

# The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

**In the Matter of**

**Judicial Council Complaint No. DC-15-90008**

## **A Charge of Judicial Misconduct or Disability**

Before: GARLAND, *Chief Judge*.

### **ORDER**

Upon consideration of the complaint described herein, filed against a judge of the United States District Court for the District of Columbia, it is

**ORDERED** that the complaint be dismissed for the reasons stated in the attached Memorandum.

The Circuit Executive is directed to send copies of this Order and accompanying Memorandum to the 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

Date: 10/15/15

## MEMORANDUM

The complainant has filed a complaint of judicial misconduct against a judge of the United States District Court for the District of Columbia. The allegations arise out of two lawsuits the complainant filed against the Social Security Administration (SSA) relating to retirement insurance benefits. Both suits were assigned to the subject judge. For the following reasons, the complaint will be dismissed.

The complainant's first lawsuit sought judicial review of the SSA's determination of his retirement insurance benefits, on the ground that the SSA had improperly reduced those benefits. The subject judge ordered that the case be remanded to the SSA for a hearing before an administrative law judge. The complainant ultimately prevailed and the SSA granted him full benefits.

Notwithstanding that the subject judge's remand order ultimately led to the complainant's success before the SSA, the complainant alleges that, in the first lawsuit, the subject judge "was biased against [the complainant] by his unfair and unfounded judgments . . . [and] acted as the defense lawyer for the Social Security Administration, rather than as an impartial judge." In support of these allegations, the complainant proffers that the judge misstated legal and factual assertions made by the SSA. The allegation that the judge made legally and factually incorrect statements is "an allegation that is directly related to the merits of a decision or procedural ruling" and, accordingly, does not constitute cognizable misconduct," JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS, RULE 3(h)(3)(A). Under the relevant

Judicial-Conduct rule, this part of the complaint must be dismissed. *Id.* RULE 11(c)(1)(B); *see* 28 U.S.C. § 352(b)(1)(A)(ii).

After prevailing on remand before the SSA, the complainant filed a second lawsuit against the SSA, seeking damages for the cost and time spent litigating the first case. The subject judge dismissed that suit, pursuant to Federal Rules of Civil Procedure 4(m), for failure to present proof of service of process on the defendant within 120 days after the complaint was filed. The complainant then sought reconsideration of the dismissal, which the judge denied. The complainant noted an appeal four months later, which the United States Court of Appeals for the District of Columbia Circuit dismissed as untimely.

With respect to the second lawsuit, the complainant again alleges that the subject judge was biased against him by his unfair and unfounded judgments. In support of this allegation, the complainant proffers that the delay in effective service of process on the defendant was “[d]ue to mistakes/negligence of the Clerk’s Office,” that the subject judge knew this, and that the “judge ignored this and did not consider giving [the complainant] additional time to send the summonses.” He also alleges that “[t]here is undisputed proof that the defendant received my complaint and summons within 120 days,” and that the “judge ignored the Federal Rules of Civil Procedure and did not default the defendant who did not answer the complaint within 60 days.” Like the complainant’s allegations regarding the first lawsuit, these allegations are “directly related to the merits of a

decision or procedural ruling” of the subject judge and so, too, must be dismissed, JUDICIAL-CONDUCT RULE 11(c)(1)(B).

There is one remaining part of the complaint that must be addressed. The complainant states that, prior to his appeal from the subject judge’s order dismissing his second lawsuit, he had filed a motion to rescind the order that may have rendered his appeal timely by extending the time for filing a notice of appeal. The Court of Appeals, in denying what it construed as a petition for rehearing, noted that, although the complainant had “offered evidence intended to show his post-judgment motion was in fact received by the district court, such a motion has not been entered in the civil docket.” The Court of Appeals directed the Clerk to transmit a copy of its order and of the complainant’s petition for rehearing to the district court, and stated that the Court “anticipates that the district court will give appropriate consideration to [the complainant’s] submissions.” Noting that his motion to rescind the order dismissing his second lawsuit was not entered on the civil docket, the complainant states that “[i]t is my right that the judge enters my motion in the civil docket, and it is not the judge’s right not to enter it.”

An examination of the civil docket shows that the complainant is correct that, as of the time he filed his misconduct complaint, his motion to rescind had not been entered on the docket. Since then, however, the subject judge has issued an Order to Show Cause to the Social Security Administration why the case should not be reopened in light of the

submissions the complainant made in connection with his petition in the Court of Appeals. Because that “intervening event[]” has rendered further action on this aspect of the misconduct complaint “no longer necessary,” this remaining part of the complaint will also be dismissed. 28 U.S.C. § 352(b)(2); see JUDICIAL-CONDUCT RULE 11(e).<sup>1</sup>

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<sup>1</sup> Pursuant to 28 U.S.C. § 352(c) and Judicial-Conduct Rule 18(a), the 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 Circuit Executive for the D.C. Circuit within 35 days of the date of the Circuit Executive’s letter transmitting the dismissal Order and this Memorandum. JUDICIAL-CONDUCT RULE 18(b).