Columbia Circuit 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)(iii); JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS 11(c)(1)(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).

Merrick B. Garland, Chief Judge
District of Columbia Circuit

Date: 3/4/13

M E M O R A N D U M

The complainant alleges that three judges of the United States Court of Appeals for the D.C. Circuit have engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts. Specifically, his complaint is that the subject judges willfully failed to address the fact that the Clerk of Court had failed to file an Application for an Appointment of an Independent Counsel pursuant to 28 U.S.C. § 592. For the following reasons, the complainant's allegation does not warrant action against the subject judges.

By separate letter, the Clerk's Office is advising the complainant that the Office had misplaced his application for appointment of an independent counsel. It is for that reason that the application was never submitted to the subject judges. The Office's letter further explains that, because the statutory authority of this circuit to appoint an independent counsel expired in 1999, the special division of this court referred to in § 592 no longer exists. It is for that reason that the judges would not, in any event, have had authority to appoint the statutory independent counsel the complainant seeks.

In light of the above considerations, there are no allegations or evidence sufficient to raise an inference that misconduct has occurred. Accordingly, the complaint must be dismissed. *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).[1]

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[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).